

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

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

C.R.A. 45 of 2012

Anup Roy

-Vs-

State of West Bengal

For the Appellant :

Mr. Debasis Kar, Adv.
Mr. Arka Chakraborty, Adv.
Mr. Husen Mustafi, Adv.

Amicus Curiae :

Mr. Kusal Kumar Mukherjee, Adv.

For the State :

Mr. Saibal Bapuli .. Ld. Addl. Public Prosecutor
Mr. Bibaswan Bhattacharya, Adv.

Heard on :

22.12.2021

Judgment on:

22.12.2021

Joymalya Bagchi, J. :-

The appeal is directed against the judgment and order dated 3rd August, 2011/4th August, 2011 passed by the learned Additional Sessions Judge, F.T.C.-I, Barasat, North 24-Parganas in Sessions Trial No. 5(4)2008 [Sessions Case No. 3(1)2008] 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 fine of

Rs.10,000/-, in default, to suffer rigorous imprisonment for six months more.

The prosecution case as alleged against the appellant is to the effect that the deceased namely, Chaya Mitra, wife of Swapan Mitra (PW4) had developed an illicit relationship with the appellant. They started residing together. On 20th July, 2007, a scuffle took place between the appellant and said Chaya Mitra. In course of scuffle, the appellant struck at the victim repeatedly in the neck and other parts of her body. She was treated at R.G. Kar Medical College and Hospital where she expired. FIR was lodged by PW10 resulting in registration of Rajarhat Police Station Case No.335 dated 20.07.2007 under Section 304 IPC. In conclusion of investigation, charge-sheet was filed against the appellant. The case was committed to the Court of Sessions and transferred to the Court of the learned Additional Sessions Judge, Fast Track Court No.1, Barasat, North 24-Parganas for trial and disposal. Charge was framed under Section 302 IPC against the appellant. The appellant pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined 17 witnesses and exhibited a number of documents. In conclusion of trial, the trial Judge by the impugned judgment and order dated 3rd August, 2011/4th August, 2011 convicted and sentenced the appellant, as aforesaid.

Mr. Debasis Kar, learned counsel appearing for the appellant argues that that the prosecution case has not been proved beyond doubt. Weapon of offence has not been sent for forensic examination. He accordingly, prayed for acquittal of the appellant.

Mr. Kusal Kumar Mukherjee, learned advocate, appearing as *Amicus Curiae* adopted the submissions of Mr. Kar. In addition, he submits that the evidence of so-called eyewitness suffers from embellishment. PWs1, 2 & 3 did not state to the Investigating Officer that they had witnessed the incident. Appellant also suffered injuries which is evident from the depositions of prosecution witnesses including the medical witnesses namely, PWs 16 & 17. Hence, the conviction of the appellant may be altered to one under Section 304 IPC.

Mr. Bibaswan Bhattacharya, learned advocate, appearing for the State, submits that the consistent version of eyewitnesses is corroborated by the medical evidence of PWs 12 & 13. Nine injuries by sharp cutting weapon were found on vital parts of the body which clearly disclose the intention to murder the deceased. Hence, he prays for dismissal of the appeal.

PWs1, 2, 3, 6 & 10 are the eyewitnesses to the incident.

PW1, Sahabuddin Ali deposed on 20.07.2007 at about 7:00 to 7:30 A.M. he was standing in the taxi stand at Haldiram. Suddenly he heard shouting at a distance of about 100 gauge from the taxi stand. He and others rushed to the spot. A person was scuffling with the victim. In course of scuffle, the person hit the victim and thereafter stabbed himself. The victim was taken to a hospital in a taxi. Police arrested the miscreant who disclosed his identity as the appellant. Police also recovered the knife and seized it under a seizure list. He identified the knife in court.

PW2, Bhutto Biswas is a taxi starter of Haldiram Anupama Taxi stand. He corroborated the evidence of PW1. He also proved his signature on the seizure list regarding the seizure of the weapon of offence.

PW3, Saheb Ali Khan and PW6, Sagar Mondal are taxi drivers who also corroborated the evidence of PWs1 & 2.

PW10, Sk. Sahajahan is the informant. He found one person assaulting a lady in front of Ritwika hotel. The lady was shifted to hospital by the taxi drivers. He proved his signature on the written complaint.

PW4, Swapan Mitra is the husband of the deceased who deposed regarding the illicit relationship between the appellant and deceased. He stated that the deceased had ran away with the appellant and was staying with him for 14 days. Subsequently, she returned home. They shifted their residence. He, however, is a reported witness with regard to the incident of assault.

PW5, Bina Das is the sister of the deceased. She is also a reported witness.

These are the witnesses of fact.

PW12, Dr. Nirmal Kumar Giri is the doctor who was posted as Emergency Medical Officer at R.G. Kar Medical College & Hospital at the relevant time. On 20.07.2007 he treated the deceased and found the following injuries :-

‘(1) Fresh incised wound about (1” x ½” x ½”) over right supra clavicular region of neck.

(2) Fresh incised wound about (1" x ½" x ½") over left sub-costal region over left side of anterior abdominal wall.

(3) One lacerated wound about (½" x ½" x ½") over left forearm lower part dorsal aspect.

(4) One incised wound about (3" x ½" x ½") over left side of front of neck.

He stated the general condition of the patient was very poor. The injuries are sufficient to cause death. He prepared the injury report (Exhibit-7).

PW13, Dr. Amitava Das conducted the post-mortem over the dead body of the deceased. He proved the post-mortem report (Exhibit-8). He noted nine injuries. He opined death was due to the cause of injuries, ante mortem and homicidal in nature.

PWs16 & 17 treated the appellant.

PW16, Dr. Debasish Biswas was a medical officer attached to Uma Medical Related Institute Pvt. Ltd., Kolkata. On 20.07.2007, he treated the appellant in the nursing home. He prepared the injury report.

PW17, Dr. Rajendra Nath Ghosh is the other Doctor attached to the said Nursing Home who had examined the appellant in the emergency department and had noted injuries on his forehead and elbow. He proved the medical examination report, Exhibit 10.

Analysis of the aforesaid evidence would show the appellant and the deceased had an illicit relationship. Deceased eloped with the appellant and stayed for a couple of days. Thereafter, she returned to her

matrimonial home. On 20.7.2007, a dispute arose between them. In the course of scuffle, appellant hit the deceased with a knife on various parts of the body including her abdomen and neck. Thereafter, the appellant struck himself with the knife causing injuries. Medical evidence on record corroborates the ocular version of the incident as narrated by PWs.1, 2, 3, 6 & 10.

It is argued version of PWs.1, 2 & 3 suffer from embellishment. I have examined the evidence of the eye witnesses as a whole. They are consistent and corroborative to one another. Minor variations in their evidence vis-à-vis earlier statement to police would not affect the intrinsic truth in their versions.

I am further fortified to come to such conclusion as the narration coming from the eyewitnesses is corroborated by the medical witness namely, PW12 who treated the victim and post mortem doctor, PW13. Both these witnesses noted sharp cutting injuries on the body of the victim and opined that the death was due to the injuries, ante mortem and homicidal in nature.

In this backdrop, I have no doubt in my mind that the appellant was the author of the injuries on the body of the deceased which resulted in her death. However, we note that the incident occurred in the course of a sudden quarrel between the appellant and the deceased. No doubt, the appellant had caused nine injuries on the body of the victim, two of them on the vital parts of the body. However, it appears that he acted in a heat of passion in the course of a sudden quarrel and not only did he strike his

paramour but also struck himself on the forehead and hand. Fact that the appellant lost his mental balance in the course of quarrel is probabalised by the version of the informant PW10 who stated that the appellant appeared to be a mad person.

In view of the aforesaid facts, I am of the opinion that the instant case falls within the fourth exception of Section 300 of the Indian Penal Code and the conviction of the appellant may be altered from Section 302 of the Indian Penal Code to Section 304 Part I of the Indian Penal Code. I find the appellant had already suffered more than 14 years of actual imprisonment. Hence, I convert the sentence of the appellant to the sentence already undergone and direct him to pay a fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for six months more.

The appeal is accordingly, disposed of.

Lower court records along with a copy of this judgment be sent down at once to the learned trial court for necessary action.

I record my appreciation for the able assistance rendered by Mr. Kusal Kumar Mukherjee, learned advocate, as *Amicus Curiae* in disposing of the appeal.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)