

Criminal Appeal

Present: The Hon'ble Justice Debiprasad Sengupta
And

The Hon'ble Justice Prabhat Kumar Dey

Judgment on: 19.01.2010

C.R.A. No. 347 of 2000

NIRANJAN SINGHA ROY

Versus

STATE OF WEST BENGAL

With

C.R.A. No. 354 of 2000

NEMAI MANNA @ NEMAI CHANDRA MANNA & OTHERS

Versus

STATE OF WEST BENGAL

Point:

MURDER: The act was committed without premeditation, in a sudden fight and in the heat of passion upon a sudden quarrel - Exception 4 to Section 300 IPC whether applicable—Indian Penal Code, 1860 Ss. 300, 302.

Fact: The appellant/accused preferred the instant appeal challenging a judgment and order of conviction and sentence passed by the Ld. Additional Sessions Judge, 2nd Court, Hooghly in a Sessions Trial whereby the accused was convicted under Section 302 of the Indian Penal Code and was further sentenced to suffer imprisonment for life. It has been submitted on behalf of the appellant that the occurrence took place in a sudden quarrel and, therefore, Section 302 has no manner of application. It was further urged that the Fourth Exception to Section 300 IPC covers acts done in a sudden fight. For bringing in operation of Exception 4 to Section 300 IPC it has to be established that the act was committed without premeditation, in a sudden fight and in the heat of passion upon a sudden quarrel and therefore the appellant in stead of Section 302 of the Indian Penal Code at best can be convicted under Section 304 of the Indian Penal Code.

Held:

It appears that there was a dispute over the irrigation work on certain plot of land, which stood in the name of deity Sitala Mata. Over such dispute there was hot altercation between the two groups of villagers. It was really unfortunate that two persons died in such an incident, but at the same time Court finds that there was no premeditation and in course of sudden quarrel such incident took place. It also appears from the evidence on record that after inflicting injury upon the deceased Gokul, Niranjana Singha Roy tried to flee away when he was chased by Sannyasi and others and at that point of time, Niranjana to save himself from the attack by those persons inflicted injury upon Sannyasi. From the evidence of D.W. 1, Dr. Kanika Adhikari Court finds that number of villagers belonging to the group of Niranjana Singha Roy were also injured in course of such free fight between the parties. Considering the facts and circumstances, in which the incident took place and the entire evidence on record, the appropriate conviction, in so far as the accused appellant Niranjana Singha Roy is concerned in CRA No. 347 of 2000, would be under Section 304 Part I of the Indian Penal Code. His conviction is accordingly altered from 302 IPC to Section 304 Part I of the Indian Penal Code read with Section 149 IPC. (Paragraphs – 18 & 19)

Case cited: 1. JT 2009 (1) SC 342 (Ramjit & Others Vs State of U.P.)

2. JT 2009 (2) SC 334 (Ravindra Shalik Naik & Others Vs State of Maharashtra)

3. 2008 (3) Eastern Criminal Notes 1155 (Kashi Prasad Vs State of Uttar Pradesh)

In C.R.A. No. 347 of 2000

For the Appellant : Mr. Debasish Roy,
Mr. Ranabir Roy Chowdhury,

In C.R.A. No. 354 of 2000

For the Appellants : Mr. Y. J. Dastoor,
Mr. Prabir Majumder,

For the State : Mr. Swapan Mallick,
Mr. Kalyan Maitra,

The Court under Sections 152 & 153 read with Section 151 of the C.P.C. for correction of the decree:

1. The aforesaid two appeals have been preferred challenging the common judgment and order of conviction and sentence dated 31.08.2000 passed by the learned Additional Sessions Judge, 2nd Court, Hooghly in Sessions Trial No. 72 of 1987. By the said judgment the accused appellant in CRA No. 347 of 2000, namely, Niranjana Singha Roy was convicted under Section 302 of the Indian Penal Code and was sentenced to suffer imprisonment for life and also to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for two years more. The said accused appellant was further sentenced to suffer rigorous imprisonment for a term of one year for committing offence under Section 324 of the Indian Penal Code and was also sentenced to suffer rigorous imprisonment for six months for committing offence under Section 148/149 of the Indian Penal Code.

2. The accused appellants in CRA No. 354 of 2000 were convicted under Section 148/149 of the Indian Penal Code and were sentenced to suffer rigorous imprisonment for six months each and also to pay a fine of Rs.1,000/- each, in default, to suffer simple imprisonment for two years more.

3. Since the aforesaid two appeals have been preferred challenging the common judgment and order of conviction and sentence as aforesaid, those are taken up for hearing and disposal analogously.

4. The prosecution case, in short, is that on 7.12.1985 at about 7.00 / 7.30 A.M. some persons of Malikpara and Uttarpara went upon the land in dispute, which belonged to the deity Sitala Mata for the purpose of irrigation. At that time 28/30 persons of Singhpara, Sainpara and Mannapara being led by Niranjana Singha Roy (appellant in CRA No. 347 of 2000) arrived at the spot and resisted such work of irrigation. An altercation took place between the two groups of villagers. At that time some of the villagers gave a proposal for amicable settlement. When Gokul and Sannyasi were talking about such settlement, Niranjana Singha Roy became furious and struck Gokul on his abdomen with a ballam, which perforated the belly and punctured the right side also. As a result of such assault the intestine came out and Gokul died on the spot. It was the further prosecution case that when Sannyasi Kar and Nema Kar came in rescue of Gokul, Niranjana assaulted them with the said ballam. At that time the other accused persons belonging to the group of Niranjana Singha Roy attacked the other group of villagers and assaulted with lathis, fists and blows. Injured Sannyasi Kar and Nema Kar were removed to Arambag Hospital for treatment, but Sannyasi expired on the way to hospital.

5. To prove its case, the prosecution examined as many as 20 witnesses and one witness was examined on behalf of the defence. The defence case was of denial as it appeared from the trend of cross-examination of the prosecution witnesses and from the statements of accused persons under Section 313 Cr. P.C. The specific defence of the appellants was that the other group of villagers,

who went upon the land of Sitala Mata for irrigation, had no authority to irrigate the land and this case was instituted in suppression of material evidence.

6. P.W. 1, Chittaranjan Bera was an eyewitness to the incident. He deposed that there was a dispute over the property of Goddess Sitala Mata. On 7.12.1985 at about 7 A.M. the villagers of Uttarpara and Malikpara went upon the said property for the purpose of irrigation. At that time 28/30 villagers under the leadership of Niranjana Singha Roy (appellant in CRA No. 347 of 2000) armed with lathi, spear and other instruments came there and protested against such work of irrigation. Some of the villagers proposed for amicable settlement and there was a hot exchange of words and altercation between the two groups of villagers. When such talk of settlement was going on, the appellant Niranjana Singha Roy gave a blow with a spear on the abdomen of Gokul Mallick causing serious injury of both sides of his belly and his intestine came out of the abdomen and he expired on the spot. Sannyasi Kar tried to catch hold of Niranjana Singha Roy and at that time Niranjana gave a blow with the same spear on the abdomen of Sannyasi Kar.

7. It may be mentioned here that P.Ws. 2, 3, 4, 5, 6, 7, 11 and 13 were the eyewitnesses to the incident and they corroborated P.W. 1 as regards the manner of assault and the manner in which the incident took place.

8. P.W. 10 was the Autopsy Surgeon, who held post mortem over the deadbodies of Gokul and Sannyasi. On examination he found the following injuries on the body of Gokul Malik.

“ Perforating injury on the right lateral thoraco abdomen region with the protrusion of the insteral coils, 4” x 3” into abdominal cavity with a point of exit on the left lateral

side abdomen 3” x 2”, it pierced through and through. On dissection liver and kidney were found penetrating.”

9. This witness further opined that death of Gokul Malick was due to effect of injury as stated above and he also stated that the said injury might be caused by a weapon like ballam. He also held post mortem over the deadbody of Sannyasi Kar and found the following injury over the said deadbody.

“Incised penetrating wound on the right lateral side of the chest in the 10th to 12th space – measuring about 2½” x 1½” x 6” with the cut of the corresponding ribs. On dissection liver and right kidney were found to be penetrating.”

10. He opined that death of Sannyasi was due to the effect of injury as stated above, which was ante mortem and homicidal in nature. He further opined that such type of injury might be caused by a blow of weapon like ballam.

11. P.W. 20 was the Investigating Officer of the case, who visited the place of occurrence, sent the deadbodies to the morgue for post mortem examination, interrogated and recorded the statements of witnesses under Section 161 Cr. P.C. and finally on completion of investigation submitted charge sheet.

12. The main argument advanced by the learned Advocate of the appellant in CRA No. 347 of 2000 was that the occurrence took place in a sudden quarrel and, therefore, Section 302 has no manner of application. It was pointed out by the learned Advocate that from a perusal of the entire evidence on record, it becomes clear that there was exchange of hot words and there was sudden

quarrel over the dispute regarding irrigation in a plot of land, which stood in the name of deity Sitala Mata. There was a dispute over such irrigation between the two groups of villagers and in course of sudden fight between the two groups the incident took place.

13. It was further submitted by the learned Advocate of the appellant that the incident took place without any premeditation in a sudden fight and in the heat of passion upon sudden quarrel and as such, there cannot be any conviction under Section 302 of the Indian Penal Code. Referring to the evidence of the eyewitnesses it was further stated by the learned Advocate of the appellant that the incident took place all of a sudden, in which members of both the parties were injured. Unfortunately, two persons died in the said incident, but the incident did not take place in the manner as it has been alleged by the prosecution.

14. The learned Advocate further submitted that the Fourth Exception to Section 300 IPC covers acts done in a sudden fight. For bringing in operation of Exception 4 to Section 300 IPC it has to be established that the act was committed without premeditation, in a sudden fight and in the heat of passion upon a sudden quarrel. Referring to the evidence of the eyewitnesses, it was submitted by the learned Advocate that even assuming such offence was committed by the accused appellant, Niranjana Singha Roy, there was no scope of convicting the accused appellant, Niranjana Singha Roy under Section 302 of the Indian Penal Code and at best he can be convicted under Section 304 of the Indian Penal Code. In support of his contention the learned Advocate relies upon a judgment of the Hon'ble Supreme Court reported in **JT 2009 (1) SC 342 (Ramjit & Others Vs State of U.P.)**. In the said judgment, it was held by the Hon'ble Apex Court as follows :

“6. It is submitted by learned counsel for the State that this cannot be stated to be a case of sudden quarrel because the accused persons after the quarrel went inside and came back with arms. In the instant case though the witnesses stated that after initial exchange of hot words and quarrel the accused persons went inside and came back, it is to be noted that they have fairly accepted that while the exchange of hot words, quarrel was continuing and immediately i.e. in less than two and three minutes they came back.

7. That being so, in the peculiar facts of the case we are of the considered view that appropriate conviction would be under Section 304 Part I read with Section 149 IPC. The conviction is accordingly altered. The other convictions remain unaltered. Custodial sentence of 10 years in respect of offence punishable under Section 304 Part I IPC would suffice. The sentences in respect of other offences remain unaltered. All the sentences shall run concurrently. “

The next judgment relied upon by the learned Advocate of the appellant is reported in **JT 2009 (2) SC 334 (Ravindra Shalik Naik & Others Vs State of Maharashtra)**. In the said judgment it was held by the Hon’ble Apex Court in paragraphs 4 and 5 as follows :

“4. The main plank of the appellants’ arguments relates to applicability of section 302 IPC. It has been contended that there is no pre-meditation involved and in course of sudden quarrel the incident took place.

5. For brining in operation of Exception 4 to Section 300 IPC it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.“

15. The next judgment relied upon by the learned Advocate of the appellant on the same point is reported in **2008 (3) Eastern Criminal Notes 1155 (Kashi Prasad Vs State of Uttar Pradesh)**. While dealing with the sole question for applicability of Exception 4 to Section 300

IPC, it was held by the Hon'ble Apex Court that for bringing in its operation, it has to be established that the act was committed without premeditation in a sudden fight and in the heat of passion upon a sudden quarrel.

16. Relying upon the aforesaid judgment it was submitted by the learned Advocate of the appellant, Niranjana Singha Roy in CRA No. 347 of 2000 that even if the prosecution case is taken to be true, there cannot be any conviction under Section 302 IPC.

17. The learned Advocate appearing for the State, on the other hand, submitted that in the present case there are so many eyewitnesses and two persons were killed in presence of those eyewitnesses. They were cross-examined at length, but nothing infirm could be elicited from their cross-examination and there is no reason to disbelieve those eyewitnesses. Fatal blow was given by the appellant Niranjana Singha Roy on the body of both the deceased and all the eyewitnesses stated in the same tune how those injuries were inflicted by the accused appellant Niranjana Singha Roy. The evidence of eyewitnesses is also corroborated by the medical evidence of the Doctor, P.W. 10, who opined that such injuries might be caused with a weapon like ballam.

18. We have heard the learned Advocates of the respective parties. We have also perused the judgments referred to above. After scrutinizing the entire evidence on record, we find sufficient merit in the submission made by the learned Advocate of the appellant. As we have stated earlier from the evidence on record, it appears that there was a dispute over the irrigation work on certain plot of land, which stood in the name of deity Sitala Mata. Over such dispute there was hot altercation between the two groups of villagers. It was really unfortunate that two persons died in such an incident, but at the same time we find that there was no premeditation and in course of

sudden quarrel such incident took place. It also appears from the evidence on record that after inflicting injury upon the deceased Gokul, Niranjana Singha Roy tried to flee away when he was chased by Sannyasi and others and at that point of time, Niranjana to save himself from the attack by those persons inflicted injury upon Sannyasi. From the evidence of D.W. 1, Dr. Kanika Adhikari we find that number of villagers belonging to the group of Niranjana Singha Roy were also injured in course of such free fight between the parties.

19. Considering the facts and circumstances, in which the incident took place and the entire evidence on record, we are of the view that the appropriate conviction, in so far as the accused appellant Niranjana Singha Roy is concerned in CRA No. 347 of 2000, would be under Section 304 Part I of the Indian Penal Code. His conviction is accordingly altered from 302 IPC to Section 304 Part I of the Indian Penal Code read with Section 149 IPC. We are also of the view that it will meet the ends of justice if the appellant Niranjana Singha Roy is sentenced to suffer rigorous imprisonment for ten years in respect of the offence punishable under Section 304 Part I of the Indian Penal Code. Conviction and sentence under Section 148/149 of the Indian Penal Code shall remain unchanged.

20. Mr. Dastoor, learned Advocate appearing on behalf of the appellants in CRA No. 354 of 2000 adopted the argument advanced by Mr. Roy, learned Advocate of the appellant and submitted that the incident took place all of a sudden in course of a quarrel and in the heat of passion Niranjana Singha Roy gave the blow with the spear resulting death of two persons. The other accused appellants although belonging to the group of Niranjana Singha Roy had no role to play. There was a dispute between the two groups and although the appellants in CRA No. 354 of 2000 belonged to one group, no overt act could be attributed to them. It was submitted by the learned Advocate that the incident took place 25 years back and the appellants have already suffered detention for a

considerable period during investigation and also after that. Considering this aspect the learned Advocate submitted that this court may take a lenient view regarding the appellants in CRA No. 354 of 2000.

21. We find that the appellants in CRA No. 354 of 2000 were convicted under Section 148/149 of the Indian Penal Code and they were sentenced to suffer rigorous imprisonment for six months. Considering the fact that the incident took place about 24 years back and that the appellants have already suffered detention for a considerable period, we reduce the sentence imposed upon the appellants in CRA No. 354 of 2000 to the period, which has already been undergone by them. They are also sentenced to pay a fine of Rs.500/- each, in default, to suffer simple imprisonment for one month each.

22. The appeals are accordingly disposed of.

23. A copy of this judgement along with LCR may be sent down to the court below immediately.

24. Urgent Xerox certified copy of this judgment and order may be supplied to the learned Advocates of the respective parties, if the same is applied for.

(DEBIPRASAD SENGUPTA, J.)

I agree,

(PRABHAT KUMAR DEY, J.)

