

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.34 of 2016

With

CRAN 3 of 2020

Lakshmi Mishra

-Vs-

State of West Bengal.

For the Appellant : Mr. Asraf Ali, Adv.
Mr. R. I. Sardar, Adv.

For the State : Mr. Noguive Ahmed, Id. A.P.P.
Ms. Amita Gaur, Adv.

Heard on : 2nd December, 2021.

Judgment on : 2nd December, 2021.

Joymalya Bagchi, J. :-

The appeal is directed against the judgement and order dated 28.1.2015 and 29.1.2015 passed by the learned Additional District and Sessions Judge, F.T.C. 2nd Court, Alipore in Sessions Case No.2(12)09 convicting the appellant for commission of offence punishable under

Section 302/34 of the Indian Penal Code and sentencing her to suffer rigorous imprisonment for life and to pay fine of Rs.5,000/- in default to suffer imprisonment for five months more.

Prosecution case as against the appellant and the other accused persons is to the effect that on 21.06.2009 in the morning, there was an altercation between the de-facto complainant Rani Sardar, P.W.1 and the appellant, her son one Bikash Mishra and her two daughters viz., Manisha and Sabita over taking bath in the pond. Soumen was the son of Rani who used to work in a cloth shop at Bartola A. C. Market. In the evening, he returned home from work and his mother narrated the incident to him. He intervened and told Bikash to solve the matter amicably. Thereafter, he left the spot. Around 9.00 P.M., he returned home. He found the appellant, her son Bikash and her daughters standing in front of the house with deadly weapons. When Soumen protested, they assaulted him mercilessly resulting in bleeding injuries. Neighbours came to the spot and took the victim to the hospital where he was declared dead. Written complaint was lodged by P.W.1 resulting in registration of Maheshtola P. S. Case No.275 dated 21.6.2009 under Section 302/34 of the Indian Penal Code.

In conclusion of investigation, charge sheet was filed against the appellant and other accused persons viz., Bikash and his sister Sabita. The case was committed to the Court of Sessions and transferred to the Court of the Additional Sessions Judge, 2nd Fast Track Court, Alipore, South 24-Paraganas. Charges were framed against the appellant and the other

accused persons viz., Bikash and Sabita under Sections 302/149 of the Indian Penal Code. However, during trial the case of Bikash and Sabita who were juveniles were separated and they were referred to the Juvenile Justice Board for enquiry. During trial, prosecution examined 14 witnesses. Defence of the appellant is one of innocence and false implication. In conclusion of trial, trial court by judgment and order dated 28.1.2015 and 29.1.2015 convicted and sentenced the appellant, as aforesaid.

Mr. Ali, learned Counsel appearing for the appellant submits that the registration of the first information report is shrouded in mystery. Scribe has not been examined. P.W.1 claimed that she had not gone to the police station to lodge the first information report whereas P.W.9, A.S.I. attached to the police station stated that she had come and put her LTI on the written complaint at the police station. P.W.1 has substantially altered her version in court and did not attribute any physical assault by the appellant on the deceased. It is further submitted that oral dying declaration as narrated by P.W.5 to 8 are not believable as P.W.1 claimed that his son was unconscious at the spot. Names of the appellant also did not transpire in the medical report (Ext.13) prepared by the Emergency Medical Officer at S.S.K.M. Hospital (P.W.14). Hence, the prosecution case has not been proved beyond doubt and the conviction is liable to be set aside.

Mr. Ahmed, learned Counsel appearing for the State submits First Information Report was registered within half an hour of the incident wherein it is stated that the appellant, Bikash and others being armed with sharp cutting weapons had repeatedly assaulted the deceased. Evidence of P.W.1 with regard to assault upon the deceased is corroborated by the post mortem doctor (P.W.15) who found number of injuries on the body of the deceased. Two sharp cutting weapons viz., katari and banti were recovered near the place of occurrence. The deceased narrated the name of the appellant and others on the way to hospital to P.Ws.5 to 8. Hence, the prosecution case is proved beyond doubt.

P.W.1, Rani Sardar is the mother and informant in the present case. She deposed on the date of occurrence at noon, there was a quarrel between herself and the accused at the pond. Soumen returned home at 3.00 p.m. Upon hearing of the incident, he requested Bikash not to quarrel. Thereafter, he went out and returned around at 8.00 p.m. After returning home, Soumen again requested the accused persons who were standing in the field not to quarrel. Thereupon, the accused persons hold Soumen forcibly against a window. Soumen told her something was penetrated in his belly by Bikash. P.W.1 called for help. P.W.1 found her son completely unconscious. She called next door neighbours who shifted him to hospital. She lodged written complaint at police station. She proved her LTI on the complaint.

In cross-examination, she stated that she was an illiterate lady and it was not possible for her to state the contents of the written complaint. She also stated that she had not gone to the police station on that day since there was election. She admitted that the houses of the accused persons were set on fire by para people.

P.Ws.5 to 8 are local people who came to the spot after the occurrence. They shifted Soumen by a rickshaw van and then taxi to hospital. On the way, Soumen reported that the appellant and others had assaulted him. Doctor declared him dead in the hospital.

P.W.9, Felaram Das, ASI of Police received the written complaint at Mahestala Police Station. He deposed that P.W.1 had put her LTI in his presence. He proved the formal FIR (Ext. 2).

P.Ws. 12 and 13 are the Investigating Officers in the instant case. P.W.12, Ranjan Rudra deposed during investigation he visited place of occurrence, prepared rough sketch map with index. He examined witnesses. He seized one blood stained banti 15 inches in length, one blood stained katari 14 inches in length under a seizure list (Ext. 3) in presence of witnesses. He seized blood stained earth in presence of witnesses under seizure list (Ext.4). He also seized blood stained wearing apparels. He sent the seized articles for FSL examination. He collected the inquest report.

P.W.13 is the Ratan Chakraborty is the 2nd Investigating Officer who collected the post mortem report and submitted charge sheet.

P.W.14, Chandan Ray, was the Emergency Medical Officer at S.S.K.M. Hospital. He deposed Soumen was brought to the hospital at 11.30 P.M. by Ranjan Kr. Nath (P.W.8) who told him that there was a quarrel with his immediate neighbour on 21.6.2009 when he had been stabbed with knife by immediate neighbour who are stated to be Biharies. He was declared dead in the hospital. He proved the injury report (Exhibit-13).

P.W. 15 is the postmortem doctor. He conducted postmortem over the body of the deceased. He found the following injuries :

“Injuries on lateral aspect of left flank at a level 3 inch above chest and incised wound – $1\frac{1}{3}$ X $\frac{1}{4}$ inch over left inguinal region 2 inch lateral to mid line and 3.8 inch below the level of anterior superior iliac 3 inch X 2 inch over lateral aspect of right lower chest; stab wounds, each arm 1 inch X $\frac{1}{2}$ inch over left side of chest and abdominal part, 20 inch below shoulder and 1 and $\frac{1}{2}$ inch above lower most part V shaped rent over left side of waist, each arm of V is 1 inch in length and stab wound 0.9 inch X 0.3 inch X muscle over lateral aspect of right arm 3 and $\frac{1}{2}$ inch below hip of shoulder and 10 inch above elbow, the stab wound is spindle shaped and on dissection it is directed from right to left and have cut the skin sub cutaneous tissue, fat and muscle as well as local vessels and finally terminates by making wedge shaped cut fracture over right humus and track of wound is converging the another stab wound 0.9 X 0.3 X hard cavity (right vertical) over lower aspect of left side of chest, 21 inch below vault and 47 and $\frac{1}{2}$ inch above left chest and spindle in shape and on dissection the track of wounds it enter the chest cavity through sub coastal margin of sixth rib from left to right direction and thereby pierced pericardium, right vertical, the stab wound 0.9 X 0.3 X intestinal lumen over lowest aspect of right side of abdominal wall spindle in shape.”

He opined that death was due to the effect of stab injury anti mortem and homicidal in nature.

It has been argued that the first information report in the instant case has not been proved. Scribe of the first information report, Mr. Jayanta Banerjee, has not been examined. Hence, apart from the signature of the informant (P.W. 1) the contents of the FIR have not been proved. However, P.W. 1 claimed that she lodged complaint with the police on the very night. Formal F.I.R. was drawn up by P.W. 9 who has proved its contents (Exhibit -2).

From the reading of the formal F.I.R. it appears that the written complaint had been lodged with the police station against the appellant and others within half an hour of the alleged incident by the mother of the deceased (P.W. 1) who appears to be the most natural witness to the incident. She has categorically disclosed the genesis of the incident during her deposition in court which commenced with a quarrel between herself on the one hand and the appellant and his son and daughters on the other hand in the afternoon of the fateful day. As a sequel to such quarrel around 9p.m. the appellant and other accused persons assembled in front of the house of the P.W. 1 with arms. Appellant and others pinned down the victim against a window and Bikash assaulted him. In spite of extensive cross-examination, the aforesaid facts remained unchallenged. Soon thereafter the appellant was removed to SSKM hospital where he was declared dead by P.W. 14. P.W. 14 proved the injury report (Exhibit - 13) wherein it is stated that the patient was stabbed by the immediate neighbour who are Biharies. P.W. 14 also noted that the intestine was

protruding from an abdominal wound on the interior abdominal wall. P.W. 15, post mortem doctor also found extensive stab injuries on vital parts of the body of the deceased. He noted that the death was due to stab injuries, ante mortem and homicidal in nature.

From the evidence of P.W. 1 and that of medical evidence of P.Ws 14 and 15, it is clear that there was a quarrel between P.W. 1 and the appellant and her children in the afternoon. Soumen, son of P.W. 1, intervened and asked the accused persons to amicably solve the matter. At around 9 p.m. accused persons gathered in front of the house of P.W. 1 and the deceased was mercilessly stabbed on various parts of the body resulting in his death. Accused persons were armed with sharp cutting weapons which were seized from a bush near the place of occurrence by the investigating officer on the selfsame day. It is argued that P.W. 1 did not state the appellant was the assailant and that the seizure of the weapons are unlikely as the house of the accused persons had been set on fire.

Appellant was called upon to answer of the charge under Sections 302/149 of the Indian Penal Code and was ultimately convicted under Section 302 read with Section 34 of the Indian Penal Code. Section 34 of the Indian Penal Code deals with common intention.

“34. Acts done by several persons in furtherance of common intention.-

When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

Thus, to prove a charge under Section 302 read with Section 34 of the Indian Penal Code, it is not necessary to establish that each and every accused has assaulted the deceased. To show the accused persons shared common intention to murder, it would be sufficient if the prosecution establishes pre-concert, presence and participation of the accused persons in the murder. Evidence on record shows that there was a quarrel between two groups in the afternoon of the fateful day. Pursuant to such quarrel the accused persons assembled with arms in front of the house of the deceased. They appear to be armed with deadly weapons. When the deceased protested the appellant and others held the deceased assaulted him with sharp cutting weapons on various parts of the body. Medical evidence shows that the injuries were grave and were on the vital parts of the body viz. chest and abdomen. In fact, the abdominal injury was so severe that the intestine came out from the rupture of the abdominal wall.

Analysis of the aforesaid evidence would show the quarrel took place in the afternoon and the appellant and the other accused persons had assembled with arms at the spot at night. It cannot be said the incident occurred in the course of a quarrel or in a fit of rage. On the other hand, it was a pre-meditated act of the accused persons to kill the deceased who had protested against them in the afternoon. Hence, the pre-concert of the appellant and other accused persons to commit the murder is evident from the facts of the case. It further appears from the evidence on record that the appellant and other accused persons conjointly participated in the act

of pinning down the victim and assaulting him on the vital parts of the body causing serious injuries damaging his vital organs. Nature of the weapons used, severe injuries on the vital parts of the body viz. chest and abdomen damaging the vital organs clearly prove the common intention of the accused persons to murder the victim. Thus, participation of the appellant in the murder is also squarely established. Keeping in view of the fact that the appellant had come to the spot with the accused persons armed with deadly weapons which had been subsequently recovered near the spot, grave nature of injuries caused on the vital organs of the deceased and the participation of the appellant throughout the incident leaves no doubt in my mind that the appellant shared common intention to murder the victim.

I have not relied on the evidence of P.W. 5 to 8 with regard to the oral dying declaration of the deceased as the said piece of evidence appears to be doubtful in the face of the deposition of the mother (P.W. 1) that she found her son completely unconscious on the spot and the fact that the names of the accused persons had not transpired in the injury report prepared by P.W. 14.

Even discounting such circumstances, I opine evidence of P.W. 1 and the medical evidence of the doctors P.W. 14 and 15 are sufficient to prove the prosecution case against the appellant. Hence, conviction and sentence of the appellant is upheld and accordingly, the appeal is dismissed.

In view of dismissal of the appeal, connected application being CRAN 3 of 2020 is also disposed of.

However, in view of the role played by the appellant who does not appear to be the principal assailant and is a lady, I observe in the event she makes an application for pre-mature release under Section 433A of the Code of Criminal Procedure, the appropriate authority shall consider the application in the light of the aforesaid facts and other attending circumstances including the conduct of the appellant in the Correctional Home.

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

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

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)