

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHITTA RANJAN DASH
AND
HON'BLE JUSTICE PARTHA SARATHI SEN

C.R.A. No. 43 of 2010
With
IA No. CRAN 2 of 2011 (Old No. CRAN 32 of 2011)

Bankim @ Banku Pramanik & Ors.
-Versus-
The State of West Bengal & Anr.

For the Appellant	:	Mr. Pratik Kr. Bhattacharyya, Adv.
For the State	:	Mr. Swapan Banerjee , Adv.
	:	Mr. Suman De, Adv.
Last Heard on	:	16.12.2022
Judgment on	:	23.12.2022

PARTHA SARATHI SEN, J. : –

1. The instant Appeal arises out of the judgment and order dated 18.12.2009 and 19.12.2009 as passed by the Learned Additional Sessions Judge 1st Court, Purulia in Session Trial no. 21/2008 arising out of Sessions Case No. 169/2008. By the impugned judgment learned trial court found the charge sheeted accused persons guilty under Sections 302/34 of the Indian Penal Code and, thus, sentenced them to suffer rigorous imprisonment for life each and also to pay a fine of Rs. 5000/- each i.d. to suffer further rigorous imprisonment for two years each.
2. The convicts felt aggrieved and, thus, preferred the instant appeal.

3. For effective disposal of the instant appeal the facts leading to initiation of Sessions Trial No. 21/2008 is required to be dealt in a nutshell.

4. One Dukhan Pramanik, son of Kalicharan Pramanik of Village Mukundapur under P.S.- Joypur, District- Purulia lodged a written complaint on 07.08.2008 with the IC Joypur P.S. stating, inter alia, that on the said day at about 9 AM when his sister Hemu Pramanik was returning to her home after taking bath in a local pond, she was abused in filthy languages by one of his neighbours namely; Bankim Pramanik @ Banku Pramanik as well as his other family members. It is the further version of the de facto complainant that after returning home his sister intimated the entire incident to her mother. However, at that time his father as well as the de facto complainant were not at home since both of them were at Joypur in their respective places of employment. It is the further version of the de facto complainant that after returning home his father Kalicharan Pramanik came to learn about the aforementioned incident and then he went to the house of the accused persons to ascertain as to why they had misbehaved with his daughter and at that time one Bhadu Pramanik, wife of aforementioned Bankim Pramanik started abusing his father with filthy languages and started pulling his hands and immediately thereafter the said Bankim Pramanik assaulted the father of the de facto complainant on his head by using a spear to which his father suffered bleeding injuries and fell down on earth and thereafter the accused Lalu Pramanik gave a blow of shovel (shabol) on

the head of the father of the de facto complainant and Kartick Pramanik, another accused also assaulted his father by a bamboo stick on the head of his father as well on his person. It is the further version of the de facto complainant that on account of such assault the victim i.e. the father of the de facto complaint succumbed to the aforementioned bodily injuries. In the written complaint it has also been stated that in order to blame the de facto complainant, the victim and his family members, some of the accused persons wounded themselves by self-inflicting injuries.

5. On the basis of the aforementioned written complainant Joypur P.S. Case No. 51/2008 dated 07.08.2008 under Sections 302/201/34 IPC was started, investigation was taken up and on completion of the same charge sheet under Sections 302/201/34 I.P.C was submitted against all the accused persons.

6. After commitment of the instant case, the trial court record was sent to the Learned Trial Judge, being an Additional Sessions Judge for trial and disposal and it reveals from the trial court record that on 11.12.2008 the learned trial court after considering the entire materials as placed before him framed charges under Sections 302/ 34 and 201/34 I.P.C against the present four appellants. Since before the Learned Trial Court the present four appellant pleaded their innocence and claimed to be tried, the trial proceeded.

7. On perusal of the entire trial court record it reveals that, for bringing home the charges, the prosecution before the trial court has examined 15 witnesses in all and several documents and materials have

been exhibited. Trial court record reveals further that after due appreciation of the evidence of the prosecution witnesses, both oral and documentary, the learned trial court passed the impugned judgment and order of conviction against the present four appellants which has been assailed before this Court.

8. Heard learned Amicus Curiae as appointed by this Court at length as well as the Ld. Advocate for the State.

9. For proper appreciation of the facts and law as involved in the instant appeal, we propose to deal with the evidence of those prosecution witnesses which are necessary for the effective disposal of the instant appeal.

10. The de facto complainant being the son of the deceased has been examined as PW1. According to the prosecution, PW1 is also an ocular witness. In his examination-in-chief PW1 has been declared hostile by the prosecution in course of his cross-examination on behalf of the prosecution. However the PW1 stated categorically that on the relevant day and hour the present appellants being the accused persons abused her sister in filthy languages. He stated further that after returning from his place of employment, his father came to learn about the entire incident from his sister and thereafter he went to inform such incident to the other villagers and on his way he was intercepted by one Bhadu Pramanick who caught hold of his father from back side and used filthy languages towards him. It is his further evidence that thereafter Bankim Pramanick assaulted his father on his head by a Spear (ballam) while the

other accused persons namely; Kartick Praminick assaulted his father with a big size stick and Lalu Pramaick gave a blow on the head of his father with a shovel. It is his further version that on account of such grievous injury his father died at the spot.

11. On perusal of the evidence of PW1 it reveals to us that PW1 remained very much consistent even in his cross-examination and on being asked he stated categorically that on the relevant day and hour he found the occurrence of the crime.

12. PW2 is a co-villager of the deceased as well as of the informant. In course of his examination-in-chief he stated that on the relevant day and hour he was sitting by the road side dawa (verandah) adjacent to his house from where the P.O is visible which is at a distance of 30/35 cubits away. He stated that he noticed Banku, Kartik and Lalu were assaulting the victim while Bhadu caught hold of the victim. It is his further version that the three male members were armed with shovel, spear and lathi and they mercilessly assaulted the victim at random. He stated further that seeing such incident he rushed to the spot and asked the assailants not to assault the victim any further as he had already expired. He stated that his statement was recorded by a Judicial Magistrate. PW2 was cross-examined at length from the side of the defence but nothing could be elicited from his mouth which may be helpful to the accused persons.

13. PW3 is another co-villager who claimed that his house is situated 50 cubits away from the P.O. In his examination-in-chief he stated that on the relevant day and hour he noticed a chaos in his door step on Kuli

Road and he noticed that Banku, Lalu and Kartick were assaulting the victim at random to which the victim fell down on the earth. He tried to intervene but the accused persons did not stop their assault upon the victim and thereafter the accused persons fled away. He further stated that after commission of the crime the accused persons rubbed the offending weapons with the earth to remove the blood stain marks on the weapons. He is also a witness to the alleged recovery of the weapon of offence. He is also an inquest witness. He too was cross examined by the defence extensively but all the efforts of the accused persons remained futile since nothing contradictory revealed from him which may be of prejudicial to the prosecution.

14. PW5 is another co-villager of the informant and the deceased. He stated that on the relevant day and hour he came out from his house and noticed that Lalu assaulted the victim by shovel while Banku assaulted the victim with spear and at that time Bhadu caught hold of the victim while Kartick assaulted the victim with lathi. He stated further that on account of assault the victim succumbed to his injuries at the P.O. In his cross-examination PW5 also remained very consistent.

15. PW8 is the daughter of the victim. She stated that on the relevant day and hour when she was following her father on the Kuli Road at that time three accused persons whom she identified during her examination-in-chief called her father and started assaulting him with spear, shovel and lathi. Resultantly her father died on the spot. She further stated that

when accused Bhadu caught hold of her father. She too could not be shaken in the cross-examination.

16. PW11 is another ocular witness. He being the relative of the deceased stated that on the relevant day and hour he found Banku, Lalu and Kartick assaulted the victim with spear, shovel and lathi while the accused Bhadu caught hold of the victim. It is his further version that on account of such assault by the accused persons, the victim succumbed to his injuries at the P.O.

17. The evidence of PW14 i.e. the Autopsy Surgeon in considered view of us is very relevant for effective disposal of the instant appeal. In course of his examination-in-chief PW 14 stated that while doing the post mortem examination over the person of the deceased, he found the following-

- “1. Punctured wound about size of ‘50’ paisa coin just behind the left angle of mandible at upper neck. Blood coming out form the wound. On dissection, extensive intra-muscular haemorrhage present.*
- 2. Multiple abrasion right forehead and frontal region.*
- 3. Swelling on the left side of head.*
- 4. Bleeding from nostrils.”*

He in course of his examination-in-chief further stated the following which are reproduced herein in verbatim for proper assessment :-

“After dissection no.1 subcutaneous haemotoma left temporal and right frontal region, (2) Extensive intra-cerebral haemorrhage and clot present.

Note: (i) Articles, clothings and blood sample handed over to escorting constable

(ii) Injury no.1 may be caused by sharp pointed end of a hard substance and like ‘shabal’ and injury nos. (2) &(3) may be caused by hard and blunt substance like lathi,

(iii) Injury no.1 and head injury both are sufficient to cause death of the deceased.

So, in my opinion, case of death was due to shock and haemorrhage due to the above injuries ante mortem and homicidal in nature.”

18. On comparative study of the consistent evidence of PW1, PW2, PW3, PW5, PW8 and PW11 vis-à-vis the evidence of PW14 it reveals to us that the evidence of the aforementioned prosecution witnesses got due corroboration from each other as well as from the evidence of PW14 i.e. the Autopsy Surgeon.

19. On perusal of the evidence of the aforementioned eye witnesses, it appears to us that the evidence of the said eye witnesses are found to be reliable and believable because in their respective examination-in-chief they are found to be honestly, interested in ensuring that the real culprits are punished. In course of their respective cross-examinations as well as in course of the argument before this Court nothing could be suggested on behalf of the present appellants that the said prosecution witnesses conjointly adduced false evidence to implicate the present appellants falsely on account of any previous animosity and/or village enmity. Such being the position, this Court finds no cogent reason to disbelieve the testimonies of PW1, PW2, PW3 , PW5, PW8 and PW11.

20. Admittedly out of the said prosecution witnesses PW1, PW8 and PW11 are related witnesses however, simply because they are related witnesses their evidence cannot be thrown over board since the primary endeavour of the Court must be to look for consistency. This view was

taken by the Hon'ble Supreme Court of India in the reported decision of **Dharnidhar vs. State of U.P reported in (2010) 3 C CrLR (SC)636.**

21. In view of the discussion made hereinabove this Court finds no cogent reason to interfere with the impugned judgement.

22. Accordingly, the instant appeal is dismissed. The impugned judgement and order dated 18.12.2009 and 19.12.2009 as passed by Learned Additional Sessions Judge, 1st Court Purulia in Sessions Trial No.21/2008 arising out of Sessions Case no.169/2008 is hereby affirmed.

23. The bail bond as given by the appellants pursuant to the order dated 12.05.2010 and 15.05.2014 as passed by this Court while disposing of CRAN nos.1391 of 2010 and 1661 of 2014 respectively is hereby cancelled. The present appellants namely; Bankim Pramanick @ Banku Pramanick, Lalu Pramanick, Bhadu Pramanick and Kartick Pramanick are hereby directed to surrender before the learned trial court within a fortnight from the date of communication of this judgement to suffer remaining part of their sentence. Learned trial court is hereby directed to issue non-bailable warrant of arrest against the present appellants namely; Bankim Pramanick @ Banku Pramanick, Lalu Pramanick, Bhadu Pramanick and Kartick Pramanick if they do not comply with the order of this Court within the time framed.

24. With the aforementioned observations the instant appeal is disposed of.

25. Let a copy of this judgement along with LCR be sent down at once.

26. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)