

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO.839 OF 2005

MANIK GARAI

Appellant (s)

VERSUS

STATE OF WEST BENGAL & ANR.

Respondent(s)

(With office report)

Date: 19/07/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Appellant(s)

Mr. S.K. Bhattacharya,Adv.

For Respondent(s)

Mr. Tara Chandra Sharma,Adv.

Ms. Neelam Sharma,Adv.

Mr. Rajeev Sharma,Adv.

UPON hearing counsel the Court made the following
ORDER

Heard learned counsel for the parties.

The criminal appeal is allowed, conviction and sentence awarded against the appellant are set aside and he is acquitted of the charge. The appellant, who is in custody, is directed to be released forthwith, if not required in connection with any other case.

[T.I. Rajput]
A.R.-cum-P.S.

[Om Prakash]
Court Master

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 839 OF 2005

Manik Garai

...Appellant(s)

Versus

State of West Bengal & Anr.
Respondent(s)

...

O R D E R

Heard learned counsel for the parties.

The appellant, along with Subhas Gorai and Probhat Gorai, was convicted by the Trial Court under Section 302 read with Section 34 of the Indian Penal Code [hereinafter referred to as "I.P.C."] and sentenced to undergo imprisonment for life and to pay fine of Rs.30,000/-; in default, to undergo further imprisonment for a period of two years. On appeal being preferred, the High Court upheld the convictions of all the three accused persons and challenging the same, when the accused persons moved this Court, the special leave petition filed by Subhas Gorai and Probhat Gorai was dismissed on 11th July, 2005, whereas leave was granted in relation to the appellant.

According to the prosecution case, accused Probhat Gorai assaulted deceased Habul Gorai with an axe and accused Subhas Gorai assaulted him with shovel whereas the appellant

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is said to have assaulted him with bricks. In support of its case, the prosecution has examined three persons, namely, Lata Bouri (P.W.4), Mongla Bouri (P.W.8) and Buro Bouri (P.W.9), all of whom claimed to be eye-witnesses to the alleged occurrence. All these three witnesses have stated that accused Probhat assaulted with an axe, Subhas with shovel and the appellant with bricks. The prosecution case in evidence that Probhat assaulted with an axe and Subhas with shovel is supported by the medical evidence as would appear from the post-mortem report as well as the evidence of Dr. P.R. Mukherjee (P.W.10) but so far as the brick injury said to have been inflicted by the appellant is concerned, the same has not been supported by the medical evidence. According to the post-mortem report, the deceased received only two injuries. The doctor, who held post-mortem examination, has enumerated the injuries in his evidence; one in the parietal region and the other on the neck. The doctor has stated that he did not find any third injury upon the person of the deceased. When question was put to him as to what type of injuries could be inflicted by the bricks, he stated that the same could have caused lacerated injuries. From the nature of injuries found by the doctor, which were incised and the opinion recorded by him that these two injuries could have been inflicted by axe and shovel, it would be clear that no injury whatsoever was inflicted by the appellant much less with bricks. The prosecution case that the appellant inflicted injuries on the

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deceased by bricks, therefore, becomes highly doubtful which makes the prosecution case about his very presence itself at the place of occurrence highly doubtful. This being the position, we are of the view that the prosecution has failed to prove its case beyond reasonable doubt against the appellant and the High Court was not justified in upholding his conviction. Accordingly, the appeal is allowed, conviction and sentence awarded against the appellant are set aside and he is acquitted of the charge. The appellant, who is in custody, is directed to be released forthwith, if not required in connection with any other case.

.....J.
[B.N. AGRAWAL]

.....J.
[P.P. NAOLEKAR]

New Delhi,
July 19, 2007.