

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Siddhartha Roy Chowdhury

CRA 133 of 2018
CRAN 1 of 2018
CRAN 2 of 2019

Kafil alias Kafiluddin & Ors.
Vs.
The State of West Bengal

For the Appellants : Ms. Puja Goswami, Amicus Curiae

Heard on : 15th December 2022

Judgment on : 15th December 2022

The Court:

This appeal assails the judgement and order of conviction passed on 27.02.2018 and 05.03.2018 for committing offence under Section 304(Part I) / 34 of the Indian Penal Code and sentencing each of them to suffer R.I. for seven years and to pay a fine of Rs. 3000/- in default to suffer R.I. for two months.

Briefly stated that Sabera Khatun informed the in-charge of Chopra Police Station in writing that her husband Jabir had three wives including herself. On 06.08.2014 at about 10.00 hours a quarrel took place between her husband and his 3rd wife Ansera Khatun. As a fallout of such quarrel Ansera left for her paternal home with her two kids. In the afternoon around 5 PM being requested by her husband Sabera Khatun went to bring back Ansera and her children from her father's house

but Ansera refused to come back. However, she allowed her kids to go with the informant. In the meantime, Kafil and his two sons Amerul and Ansarul came to their house and took her husband by force to their house where they assaulted Jabir with iron rod and axe etc. The neighbouring people rescued Jabir and he was taken to Siliguri Medical Hospital at about 1 AM Jabir succumbed to injuries. On the basis of such information that disclosed an offence cognizable in nature Chopra P.S. Case No. 884/14 was registered on 07.08.2014. Police took up investigation which ended up in submission of charge sheet. The accused persons stood trial pleaded their innocence.

The prosecution examined eleven witnesses.

The learned Trial Court upon perusal of evidence was pleased to hold that all the three accused persons committed offence of culpable homicide not amounting to murder and passed the judgement impugned.

Ms. Goswami, learned amicus curiae submits that in course of trial prosecution failed to fix place of occurrence. According to P.W. 1 occurrence took place in the house of accused Kafil. According to P.W. 2 it was on the backward of the house of the Kafil. According to P.W. 4 the incident took place in front of the house of Jabir on the road and P.W. 5 claim to have found the victim lying by the side of the road wherefrom he was lifted to his vehicle and was taken to hospital. The Investigating Officer of the case, however, fixed the courtyard of the house of the accused Kafil as the place of occurrence. The written information Ext. 2 shows that P.W. 1 the de facto complainant while she was in the house of the accused persons or was on her wayback to home with children of Ansera, father and two brothers of Ansera abducted

Jabir from his house and assaulted him. This statement rules out the possibility of the de facto complainant to be a witness to the occurrence. Though in her oral testimony P.W. I stated that ten minutes after her arrival Kofiluddin, Meherun Nesa, Ansera, Amerul, Manjura came to their house being armed with Hasua, Axe, and Bamboo stick and spade and assaulted her husband Jabir after entering into their house. Thereafter took Jabir took them to their house. The written information is the maiden narrative of the incident disclosed by the de facto complainant (P.W.I) and her oral testimony appears to be inconsistent with the information she gave to the police. Investigating Officer in course of investigation seized some four mud stones bamboo sticks. While three persons were facing charge for committing offence of assault the recovery of four number of bamboo sticks does not fit with the prosecution case that when the appellant no. 3 was in her advanced stage of pregnancy it was humanly not possible for her to assault her husband by a weapon like bamboo stick even after it is assumed that all the three appellants assaulted the accused person then the fourth weapon becomes an enigma.

Drawing my attention to the testimony of P.W. I made during cross-examination, Ms.Goswami submits that the victim had enmity and previously he was assaulted by Akram of his village and with grievous injury on his head he remain admitted in hospital. Therefore, the possibility of involvements of some other person cannot be ruled out.

P.W. 4 claims to be an eye witness to the occurrence who stated that Kafiluddin, Meherun, Ansara, Amerul, Ansarul and Manjira assaulted Jabir after that dragged him out of his home to the road. All of them were carrying lathi in their hand.

This testimony of P.W.4 contradicts the claim of P.Ws 1 and 2 that six persons came being armed with Hasua, Axe, Spade and Bamboo Sticks. Jabir was found lying on the road with bleeding injury for nearly thirty minutes.

This fact raises doubt about the persons of witnesses particularly the family members of Jabir on spot at the time of incident.

Asma Khatun (P.W. 2) claimed that being requested by her husband Jabir she along with Sabera went to the paternal house of Ansera to bring her back. She also came back along with Sabera with two kids of Ansera. This statement rules out the possibility of Ashma Khatun who have witnessed the incident that accused persons intruded into their house and assaulted Jabir and dragged him to the house of the accused persons for the simple reason that in her maiden information Sabera Khatun stated that while she was in the paternal house of Ansera or on her way back the accused Kafil and his two sons came to their house and took Jabir by force with them.

From the attending facts of the case it is admitted that Jabir sustained head injury and it is also admitted that he succumbed to such injuries in hospital. The post mortem report is admitted as Ext. 4 and according to the doctor the cause of death was the effect of anti mortem injuries sustained by the victim.

It is admitted that the Jabir was the husband of the appellant Ansera and the couple have two children. There might be some dispute between the couple as a fallout of quarrel Ansera left her matrimonial home and took refuge to her paternal home over such a trivial issue why should the father of Ansera would kill his son-in-law. The motive behind such offence is glaringly missing. If we consider the fact that the Jabir was assaulted by Akram and sustained head injury and he was admitted to

North Bengal Medical College & Hospital and the autopsy surgeon found repaired head injury over the dead body of Jabir anti mortem in nature in absence of specific opinion as to the age of injury it cannot be said with certainty particularly amidst the discrepancy about the manner of assault and place of assault that appellants were responsible for the injury sustained by victim Jabir. Apart from the post mortem report no other document was produced by the prosecution to establish the nexus between the incident that allegedly took place on 06.08.2014 and the injury on the head of Jabir. Even it is not clear exactly when Jabir was taken to Islampur Hospital the inquest was held of North Bengal Medical College and Hospital. As Ext. 3 indicates when these facts are considered with reference to the testimony of P.WI that her husband was admitted to North Bengal Medical College and Hospital with head injury caused by one Akram, it shrouds the case of prosecution with shadow of suspension about the role of the appellants in committing the death of the victim Jabir Seikh.

In my opinion prosecution has not been able to prove the charges beyond reasonable doubt against the appellants.

The appeal is accepted. The judgement and order of conviction as well as sentence passed by the learned Trial Court is set aside.

The appellants be released upon execution of bonds under Section 437A of the Code of Criminal Procedure for six months.

The criminal application along with applications are disposed of.

Copy of the order be sent down to the learned Trial Court for information and necessary action.

I record my appreciation for the able assistance rendered by Ms. Puja Goswami, learned advocate, as amicus curiae in disposing of the appeal.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon completion of requisite formalities.

(Siddhartha Roy Chowdhury,J)

SB
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