

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. 116 of 2010

Debasish Chowdhury
-Versus-
The State of West Bengal

Amicus curiae : **Ms. Chandreyee Alam, Adv.**

For the State : **Ms. Sreyashee Biswas, Adv.**

Last Heard on : **22.11.2022**

Judgment on : **25.11.2022**

PARTHA SARATHI SEN, J. : -

1. The instant appeal arises out of the judgement and order dated 12.11.2009 as passed by the Learned Additional Sessions Judge, 2nd Court, Jalpaiguri, in Sessions Trial No.9/03 arising out of Sessions Case No. 92/1999 and GR Case No.228/98 whereby and whereunder the said court by the impugned judgement found the present appellant guilty under Section 302 of the Indian Penal Code and thus sentenced him to suffer imprisonment for life and pay fine of Rs.5000/- i.d to suffer imprisonment for one year more. The convict felt aggrieved and thus preferred the instant appeal.

2. For effective disposal of the instant appeal the facts leading to filing of the instant appeal are required to be dealt with in a nut shell.

3. On 02.03.1998, one Krishna Sarkar, wife of Manik Sarkar, village Netajipara, P.S Dhupguri, District Jalpaiguri lodged a written complaint with the officer-in-charge, Dhupguri Police Station stating, inter alia, that her daughter Manasi Sarkar, a student of Class VI of Dhupguri Balika Vidyalaya, was proceeding towards her school at about 10:30 a.m and on her way near the local bus stand, one of his neighbours namely; Debasish Chowdhury intervened and stabbed her said daughter on her abdomen and breast and as a result of such assault her said daughter became senseless and she was thereafter taken to Dhupguri P.H.C. It is her further assertion that since the condition of her daughter deteriorated she was then referred to Jalpaiguri Hospital where on the date of lodging of the FIR she was struggling for her life.

4. On the basis of such written complaint Dhupguri P.S Case No. 22/98 dated 02.03.1998 under Sections 326/307 IPC was started. Investigation was taken up and on completion of the same charge sheet was submitted under Section 302 of the Indian Penal Code since the victim girl succumbed to her injuries after lodging of the FIR. Learned SDJM, Jalpaiguri found that the case is triable by a Court of Sessions and accordingly by his order dated 20.07.1999 he committed the said case to the Learned Sessions Judge, Jalpaiguri for trial and disposal.

5. Lower Court Record reveals that after transfer, Learned Additional Sessions Judge, 2nd Court, Jalpaiguri, considered the entire materials as

placed before him and by his order dated 12.09.2003 thus framed charges under Section 302 of the Indian Penal Code against the present appellant. Since the present appellant before the learned trial court pleaded his innocence the trial proceeded.

6. Lower Court Record reveals further that in order to bring home the charge as framed against the present appellant, the prosecution has examined 13 witnesses and some documents have been exhibited on their behalf. Lower Court Record reveals further that on appreciation of the evidence, both oral and documentary, the learned trial court by the impugned judgement and order convicted the present appellant as discussed herein above.

7. Ms. Chandreyee Alam, learned *amicus curiae* in course of her submission draws attention of this Court to the deposition of the prosecution witnesses as well as to the certified copy of the impugned judgement. It is contended by her that the evidence of the prosecution witnesses are contradictory and thus the learned trial court ought not to have placed much reliance upon such evidence. It is thus argued that the instant appeal be allowed by setting aside the impugned judgement.

8. Ms. Sreyashee Biswas, learned advocate for the State draws attention of this Court to the evidence of PW1, PW3 and PW8. It is argued that in view of the consistent evidence as led by the said three witnesses learned trial court made no mistake in passing the impugned judgement of conviction against the present appellant. It is further argued by her that the evidence of PW1, PW3 and PW8 got due corroboration from the

evidence of PW13 i.e. the medical officer who performed autopsy over the dead body of the deceased. Ms. Biswas, learned advocate for the State also draws attention of this Court to the examination of the accused under Section 313 of the Code of Criminal Procedure as recorded by the learned trial court. It is submitted that since before the learned trial court the accused candidly admitted that he stabbed the victim Manasi Sarkar by knife and thus killed her, the learned trial court is very much justified in passing the impugned judgement. Ms. Biswas, learned advocate for the State thus requests this Court to dismiss the instant appeal.

9. In order to assess as to whether the learned trial court is at all justified in convicting the present appellant under Section 302 of the Indian Penal Code, a brief look to the oral testimonies of the present witnesses are very much necessary.

10. PW2 being the informant and mother of the victim in her examination-in-chief deposed that the present appellant stabbed her daughter Manasi Sarkar on 02.03.1998 at about 10:30 a.m when her said daughter was on her way to school. It is her further version that on the relevant day and hour one Tumpa Pal, one Soma Saha and her son Subir Sarkar were accompanying the victim girl on her way to school. It has been stated by her that all on a sudden the said three children namely; Tumpa Pal, Soma Saha and Subir Sarkar rushed to her house and narrated to her as to how Manasi was murdered by the present appellant. In her chief she further stated that the condition of victim girl Manasi deteriorated at Dhupguri P.H.C which is why she was referred to

Jalpaiguri Sadar Hospital and after her admission she went to Police Station for lodging the FIR. It reveals from her cross examination that PW2 remained very much consistent and she could not be shaken by the defence.

11. According to the prosecution PW1, Tumpa Pal is an ocular witness of the incident of murder of the victim. In course of her examination-in-chief she deposed that on 02.03.1998 at about 10 a.m the victim, Subir Sarkar (PW8), Soma Saha (PW 3) and she (PW1) were proceeding towards their school and when they reached the bus stand, all on a sudden the present appellant arrived and assaulted Manasi, by a knife at her abdomen and breast. It is her further version that thereafter she, Subir Sarkar and Soma Saha picked up Manasi and laid her on a bench of a nearby grocery shop and at that time Manasi was profusely bleeding. It is her further version that thereafter they left the P.O and rushed to the house of PW2 i.e the mother of the victim to give the information of the incident. She stated further that her statement was recorded by the Magistrate.

On perusal of the cross examination of PW1 it appears to us that she was all along consistent and nothing reveals from her mouth which may weaken the prosecution case.

12. PW 3 being another ocular witness in her examination-in-chief practically echoes the version of PW1. She gave a vivid description as to how the victim Manasi Sarkar was stabbed by the present appellant at

her breast and abdomen in front of her, near bus stand. She further stated that her statement was recorded by the Magistrate.

13. PW8 being the brother of the victim Manasi Sarkar in his examination-in-chief categorically stated that on the relevant day at about 10:30 a.m when Manasi, PW1 and PW3 and he i.e PW 8 were on their way to their school, at that time the present appellant arrived and stabbed Manasi at her breast and abdomen with a knife.

14. In their respective cross examinations PW3 and PW8 are also found very much consistent and they also could not be shaken in course of their cross examinations.

15. PW4 is the elder sister of the victim Manasi Sarkar. In her examination-in-chief she too stated that PW1, PW3 and PW8 and her said sister Manasi were proceeding to their school on the relevant day and hour and on the way to their school the present appellant intervened and thereafter he stabbed her said sister by a knife and she got such information from PW1, PW3 and PW8.

16. In considered view of this Court the deposition of PW13 i.e the Medical Officer who performed autopsy over the dead body of the victim is very much relevant. In course of his examination-in-chief the said doctor stated that in course of post mortem examination of the victim he found the following injuries:-

“1. Penetrating wound ½” X 1/3” X 2” deep lying slightly obliquely upwards and outwards 2” above umbilicus and 1 1/2” to the left of midline. A piece of omentum with blood clots was coming through the wound. On exploring the wound a part of transverse colon was found cut. The direction of the wound was backwards.

2. Penetrating wound ½" X 1/3" X 2" deep lying almost vertically 2 1/2" above umbilicus. On exploration of wound stomach was found cut. The direction of wound was upward backwards and to the left.

3. Incised wound ½" X 1/3" X muscle deep 2" below left nipple and 2" laterally to midline."

In course of his examination-in-chief he stated that the death of the victim in his opinion is due to shock and haemorrhage following above mentioned injuries which was ante-mortem in nature. He opined that the injuries as found in the person of the dead body are sufficient to cause death. She was not cross examined by the defence.

17. PW 10 being the Recording Officer as well as the Investigating Officer in course of his examination-in-chief stated that on 02.03.1998 on receipt of the written complaint from PW 2 he started Dhupguri P.S Case No.22/98 dated 02.03.1998 and thereafter drew up the formal FIR. He himself took up the investigation. He stated further that thereafter he visited the P.O , prepared sketch map of the P.O with index, examined the available witnesses, recorded the statements under Section 161 CrPC, made prayer before the Court for adding Section 302 IPC since the victim succumbed to her injuries, prepared seizure list, collected the inquest report and the post mortem report, took steps for recording all the statements of the witnesses under Section 164 CrPC, made an attempt to recover the weapon of offence and before completion of investigation he was transferred and thus handed over the charge of investigation to the Officer-in-Charge.

18. PW12 is the second I.O who in his examination-in-chief stated that after taking charge on investigation he recorded the statement of one Fire Operator and thereafter he submitted the charge sheet against the present appellant under Section 302 IPC.

19. In considered view of this Court the evidence of other witnesses are not required to be discussed for the reason basically they are the post occurrence witnesses.

20. It is pertinent to mention herein that on 21.07.2009 the present appellant was examined by the learned trial court under Section 313 of the Code of Criminal Code. Learned trial court in course of such examination put various questions to the present appellant in respect of the circumstances which are against him and in course of such examination the present appellant stated it categorically that none but he assaulted the victim with knife as the said victim scolded him by saying a filthy language.

21. On perusal of the evidence of the aforesaid prosecution witnesses it thus appears to us that the testimonies of three eye witnesses namely; PW1, PW3 and PW8 are very much inspiring and their evidence gets due corroboration from each other as well as from the deposition of the autopsy surgeon i.e. PW13 and the post mortem report of the victim namely; Exhibit 11.

22. From the deposition of the post occurrence witnesses namely PW2, PW4, PW5, PW6 and PW7 it reveals that the incident of murder as described by PW1, PW3 and PW8 are trustworthy and immediately after

the alleged incident of murder and/or stabbing, PW1, PW3 and PW8 being the ocular witnesses narrated the entire incident before PW2 and PW4 and at the same time they have disclosed the name of the assailant. In view of such we do not have any hesitation to hold that the evidence of PW1, PW 3 and PW8 inspires confidence and we thus find no reason to disbelieve their testimonies.

23. In view of the discussion made hereinabove we do not have any hesitation to hold that none but the present appellant committed the murder of Manasi Sarkar on the relevant day and hour and such factum has been duly admitted by the present appellant in course of his examination under Section 313 of the Code of Criminal Procedure.

24. We thus find no merit in the instant appeal and accordingly the instant appeal is dismissed.

25. The impugned judgement and order dated 12.11.2009 as passed by the Learned Additional Sessions Judge, 2nd Court; Jalpaiguri in Sessions Trial No.9/13 is hereby affirmed.

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

27. 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.)