

PETITIONER:
THE SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, WEST B

Vs.

RESPONDENT:
MANGAL PATHAK & ORS.

DATE OF JUDGMENT 09/12/1994

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
PUNCHHI, M.M.

CITATION:
1995 SCC Supl. (1) 239 JT 1995 (1) 227
1994 SCALE (5) 206

ACT:

HEADNOTE:

JUDGMENT:

1. This appeal by the State of West Bengal is directed against the judgment of the Division Bench of the Calcutta High Court. There are nine respondents namely original accused nos. 1 to 9. They were tried for offences punishable under Sections 148, 302/149 and 326/34. The trial court convicted and sentenced each of them to undergo imprisonment for life for the offence punishable under Sections 302/ 149 and lesser terms of imprisonment for minor offences. On an appeal the High Court by the impugned judgment set aside the judgment of the trial court and acquit-

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ted all of them of all the charges. Hence the present appeal.

2. All the accused and the deceased Brahmananda Pathak, his brother P.W. 12 the injured witness and his son P.W.1, Amalendu Pathak belong to Village Surulia in Purulia District. There were disputes between the deceased and his men on one side and the accused and the other villagers on the other side in respect of fishing towards the end of month of Kartik. Thus there were two parties and each was inimical towards the other. About 4 or 5 years before the present incident there was a dacoity in the house of the deceased and in that criminal case A-2 and A-8 were convicted and sentenced to eight years' R.1. They preferred an appeal and were released on bail pending appeal. On 14.11.79 some of these accused alongwith 12 other, criminally trespassed into the house of the deceased and took away a gun and threatened the deceased. As a counter blast the accused also instituted a case against the deceased, P.Ws. 1 and 12 and others. In that case the deceased and P.W. 1 were granted bail with a condition that they should remain outside the District and subsequently it was relaxed and they were allowed to visit their house on Wednesday and Sunday and this order was in force. The

deceased had an old mother. Two or three days before the present incident she feel ill and she expressed a desire to see the deceased. On 23rd July, 1980 it was a Wednesday. The deceased and his son P.W. 1 were in their rice godown in Purulia Town. Towards evening P.W. 12, brother of the deceased came there and informed the deceased about the deteriorating condition of his mother and her desire to see him. Thereafter the deceased and P.Ws 1 and 12 started together to their house to see the old lady, P.W. 1 had a bicycle with him and a three-cell torch and a bag containing some papers. On the way to their house they had a grocery shop. They dropped in there for some time and at about 8.45 P.M. they were proceeding to a place called Rakhabari, and there they noted 7 or 8 persons coming towards them from the opposite direction. P.W. 1 flashed the torch and saw accused nos. 2,3,4,8 and 9 and some others and they were carrying various weapons. A-8 was armed with a table, A-2 and A-3 were armed with swords and A-4 and A-9 were armed with tangis. P.W. 1 apprehending danger gave his cycle to the deceased and asked him to leave immediately. While the deceased was ready to ride on the cycle, A-8 Aswini Pathak reached there and assaulted the deceased on his neck with the tabla with the result that the deceased fell down on the ground. P.W. 1 immediately ran from the place raising an alarm. While running he looked back and saw his uncle P.W. 12 also being assaulted by A-8 and others. P.W.1 reached a locality called Hanchuk Para and raised an alarm. Hearing this P.Ws. 2,3,6, and 7 came out followed by others from their houses. P.W. 1 immediately reported the incident to them and also mentioned the names of accused nos. 2,3,4,8 and 9 as the, assailants.

3. After P.W. 1 had run away from the place as stated above, P.W. 12 seeing that his brother deceased had fallen, went to save him and caught hold of A-8. Both of them fell down. At that time A-2 and A-3 attacked him with swords and inflicted injuries on his neck and back. As P.W.12 tried to resist the attack on him by raising his hands he sustained bleeding injuries on his hands and his right little finger got severed and his wrist watch also fell down.

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At that time the deceased got up and was trying to run away but he was- chased and was assaulted by the assailants. P.W. 12 in the meantime managed to get up and walk upto Hanchuk Para. At the time of the incident there was moonlight and little thereafter there was a shower to rain. At the request of P.W. 1 some of the residents of Hanchuk Para went to inform the police over the phone and some other made arrangement for carrying P.W. 12 to Purulia Hospital for treatment. P.W. 1 was informed that his father had expired. On the information received at about 11.15 P.M. the police arrived. On their way they saw P.W. 12 being carried. P.W. 16, Police Sub Inspector then recorded the statement, Ex.P.1 of P.W.1 and sent it to the police station for registering the case. P.W. 16 took up the investigation, went to the place of occurrence and held inquest next day morning and sent the dead body for postmortem. He recorded statements of several persons including that of P.W.12. P.W. 11, the Doctor, who conducted the postmortem, found as many as six incised injuries all over the body. The Doctor also found one gun shot injury over the right lumbar region which injured the kidney and other parts. He recovered pellets from the body. He opined that the death was due to shock and hemorrhage and the incised injuries could have been caused by cutting weapons like tabla, sword and tangi and the last injury could have

been caused by a fire-arm. P.W. 12 also was examined by another Doctor, P. W. 15 and he found as many as six sharp cutting wounds on the hands and other parts of the body of P.W. 12 and also found his right little finger missing. He opined that these injuries could have been caused by Tabla and with sharp-edged weapons. After completion of the investigation, the charge-sheet was filed.

4. The prosecution relied mainly on the evidence of P.Ws. 1 and 12, the eyewitnesses and also on the evidence of P.Ws. 2,3 and others who came out after hearing the cries of P.W. 1 and narrated the incident. The accused, when examined under Section 313 Cr. P.C., denied the offence and pleaded not guilty. The plea set up by the defence was that they have been falsely roped in and that the earliest report given by P.W. 1 was a fabricated one and the identification of the assailants by P.Ws. 1 and 12 should not be accepted because it was dark.

5. The trial court after an elaborate discussion of the evidence of P.Ws. 1 and 12 accepted their testimony. He did not find any serious infirmity in their evidence. The trial court held that Ex.P. 1 amply corroborated the evidence of P.Ws. 1 and P.W. 12, being an injured witness, his evidence has to be accepted. Coming to the other witnesses the trial court found that P.W. 2 turned hostile. P.W.3, however, supported the prosecution case and his evidence was accepted. P.W. 5 deposed that on hearing the alarm of P.W. 1 he came out and also saw P.W.12 with bleeding injuries who came there and thereafter they went to inform the police and for sending ambulance and subsequently P.W. 12 was removed to the hospital. The trial court held that the evidence of P.W. 5 could not be discredited on any ground. P.W. 6 who also came out on hearing the cries of P.W. 1 supported the evidence of P.W. 1. Likewise P.W.7's evidence also, which is to the same effect, was accepted by the trial court. Thus it can be seen that the prosecution case as spoken to by P.Ws. 1 and 12 and corroborated by the evidence of P.Ws. 3 to 7 was

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accepted by the trial court. However, the other four accused whose names were not mentioned in the earliest report were mentioned subsequently and the case against them was also accepted by the trial court as spoken to by P.Ws. 1 and 12.

6. While so, the High Court in the appeal without any discussion on the evidence whatsoever simply held that P.W. 12, who knew and recognised the assailants, did not mention the names to the doctor who examined him and therefore it would be unsafe to accept his evidence. Coming to the evidence of P.W. 1 the High Court pointed out that the conduct of P.W. 1 in not asking any of the villagers to go the rescue of his father is unnatural and against normal human behavior and it would be risky to sustain the conviction of the accused on the basis of his testimony. These are the only main reasons given for discarding the evidence of P.Ws. 1 and 12. It is needless to say that the High Court has not examined the evidence of P.Ws. 1 and 12 in the proper perspective and on the basis of some vague grounds their evidence has been rejected and the few reasons given do not stand judicial scrutiny at all. We have carefully examined the evidence of P.Ws. 1 and 12 alongwith the evidence of P.Ws. 3 to 7. The evidence of P.W.5 clearly shows that P.W. 12 who was seriously injured was immediately taken to the hospital and we fail to see as to why P.W. 12 should tell the names of the assailants to the who was examining him for his injuries. P.W.1 at the earliest

moment has given the earliest report Ex.P. 1 to the Police. In that report he has mentioned the place and time of occurrence and as to how he alongwith the deceased and P.W.12 were going to their house to see the old lady. Then he mentioned the names of accused nos. 2,3,4,8 and 9 as some of the assailants armed with deadly weapons and he also stated that apprehending danger he gave the cycle to his father and asked him to go away. AT that juncture A-8 hit his father on the neck with the tabla and immediately accused nos. 2,3,4 and 9 surrounded and were ready for assault and he saw his uncle P.W. 12 also being assaulted but somehow he managed to escape and then raised an alarm. Before that he also heard the sound of a bomb explosion. On reaching Name Surulia he saw P.Ws. 2,3 and others coming out hearing his cries and he told them about the incident. Thereafter he came to know that his father was dead. We have gone through Ex.P. 1 carefully, In the light of the circumstances we find that it is a most natural and true report and there are absolutely no indication of any fabrication. If P.W. 1 has prepared to fabricate a report after consultations he could have attributed specific overt acts to many other accused and the version given in Ex.P. 1 has a ring of truth. The names of P.Ws. 2,3 and others who came out hearing his alarm are also mentioned. All other necessary details are mentioned. All these facts mentioned in Ex.P. 1 could not have been incorporated if P.W. 1 was not a natural witness to the occurrence to the extent he has witnessed. He also deposed that he had a torch and it was also a moonlit night. The accused were not strangers to him and there would not have been any difficulty in identifying them. In any event there is evidence of P.W. 12 who was seriously injured and whose presence at the scene of occurrence can not be doubted. He must have seen the assailants at the close quarters and he has also mentioned the parts played by accused nos. 2,3, and 8. His version is

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in conformity with that of P.W. 1 and the same version is also mentioned in Ex. P. 1, the earliest report. Their evidence is further corroborated by the evidence of P.Ws. 3 to 7 as mentioned above and the trial court has given good and valid reasons for accepting the evidence of these witnesses.

7. The next question is whether a foolproof case is made out against all the respondents namely A-1 to A-9. As stated above there was bitter enmity between the two parties and they were involved in criminal cases. P.Ws. 1 and 12 are admittedly interested witnesses and their evidence has to be scrutinised with great care and caution. Generally in such a situation their evidence has to be scrutinised in the light of Ex.P.1, the medical evidence and other surrounding circumstances and with reference to their earlier statements. It has to be noted that in Ex. P. 1 only the names of accused nos. 2,3,4,8 and 9 are mentioned and the names of other accused were not mentioned. Therefore we think it may not be safe to convict the other accused whose names were not mentioned in Ex.P. 1. Then we are left with the case of accused nos. 2,3,4,8 and 9. In Ex.P.1, P. W. 1 has stated that it was A-8 who first opened the attack and inflicted a blow on the neck of the deceased. No other overt acts are mentioned obviously because he did not witness the entire occurrence. P.W. 12 in his evidence has attributed overt acts to A-2, A-3 and A-8 only. In a case of this nature we think it is safe to convict only those accused to whom specific overt acts are attributed. P.W. 12 deposed that in the flash of torch of P.W. 1 he recognised

the nine accused. Then he proceeded to state that A-8 was the first person to inflict a blow on the neck of the deceased with a tabla as a result of which he fell down. Thereafter P.W. 12 caught hold of A-8 and both of them fell down and A-2 and A-3 inflicted blows with swords on him on the neck and back. At that time he saw P.W. 1 running away. He could not give any other details of the occurrence. Thus it can be seen that though the names of accused nos. 2,3,4,8 and 9 are mentioned in Ex. P. 1 we find from the evidence of P.Ws. 1 and 12 that the actual overt acts are attributed only A-1, A-3 and A-8. The medical evidence also corroborates in respect of overt acts committed by these three accused. Therefore we think it is absolutely safe to convict these three accused and give benefit of doubt to others. But by this way we are not in any manner doubting the evidence of P.Ws. 1 and 12. By way of abundant caution having regard to the fact that they are interested witnesses and, after a careful consideration keeping in view the principles regarding the scrutiny of such interested witnesses, the other accused are given benefit of doubt for the above stated reasons. However, we have no hesitation to accept their evidence as against A-2, A-3 and A-8 to whom specific overt acts have been attributed. In our view, the prosecution has established the guilt of these three accused beyond all reasonable doubt. The view taken by the High Court in acquitting all the accused, as stated above, is wholly erroneous.

8. Now coming to the question of applicability of Sections 302/149 I.P.C., taking into consideration all the circumstances of the case we are firmly of the view that more than five persons participated in the occurrence. Therefore there is no difficulty in convicting A-2, A-3 and A-8 under Sections 302/149 I.P.C.

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9. Accordingly we set aside the judgment of the High Court so far these three accused are concerned and convict A-2 Gurupada Pathak, A-3 Bidyadhar Pathak and A-8 Ashwini Pathak under Sections 302/149 I.P.C. and sentence each of them to undergo imprisonment for life. The conviction for the offence punishable under Section 148 I.P.C. and sentence of R.I. for one year and to pay a fine of Rs. 100/- in default of payment of which to undergo further R.I. for one month and the conviction of A-2 and A-3 under Sections 326/ 34 I.P.C. and sentence of R.I. for two years and to pay a fine of Rs. 500/- in default of payment of which to undergo further R.I. for six months, as awarded by the trial court, are restored. The other directions given by the trial court regarding disposal of the articles seized are upheld. In the result the appeal is allowed as against A-2, A-3 and A-8 and dismissed against other respondents-accused.

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