

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

**The Hon'ble Justice Joymalya Bagchi
And
The Hon'ble Justice Suvra Ghosh**

C.R.A. 288 of 2015

**Sagar Behara @ Banamali @ Dayanidhi
Vs.
State of West Bengal**

For the appellant : Mr. Anikt Agarwal
Mr. S. Debnath

For the State : Mr. Rana Mukherjee, APP
Ms. Sujata Das

Heard on : 18.09.2020

Judgment on : 18.09.2020

Joymalya Bagchi, J. :

The appeal is directed against the judgment and order dated 30.03.2004 and 31.03.2004 passed by the learned Additional Sessions Judge, 3rd Court, Barasat, North 24-Parganas convicting the appellant for commission of offence punishable under sections 302/34 IPC, 394/34 IPC, 323/34 IPC and 411 IPC and sentencing him to suffer rigorous imprisonment for life and pay a fine of Rs. 4,000/, in default, to suffer rigorous imprisonment for one year more for the offence punishable under Sections 302/34 of the Indian Penal Code, to suffer rigorous imprisonment for ten years and pay a fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for two months more for the offence punishable under Sections 394/34 of the Indian Penal Code, to suffer simple

imprisonment for six months and pay a fine of Rs.500/-, in default, to suffer simple imprisonment for 15 days more for the offence punishable under Sections 323/34 of the Indian Penal Code and to suffer simple imprisonment for six months and pay a fine of Rs.500/-, in default, to suffer simple imprisonment for 15 days more for the offence punishable under Section 411 of the Indian Penal Code. All the sentences to run concurrently.

Learned counsel appearing for the appellant argued that the evidence of the sole eye-witness Rashmi Agarwal (PW2) suffers from inconsistencies and does not inspire confidence. She could not name the co-accused. Although she claimed that her mother had been smothered to death, P.M. doctor (P.W. 7) deposed that the victim had died due to strangulation. There is no independent witness with regard to recovery of the stolen articles. Hence, the appeal ought to have allowed.

Mr. Rana Mukherjee, learned Additional Public Prosecutor submitted that P.W. 2 is an injured eye-witness. She has extensively narrated the incident of robbery and murder. Variation with regard to the nature of assault on the deceased vis a vis finding of the P.M. doctor ought not to be a ground to discredit an injured eye-witness. Stolen booty was recovered from the appellant who had absconded to a neighbouring State. Accordingly, the appeal is liable to be dismissed.

From the rival submissions across the Bar it appears that the most vital witness is the daughter of the deceased, Rashmi Agarwal (PW2).

She deposed she resided with her mother at P/231, B Block, Bangur Avenue, P.S. Lake Town. On 17.04.2001 around 7.45 p.m. while other members of her family had gone out for business, appellant along with co-

accused came to their residence. They had rung the bell and P.W. 2 opened the door. From the appellant P.W. 2 came to know the identity of the co-accused namely, Promod. Both the accused persons entered the house and demanded Rs.100/-. She offered Rs.20/- Rs.30/-. When she went inside to bring the money appellant followed her and demanded the key of the almirah. She refused and appellant assaulted her. She sustained bleeding injury. Thereafter, the appellant assaulted her mother and took the key of the almirah of her sister-in-law. They took gold ornaments, cash, other jewelleryes from the almirah. Thereafter, accused persons assaulted her mother and tied her legs with rope and pushed cloth into her mouth. As a result, her mother expired. She became unconscious. After regaining consciousness she raised hue and cry. She narrated the incident to her neighbour and relatives. She was treated by a private doctor. She identified the gold ornaments in Court.

Evidence of the said witness has been corroborated by other witnesses including, P.W. 1, her brother who had lodged the FIR, Exhibit – 1. He was also signatory to the seizure list and inquest report prepared with regard to death of her mother. In course of investigation he took custody of the recovered gold ornaments on *zimbanama*.

P.W. 7, P.M. doctor examined the body of the deceased. He found the various injuries including 12"x ½" continuous transversely placed ligature mark over the neck. He opined that the death was due to the effect of asphyxia resulting from strangulation by ligature associated with other injuries antemortem and homicidal in nature.

PW8, IO arrested the accused persons from Orissa and seized the stolen articles under seizure list.

Relying on the medical evidence of PW7 learned counsel has sought to discredit the deposition of P.W. 2. He contends PW2 stated the miscreants put cloth in the mouth of her mother while PM doctor opined death was due to strangulation.

I find little substance in his argument. P.W. 2 is the most natural witness who was present in the house when the robbery and murdered occurred. She has stated the manner in which the appellant along with co-accused entered the house and assaulted her. She suffered injuries. Accused persons forcibly took away the key of the almirah and committed theft. After such pilferage, they assaulted her mother and tied her with a rope.

Failure on the part of the witness to notice that they had utilised the ligature to strangle her mother cannot be a ground to discredit her evidence on the plea that it runs counter to the medical evidence.

It is trite law that ocular version of an eye-witness is to be given maximum importance particularly when such witness is also injured in course of the incident. Mere technical variations in the deposition of an eye-witness vis a vis the medical evidence is no ground to disbelieve the prosecution case. No irreconcilable and patent inconsistency emerges from the evidence of the injured and the P.M. doctor in the instant case.

That apart, stolen articles recovered from the appellant and co-accused were identified by the witnesses, particularly, P.W. 1 and P.W. 2.

In view of the aforesaid discussion, I uphold the conviction and sentence of the appellant, as aforesaid.

The appeal is thus dismissed.

The period of detention, if any, undergone by the appellant during the period of investigation, enquiry and trial shall be set off against the substantive sentence, as aforesaid, in terms of Section 428 of the Code of Criminal Procedure.

Copy of the judgment along with L.C.R. be sent down to the trial court at once.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree.

(Suvra Ghosh, J.)

(Joymalya Bagchi, J.)