

Form No. J(1)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi
&

The Hon'ble Justice Moushumi Bhattacharya

C.R.A. 716 of 2009

Budhu @ Sanjoy Sabar

-vs-

The State & Anr.

For the appellant : Ms. Pronoti Goswami,

For the WBSLSA : Ms. Jharna Biswas

For the State : Mr. Madhu Sudan Sur
Mr. Aniket Mitra
Mr. Manaronjan Mahato

Heard on : 13.10.2020

Judgment on : 13.10.2020

Joymalya Bagchi, J.:

Judgment and order convicting the appellant under sections 304 Part II read with Section 323 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for ten years and to pay a fine of Rs.5,000/-, in default to suffer rigorous imprisonment for six months more for the offence punishable under section 304 Part II IPC and to suffer rigorous imprisonment for one year for the offence under section 323 IPC has been assailed in this appeal.

Crux of the accusation is to the effect that while deceased Budhu was having dinner in his residence with his wife Jharna, PW 1 and two children, the appellant came to the house and assaulted the couple with a club. Both of them

suffered injuries. Unfortunately, Budhu succumbed to his injuries. Charge was framed under section 304 IPC for the culpable homicide of Budhu and under Section 323 IPC causing hurt to Budhu Sabar and his wife, Jharna.

In the course of trial, prosecution examined 14 witnesses and exhibited a number of documents.

The defence of the accused persons was of innocence and false implication.

In conclusion of trial, the trial court by the impugned judgment and order dated 16.9.2009 and 17.9.2009 convicted and sentenced the appellant, as aforesaid.

Ms. Goswami, learned Counsel appearing for the appellant submits that, most of the prosecution witnesses did not support the prosecution case and had turned hostile. She submits that prior report of the incident was made to the police by PW3. Hence, subsequent report by PW 7 (Medical Officer) ought not to have been treated as FIR. It is further submitted that evidence of PW 1 is unreliable and there is no other eye-witness to the incident.

Ms. Biswas who has been instructed to appear on behalf of the appellant by West Bengal State Legal Services Authority supports the contentions of Ms. Goswami. She submits that the appellant has undergone the sentence imposed upon him.

On the other hand, Mr. Sur appearing for the State submits that the prosecution case is clearly established through the evidence of PW 1, the injured eye-witness as well as the medical evidence on record, namely, P.Ws 6, 7 and 9.

I have considered the evidence on record.

P.W 1 is the wife of the deceased. She was present at the place of occurrence and is an injured eye-witness. She deposed while she and her husband along with two children were having dinner, appellant came to the residence and assaulted her with a 'mugur' on the head. She fell down. Her husband was also assaulted with 'mugur'. Her sister in law Saraswati, P,W 5 informed the matter to PW 3, a Panchayet Member, who in turn informed the local police over telephone. Police took her husband to Chilkagarh BPHC for treatment. Two days later her husband expired.

PW5, Saraswati Sabar, sister-in-law of PW1 has corroborated the latter's version. She deposed her elder brother was assaulted by the appellant on the fateful night. She informed the incident to Rohini Malla (PW3), a member of the Gram Panchayat.

Evidence of the aforesaid witnesses appear to be corroborated by the medical evidence on record.

PW6, Dr. Ranjit Kr. Besra was posted as B.M.O.H. at Chilkigarh BPHC, Paschim Medinipore. He medically examined the deceased. He examined Jharna Sabar (PW1) and found one recent blunt injury over left side of skull (fronta-temporal) with mild laceration and active bleeding. He proved the medical report (Ext.4). He lodged written complaint (Ext.2) with Police.

PW7, Dr. Tarachand Hembram deposed that Budhu Sabar was admitted at Chilkigarh BPHC on 5th January, 2007 and expired on 6th January, 2007. Police conducted inquest over the body of the deceased.

PW9, Dr. Subhas Chandra Halder held post-mortem examination over the dead body of the deceased and found the following injuries:-

- 1) *One bruise on the back of neck on survival spinal region of size 4" x 1", a blackened area underneath the skin subcutaneous collection of blood and blood in paravertebral and interspinous parts where exudation was also present.*
- 2) *One huge haematoma of size 4" x 4", circular at subcutaneous level in front of parietal region on dissection of the part subdural haemorrhage present in right half of superior part of brain, intact piamatter and arachnoid matter was intact.*

He opined that death was due to head injury ante mortem and homicidal in nature.

Having assessed the ocular evidence of the injured eyewitness (P.W.1) in the light of the aforesaid medical evidence, I have no doubt in my mind that the version of the injured eyewitness is wholly corroborated by the medical evidence on record particularly that of the P.M. doctor, P.W.9. It is submitted that the report of P.W.6 to the police is a subsequent one in the light of the telephonic call made by the Member of the gram panchayet, P.W.3 resulting in police action. It is trite law cryptic telephonic message would not substitute a written complaint disclosing ingredients of the offence. In the present case, such complaint is lodged by an independent person, namely, treating doctor and I have no reason to believe it is a concocted one. Further, alleged anomaly vis-à-vis, the first report would not affect the intrinsic trustfulness of the prosecution case, which is hinged on the version of the injured eyewitness, P.W.1.

In the light of the aforesaid facts, I am of the view that the conviction recorded in the instant case ought to be upheld.

With regard to sentence, I find from the evidence of P.W.6 that the deceased was in an inebriated condition at the time of provoking the appellant

to commit the death. Incident occurred on the spur of the moment and without pre-meditation.

Accordingly, it is directed that the appellant shall suffer rigorous imprisonment for the period already undergone and shall pay a fine of Rs.5,000/- in default shall suffer rigorous imprisonment for six months for the offence punishable under Section 304 Part II of the Indian Penal Code. Sentence imposed upon him under Section 323 of the Indian Penal Code shall remain unaltered. Both the sentences shall run concurrently.

The appeal is accordingly disposed of.

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.

I record my appreciation for the able assistance rendered by Ms. Biswas in disposing of the appeal.

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

Let a copy of this judgment along with the lower court records be sent down to the trial court immediately for necessary action and execution of the sentence.

I agree.

(Moushumi Bhattacharya, J.)

(Joymalya Bagchi, J.)