

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE
(Via Video Conference)

Present:

The Hon'ble Justice Joymalya Bagchi
AND
The Hon'ble Justice Suvra Ghosh

C.R.A. 214 of 2006

Aditya Mandi
-vs-
The State of West Bengal

For the Appellant: Mr. Kallol Mondal.
Mr. Krishan Ray,
Ms. Amrita Chel,
Mr. Souvik Das,
Mr. Anamitra Banerjee.

For the State: Ms. Zarin N. Khan.

Heard on: 18.09.2020

Judgment on: 18.09.2020.

Joymalya Bagchi, J.:

The appeal is directed against the judgment and order dated 30th June, 2005 and 1st July, 2005 in Sessions Trial no. 13 of 2005 / Sessions Case no.22 of 2005 convicting the appellant for commission of offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs.2,000/-, in default to suffer further rigorous imprisonment for six months.

Gist of the prosecution case, as transpiring from the First Information Report lodged by Haradhan Mandi, son of the deceased, (P.W. 3 herein) is to the effect that ten days prior to the incident there was an altercation between the deceased Gobardhan and the appellant, Aditya Mandi over driving of pigs from his maize field. Aditya threatened his father. On the date of the incident i.e., on 18th July, 2004 at 9:00 a.m. Gobardhan had gone to plough the maize field situated behind his residence. It is alleged Aditya came to the field and assaulted Gobardhan with an axe. As a result he suffered grievous injuries and died. The incident was witnessed by one Suki Mani Mandi (P.W.2). Upon rushing to the spot, P.W.3 found a blood-stained axe as well as a blue and white hawai chappal belonging to the appellant. In the course of trial, prosecution examined 16 witnesses. Star witness was P.W.2, Suki Mani Mandi, who claimed to have witnessed the incident. Defence of the appellant was innocence and false implication. In conclusion of trial, the trial judge by the impugned judgment and order dated 30th June, 2005 and 1st July, 2005 convicted and sentenced the appellant, as aforesaid.

Mr. Mondal, learned lawyer appearing for the appellant submits that the sole eye-witness is not a reliable one and she gave a complete go by to her version in her cross-examination.

Ms. Khan, learned lawyer appearing for the State submits that the evidence of P.W.2, Suki Mani Mandi is unimpeachable and is corroborated by other evidence on record.

It appears that the prosecution case essentially hinges on the evidence of P.W.2. Hence, I have analysed her evidence in detail.

P.W.2 deposed she was tending goat at the time of incident. Suddenly she heard a sound from the maize field. Going to the spot she found Aditya gave a blow with an axe on the head of Gobardhan. Chunaram and Sarbeswar rushed to the spot. Hearing the alarm, Aditya fled away from the spot. Police seized the axe and Chappal from the place of occurrence. She made statement before the magistrate. In cross-examination, she, however, gave a completely different version. She deposed there were maize plants of 5 feet high around the place of occurrence. Boundary line of the maize field was not visible from the tree where she had tied the goat. At the time of occurrence she was sweeping her house. On hearing a sound, she rushed to the spot and found Gobardhan was lying with bleeding injury.

It is trite law that the evidence of a witness is to be taken as a whole. If such test is applied to the deposition of P.W.2, it is difficult for me to come to an irresistible and unassailable inference that P.W.2 upon rushing to the spot had witnessed the assault on the victim. Other witnesses, including P.W.1 [Chunaram], P.W.3, [Haradhan], P.W.4 [Suklal], P.W.8 [Babulal] and P.W.9 [Rajendranath] are post-occurrence witnesses and did not see the incident. None of these witnesses had also deposed that they saw the appellant ran away from the spot. In the light of the aforesaid evidence on record, I find it difficult to come to an unequivocal finding beyond doubt that it was the appellant who had hit the victim on the head with an axe and had run away from the spot. Chappal seized at the spot had also not been identified in the course of trial as that of the appellant.

In view of the aforesaid evidence on record, I am constrained to hold that it would be unsafe to rely on the inconsistent evidence of P.W.2, the purported sole eyewitness, to come to a conclusion that the appellant had assaulted the victim resulting in his death.

In the light of the aforesaid discussion, I set aside the impugned judgment and order of conviction and sentence recorded against the appellant. The appeal is, accordingly, allowed.

The appellant shall be released from custody forthwith, if not wanted in any other case.

Copy of this judgment along with the lower court records be sent down to the trial court at once.

All concerned parties shall act in terms of the copy of the order downloaded from the official website of this court.

(Joymalya Bagchi, J.)

I agree.

(Suvra Ghosh, J.)

KM/rpan