

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 694 OF 2000@@
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Pranab Chatterji & Ors. ...Appellants

Vs.

State of West Bengal ...Respondent

WITH

Crl.A.No.695/2000@@
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The appellants, six in number, were amongst 20 accused persons who were tried for offences under Sections 147, 148,149,302 IPC. Appellants alone were convicted. The remaining accused persons were acquitted. The case of the prosecution is that at 10.15 p.m. on 30.9.1987 Kalyan was severely assaulted and attacked at village Sarpi. The injuries received by Kalyan as per post-mortem examination conducted by PW11 Dr.PN Chatterjee were these:

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- "1) Rigormortis was positive. Eyes closed. Mouth open. Stout body. Incised injury 5" x 1" bone deep over the occipital bone on the right side upto the posterior aspect of right ear.
- 2) Incised injury 6" x 1" bone deep and fracture on occipital bone 2" above the first injury.
- 3) Incised injury, 3" x 1" fracture on right parietal bone 1" above the second injury.
- 4) 4" x 1" incised injury bone deep over the parietal bone, fracture on right parietal bone.

- 5) 3" x 2" incised injury 3" above the first injury, fracture on occipital bone.
- 6) 3" incised injury over the left side of the occipital bone.
- 7) 2" x 1" incised injury over the right scapula, bone deep.
- 8) 5" x 3" incised injury over the left side of the occipital bone just above the neck.

- 9) 3" x 2" incised injury over the parieto-occipital left side.
- 10) 2" incised injury on the shoulder joint.
- 11) 1" muscle deep over the left thumb and dorsal aspect of the left palm.
- 12) 2" incised injury at the root of the thumb.
- 13) Fracture maxilla.
- 14) Fracture nasal bone.
- 15) 2" incised injury bone deep over the right forehead.
- 16) 2" incised injury muscle deep over the right elbow joint.
- 17) All upper teeth broken."

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Kalyan was taken to the hospital by the informant PW1 who was brother of deceased. According to the prosecution both were coming after attending a marriage function in the village. Kalyan was ahead, PW1 Swapan Goswami was behind. He has deposed to have seen the appellants. When he took his brother to the hospital, the hospital reported that the

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deceased was brought dead. In the FIR recorded soon after the occurrence the appellants are named so also the weapons, namely, Tangi, Bhojali and Lathi. PW1 has also deposed that his brother told him that the appellants and some other had caused him deadly injuries and also that he kept the head of his brother in his lap.

The trial court on appreciation of evidence has convicted the six appellants. Their conviction has been maintained in the appeal by the High Court by a detailed examination of the evidence on record.

Mr.UR Lalit, learned counsel appearing in support of these appeals contends that it is a case where conviction is based on the testimony of a single witness who is an interested witness being brother of the deceased. Rightly and fairly not questioning that conviction can be based on the testimony of a single witness learned counsel contends that in that eventuality the witness has to be of a sterling quality which PW1 is not. We have been taken through the testimony of PW1, PW11 and the Investigating Officer - PW12. On account of the injuries it is contended that it was impossible for the deceased to have spoken and given names to PW1 as claimed by the witness. The contention is that PW11 - doctor's testimony also is to the same effect in so far as the speech of Kalyan is concerned.

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It was further pointed out that the blood stained clothes of PW1 were not produced. Submissions were also made regarding the non availability of sufficient light and also the improbability of no-one having shouted or chased the culprits despite the claim that the incident took place close to a place where a party in respect of marriage was going on. Submission was also made by learned counsel on

the discrepancy in regard to the clothes which were worn by the deceased.

We find that the evidence has been properly appreciated by the trial court as also the High Court. It has been noticed that victim Kalyan was conscious for some time even after sustaining injuries. That was a statement of even that witness who had been declared hostile. It has been further noticed that Kalyan was murmuring something near the ears of PW1. The conclusion that has been drawn on appreciation of evidence is that Kalyan was alive at least for some time even after sustaining injuries and speaking in the injured condition. On correct appreciation of evidence the High Court has concluded that the doctor's testimony does not give the clear picture.

Besides the aforesaid finding the High Court has also reached the conclusion that even if the statement of the victim said to have been made immediately after occurrence

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to PW1 is kept out of consideration still there are other evidence and facts and circumstances which led credence to the prosecution version of the case regarding the involvement of the appellants in commission of the offence for which they have been charged. On discussion of the evidence the High Court has concluded that "...we have no reason to discard the evidence of the PW1 regarding the involvement of the appellants in the commission of the offence which also receives support from other witnesses..."

Though appreciation of evidence by the trial court and the High Court was not found unsatisfactory in any manner still we perused, as stated earlier, the testimonies of the three witnesses. On perusal thereof we find no ground to take a view different than that has been taken by the High Court.

An alternate submission was also made by learned counsel that the three appellants, namely, Pranab Chatterjee, Dona Paul & Rosa Paul who allegedly surrounded the deceased were entitled to be acquitted in the manner other accused were acquitted by the trial court. We find no substance in this contention as well. They have been charged for offence alongwith Section 149 IPC. The six appellants, including these three, are named right from the

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start of the occurrence in the F.I.R. We do not think they deserve any different treatment. They were rightly convicted by the trial court and their conviction maintained by the High Court in the impugned judgment. For the aforesaid reasons, we find no substance in the appeals which are accordingly dismissed.

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.....J.
[Y.K. SABHARWAL]

.....J.
[H.K. SEMA]

New Delhi,
September 12, 2002.@@
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