

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

Present:

The Hon'ble Justice Debangsu Basak

AND

The Hon'ble Justice Bibhas Ranjan De

CRA 49 of 2021

Dayamoy Mondal

-vs-

The State of West Bengal

For the appellant : **Mr. Aslam Khan, Advocate**
Mr. Santanu Deb Roy, Advocate

For the State : **Mr. Saibal Bapuli , Ld. APP**
Mr. Arani Bhattacharyy, Advocate

Hearing concluded on : **August 29, 2022**
Judgment on : **August 29, 2022**

Debangsu Basak, J.:-

1. The appeal is directed against the judgement in order of conviction dated January 6, 2021 and order of sentence dated January 18, 2021 passed by the Learned Additional Sessions Judge 2nd Court, Assansol in Sessions Trial No. 07 of 2008 arising out of Sessions Case number 225 of 2008.
2. By the impugned judgement of conviction the appellant was convicted under Section 302 of the Indian Penal Code, 1860 and was awarded a sentence of life imprisonment. The appellant was also awarded a fine

of Rs. 10,000 and in default of payment of fine the appellant was directed to undergo a further period of six months of rigorous imprisonment.

3. The case of the prosecution in brief is that, Madhusudan Gorai went to the field on June 20, 2007 at 6 AM and murdered at 7 AM in the morning by the appellant and four other persons. The son of the murdered person, lodged the police complaint which was investigated into. The police filed a charge sheet against five accused persons. Charges were framed against five accused persons. The five accused persons claimed to be tried.
4. At the trial, one of the accused persons namely, Mayoni Mondal died. Another accused person was found to be a juvenile and was sent to the Juvenile Justice Board for further proceeding and for trial.
5. Learned advocate appearing for the appellant draws the attention of the Court to the evidence led at the trial. He submits that, 13 prosecution witnesses were examined. According to him, four prosecution witnesses were eyewitnesses and that, all such prosecution witnesses were interested witnesses. He draws the attention of the court to the contents of the evidence of the four prosecution witnesses who claimed themselves to be eyewitnesses. He submits that, their evidences are unreliable.
6. Learned advocate appearing for the State submits that, all the prosecution witnesses corroborated each other so far as the evidence led at the trial is concerned. He contends that, P.W. Nos.-1 and 5 are

relatives, P.W. No.-7 is a neighbour and P.W. No.-8 is a labourer. P.W. Nos.-7 and 8, therefore, cannot be said to be interested witnesses. He submits, referring to **2003 volume 11 Supreme Court Cases 367 (Sunil Kumar -vs- State Govt. NCT of Delhi)** and **2020 (19) Supreme Court Cases 165 (Amar Singh -vs- State [NCT of Delhi])** and contends that, the accused can be convicted on the basis of the evidence of the single reliable witness. In the present case, according to him, there are more than one witness who implicates the accused in the offence. Therefore, according to him, the prosecution proved the case beyond all reasonable doubts. He submits that, the appeal should be dismissed.

7. At the trial 13 witnesses were examined by the prosecution. The prosecution also relied upon various documents which were marked as Exhibits-1 to 21. Prosecution relied upon various material exhibits which were marked Exhibit-I and Exhibit-II. On conclusion of the evidence of the prosecution, the accused persons were examined under section 313 of the Criminal Procedure Code (Cr.P.C.) where they pleaded their innocence. The defense of the appellant was denial of the case of the prosecution and false implication.
8. P.W.Nos.-1 and 5 are the two sons of the victim. P.W.No.-1 in his evidence states as follows: – set out page 13

“ On 20.06.2007 at about 6.00 A M he was murdered. On that date myself, my father Madhu sudan gorai, my younger brother Manik Gorai, my Jethtuto brother Swapan Gorai, two labourers namely Badal Bouri and Prabat Bouri went to our plot No.

1046 within mouza Siddhyapur for seeding in our field. When my father Madhu Sudan Gorai was ploughing the said land and other labourers were clearing the bushes, in the mean time the wife of Dayamoy Mondal i.e., Chadi Mondal stood in front of the plough of my father and began to abuse him. At that time, all on a sudden Dayamoy Mondal appeared there from the nearby southern side bush with an axe in hi hand. He hit on the back side of my father. As a result, my father fell down on the ground. We tried to resist Dayamoy Mondal who chased us with the said axe. We went at a distance place to save ourselves. In the mean time Dayamoy again hit my father on his head and eye several times with the said axe. We failed to resist in fear.”

9. The evidence of P.W.No.-1 is corroborated by the evidence and testimony of P.W.Nos.-5, 7 and 8. All the four prosecution witnesses were cross-examined in great details. The appellant was unable to elucidate anything favourable from such prosecution witnesses in cross examination.
10. The four prosecution witnesses being P.W.Nos.-5, 7 and 8 stated that on June 20, 2007 at about 7 AM the victim was murdered by the appellant. Other accused were also involved. On that date, P.W.Nos.-1, 5, 7 and 8 were on the plot number 1046 where the incident occurred. The victim was ploughing such land. Other labourers were clearing the bushes. In the meantime, the wife of the appellant stood in front of the plough of the victim and began to abuse him. At that time, all of a sudden, the appellant appeared there from the nearby southern side bush with an axe in his hand. He hit on the back side of the head of the victim. As a result, the victim fell down on the

ground. The prosecution witnesses tried to resist the appellant who chased them with the axe. The prosecution witnesses went at a distance place to save themselves. In the meantime, the appellant again hit the victim on his head and eye several times with the axe. The prosecution witnesses present at the locale could not resist due to fear.

11. P.W. Nos. 1, 5, 7 and 8 corroborate each other in their testimonies at the trial court with regard to the incident. They say that they were present at the time of occurrence. They described the incident in great details. There is hardly any discrepancy worth mentioning in the testimonies of the P.W. Nos. 1, 5, 7 and 8. They were cross-examined at great length by the defence at the trial.
12. Exhibit 12 is the post-mortem report of the victim. The post-mortem doctor was examined as P.W. 9. In his testimony in, the P.W. 9 stated and described the injuries suffered by the victim. In his opinion, the injuries suffered by the victim were ante mortem and homicidal in nature. According to him, the injuries were sufficient to cause the death of the victim. He was shown the axe which were seized from the place of occurrence. He opined that such axe was capable of inflicting the injuries suffered by the victim.
13. The P.W. Nos. 1, 5, 7 and 8 described the injuries that were inflicted by the appellant on the victim. The post-mortem report and the evidence of the post mortem doctor being P.W. 9 corroborates such a description of the assault that the appellant inflicted upon the

victim. In such circumstances, the prosecution was able to prove beyond reasonable doubt that the appellant was involved in the murder of the victim. In fact, he was the person who dealt the blows upon the victim which led the victim to his death.

14. P.W. Nos. 5, 7 and 8 recorded statements under section 164 of the Cr.P.C. before the learned Judicial Magistrate being P.W. 11. The statements of the P.W. 5 recorded under Section 164 of the Cr.P.C. was tendered in evidence at the trial and was marked as Exhibit 6. Statement of P.W. 7 recorded under section 164 of the Cr.P.C. was tendered in evidence and marked as Exhibit 11. Statement of the P.W. 8 recorded under Section 164 of the Cr.P.C. was tendered in evidence and marked as Exhibit 16. The statements of P.W. Nos. 5, 7 and 8 recorded under Section 164 of the Cr.P.C. corroborate each other. They also corroborate the evidence that they testified at the trial.
15. The Learned Judicial Magistrate recording the statements of P.W. Nos. 5, 7 and 8 under Section 164 of the Cr.P.C. was examined as P.W. 11. The learned Judicial Magistrate in his testimony stated that such prosecution witnesses recorded their statements before him.
16. ***Sunil Kumar Singh (supra)*** is of the view that as a general rule, the court can and may act on the testimony of a single witness provided he is wholly reliable. It is of the view that there is no legal impediment in convicting a person on the sole testimony of a single witness.

17. This view of the Hon'ble Supreme Court in ***Sunil Kumar Singh (supra)*** was affirmed by the Hon'ble Supreme Court in ***Amar Singh (supra)***.
18. It is trite law that, when the court is required to appreciate the evidence of any interested witness it is required to be cautious in evaluating their evidence. The evidence of an interested witness requires a scrutiny with utmost care and caution. The court is required to address itself whether there are any infirmities in the evidence of such a witness, whether the evidence is reliable, trustworthy and inspires the confidence of the court. The court is required to consider while analysing the evidence of interested witness is whether the genesis of the crime unfolded by such evidence is probable or not. If the evidence of any interested witness/relative on a careful scrutiny of the court is found to be consistent and trustworthy, free from infirmities or any embellishment that inspires the confidence of the court, there is no reason not to place reliance on the same.
19. Tested on the anvil of the propositions of law noted above, in the facts and circumstances of the present case, it cannot be said that, any of the testimonies prosecution witnesses suffers from any infirmities or that there is any embellishment in their evidence tendered at the trial or that any of them are undeniable or untrustworthy. All the prosecution witnesses corroborated each other at the trial. In particular, P.W. Nos. 1, 5, 7 and 8 corroborated each

other. P.W. Nos. 1 and 5 are sons of the victim and can technically be said to be interested witnesses. However, their evidence at the trial is corroborated by the post-mortem doctor as well as the post-mortem report of the victim. There is no deviation from their statements recorded under Section 164 of the Cr.P.C. In such circumstances we find no reason not to rely upon their evidence.

20. In such circumstances, we find no infirmity in the impugned judgement of conviction passed by the learned trial judge.

21. CRA 49 of 2021 is, therefore, dismissed.

22. Lower Court records along a copy of the judgement and ordered be remitted to the trial court forthwith.

23. Urgent photostat certified copy of this judgment if applied for be given to the parties on priority basis upon completion of requisite formalities.

(Debangsu Basak, J.)

24. I Agree.

(Bibhas Ranjan De, J.)