

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

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Krishna Rao

C.R.A. 605 of 2019

Monoranjana Shaw @ Chunanram

-Vs-

State of West Bengal

For the Appellant:

Mr. Apalak Basu, Adv.

For the State:

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

Heard on:

01.12.2021

Judgment on:

01.12.2021

Joymalya Bagchi, J. :-

The appeal is directed against judgment and order dated 10.08.2018/11.8.2018 passed by the learned Additional District & Sessions Judge, Fast Track Court, Khatra, Bankura in Sessions Trial No. 01(01)2009 arising out of Sessions Case No.13(07)2007 convicting the appellant for commission of offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer life imprisonment and to pay a fine of Rs.5,000/-.

The prosecution case is that on 11.04.2007 at about 06.35 a.m. one Ganesh Karga lodged a written complaint at Simlapal Police Station to the effect that on the aforesaid date at 12.30 a.m. while he was sleeping at his room, he heard his aunt Bhakti Karga calling him. He woke up and heard from Bhakti that his another aunt namely, Tulsi Karga, wife of Fani Karga, has been murdered by the son-in law who is the husband of their niece. He also stated in the complaint Basanti Sutradhar aged about 14 years, granddaughter of Tulsi used to reside with her and on the fateful night she was sleeping along with her grandmother, that is, Tulsi in the verandah. Upon reaching the house of Tulsi, he found her lying dead with bleeding injuries. On seeing the dead body, he raised hue and cry; other villagers assembled and they tried to search for their son-in-law, that is, the appellant but in vain. On enquiry it came to light, Basanti had seen that Monoranjan had assaulted her grandmother on her neck with the help of a sharp cutting weapon like a knife in the light of the lantern; after which deceased had cried out “Chuna Tui Aamar Eai Abastha Karli”; thereafter, the appellant fled away from the place and Basanti narrated the incident to Bhakti Karga who was also sleeping nearby. It is further alleged in the complaint that due to the matrimonial dispute between Monoranjan and his wife Durga, Monoranjan had threatened Tulsi that he would kill her. On the basis of the aforesaid written complaint, Simlapal Police Station Case No.08/07 dated 11.04.2007 under Section 302 of the Indian Penal Code was registered for investigation.

In the course of investigation, the appellant was arrested and upon interrogation the weapon of offence, namely, Batali was recovered. In

conclusion of investigation, charge sheet was filed and case was committed to the Court of Sessions and was transferred to the Fast Track Court, Khatra, Bankura for trial and disposal. Charge was framed under section 302 of the Indian Penal Code against the appellant. He pleaded not guilty thereto and claimed to be tried. Prosecution examined twenty three witnesses to prove its case.

Defence of the appellant was that he was innocent and had been falsely implicated in the case. In conclusion of trial, the learned Judge convicted the appellant and sentenced him, as aforesaid.

Mr. Basu, learned advocate appearing for the appellant argued that the appellant has been falsely implicated due to some previous grudge. P.W 7 (Basanti) who claims to be the sole eye witness, was a 14 year old girl and the possibility of tutoring her cannot be ruled out. It is further submitted that prosecution case is most unnatural as P.W.19 (Bhakti) who was sleeping in a cot in the varendah did not see the incident. It is further submitted that the incident occurred in darkness, hence there was no possibility of identifying the appellant. Seized weapon, namely, Batali was not the weapon of the offence. Hence, prosecution has miserably failed to prove its case and the appellant is entitled to an order of acquittal.

Mr. Bhattacharyya, learned advocate appearing for the State argued that P.W.7 Basanti was sleeping along with the deceased and was the most natural witness to the incident. She saw the appellant in the light of lantern and deceased had uttered the name of the appellant at the time of assault. He submitted that evidence of P.W.7 was corroborated by P.W.2 and P.W 19. The F.I.R was registered within six hours of the incident. P.W 22, P.M

Doctor, corroborated the evidence of P.W.7 by explaining the nature of injury. Motive has also been proved. Hence, prosecution case is proved beyond reasonable doubt.

From the rival submission at the Bar, it appears that the prosecution case is hinged primarily on the evidence of sole eye witness, P.W.7, grand-daughter Basanti.

P.W.7, grand-niece of the deceased lady used to reside with her and her sister Bhakti in the same house. P.W.7 deposed at around 12/12.30 a.m that she woke up and saw that the appellant was sitting beside her grand-mother. He assaulted her grandmother on the throat with the help of a weapon and fled away from the spot. P.W 7 deposed that her grandmother cried out by saying "Chuna Tui Amar Eai Abastha Karli". P.W.7 immediately called her another grand-mother, Bhakti, P.W.19, who, in turn called Ganesh Karga (P.W.2), who resided in an adjoining house. She stated the incident to the local people also. She signed on the inquest report. Police came to the spot and seized one blood stained mosquito net, one blood stained mat, one blood stained katha and one lantern under the seizure list. She made statement before the learned Magistrate. P.W.7 has been cross-examined extensively. However, no major contradiction in her deposition could be elicited during her cross-examination.

P.W.19 Bhakti deposed in her examination-in-chief that Tulsi was her sister. Basanti is her grand-daughter and the appellant is the husband of Durga who is her niece. On the fateful night she was sleeping on a cot at the varendah of their house and Tulsi and Basanti were sleeping on the floor of the said varendah. Basanti called her and stated that the appellant had

murdered Tulsi. She found that the victim was in a restless condition. She gave her some water and called Ganesh who was sleeping in the adjoining house. Durga, their niece is the wife of appellant. She was tortured at her in-law's house. Durga took shelter in her parental house. Panchayat was informed and Durga returned to her matrimonial house. Thereafter she came back to her parental house. Subsequently, this incident took place.

P.W.2 Ganesh deposed that there was matrimonial dispute between Durga, niece of Tulsi and the appellant. Durga was assaulted by the appellant. Tulsi raised protest whereupon the appellant threatened to kill her. He heard about the murder from Bhakti. P.W.7 (Basanti) who narrated the whole incident. P.W.2 Ganesh lodged the complaint which was scribed by Nayan Mondal, P.W.1 and treated as F.I.R (Exbt.1).

The evidence of aforesaid witnesses have been corroborated by P.W.3 and 15, the neighbours.

P.W.3 deposed on the fateful night that he was sleeping in his house and upon hearing hue and cry he went to the house of Tulsi and found her dead body lying in the varendah. He also deposed that the relationship between Durga and appellant was not good and the deceased intervened in the matrimonial dispute. He signed the papers which were prepared by the police on the spot. P.W.15, another neighbour has corroborated the evidence of P.W.3.

P.W. 5, Durga Shaw, is the niece of the deceased and wife of the appellant. She deposed she had been driven out by the appellant and her deceased aunt, Tulsi had brought the matter before the Panchayat. Her husband had threatened to kill her aunt Tulsi.

P.W.16, is the Upapradhan of Dubrajpur Gram Panchayat. He deposed that there was family dispute between Durga and the appellant. They had come to the Panchayat Office to settle the dispute. Tulsi had taken steps to resolve the dispute between Durga and the appellant.

From the aforesaid evidence on record it is clear that the evidence of P.W.7, the sole eye witness, is corroborated by Bhakti, P.W.19 and Ganesh, P.W.2, who immediately arrived at the spot. F.I.R was lodged by Ganesh within six hours of the incident wherein he specifically stated that Basanti who was sleeping with the deceased in the Varendra had witnessed the incident in the light of the lantern. Not only these facts remain unchallenged but they are corroborated by the independent neighbours, P.W.3 and P.W.15 who arrived at the spot upon hearing the hue and cry and heard about the incident from Basanti, P.W.7.

It has been argued that Basanti was a young girl and in view of a previous grudge, possibility of tutoring her to implicate the appellant cannot be ruled out. It is trite law that evidence of sole eye witness ought be weighed with due care and circumspection prior to relying on it to bring home the guilt of the accused.

I note that P.W.7 is the most natural and probable witness. Her deposition does not suffer from any contradiction with her previous statement to police or Magistrate. It is corroborated by other independent neighbouring witnesses, namely, P.W.3 and P.W.15. As discussed above, F.I.R was registered within six hours of the incident wherein it is stated that P.W.7 witnessed the incident in the light of the lantern. Thus, possibility of false implication of the appellant by tutoring the minor witness appears to

be too remote. Source of the light being the lantern is also proved. Hence, I am convinced that Basanti is a reliable and truthful witness.

It has been argued that the prosecution case is unnatural as Bhakti, P.W.19 who was sleeping in the cot in the same verandah did not witness the incident. Evidence has come on record that Basanti was sleeping in the same bed along with deceased on the floor of the verandah while Bhakti was sleeping at a distance in the cot.

The incident occurred while all of them were sleeping. In view of the close proximity between Basanti and the deceased who were sleeping in the same bed, Basanti woke up when the appellant sat beside the victim and struck at her throat. Thereupon, the deceased took the name of the appellant and uttered a few words. As the victim had already been struck by the appellant, it is most natural that her utterances were not loud enough to arise Bhakti, who was sleeping in the cot. By the time Basanti woke her up, appellant had fled away. Under such circumstances, I find no reason to disbelieve the version of Basanti on the score that Bhakti had not witnessed the incident. Ocular evidence of Basanti also finds corroboration from P.W.22, P.M Doctor who during the post mortem examination of the deceased found the following injury i.e, one bevelled stab wound at the jugular notch measuring 2.3" long 0.6" wide and 4.7" deep. The injuries were placed horizontally and bevelling towards sternum. The track of the stab wound is directed towards the left side. He opined that the cause of death was done to the above noted injury ante-mortem and homicidal in nature. In cross examination, he clarified that a person who received such type of injury may be alive for 10/12 minutes though it varies man to man.

He also opined that if a person received such type of injury he may also speak for 10/12 minutes.

Motive of the crime has also been established. Most of the witnesses have proved the relationship between Durga, niece of deceased Tulsi and the appellant was not good and the appellant had threatened the deceased for having intervened in his matrimonial dispute.

In the light of aforesaid discussion, I am of the opinion that the prosecution has been able to prove its case beyond reasonable doubt and the sentence and conviction imposed upon the appellant is upheld.

Accordingly, the appeal is dismissed.

Period of detention, if any, undergone by the appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon him in terms of Section 428 of the Code of Criminal Procedure.

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

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

I agree.

(Krishna Rao, J.)

(Joymalya Bagchi, J.)