

Sl. No. 1

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

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ananya Bandyopadhyay

**C.R.A. 138 of 2016
With
CRAN 2 of 2016 (Old CRAN 871/16)**

**Sk. Saidul Islam
Vs.
State of West Bengal**

For the Appellant : Mr. Mainak Bakshi

For the State : Mr. Sanjoy Bardhan
Mr. Palash Chandra Majhi

Heard on : 17.08.2022

Judgment on : 09.09.2022

Ananya Bandyopadhyay, J.:-

The present appeal is preferred against the judgment and order of conviction dated 25.06.2014 and 26.06.2014 respectively passed by the Learned 2nd Court of Additional District and Sessions Judge, Tamluk, Purba Medinipur in Sessions Trial no. 01(9)2013 arising out of Sessions Case no. 405 (July), 2013 convicting the appellant under Section 302 of the Indian Penal Code sentencing him to undergo life

imprisonment and to pay a fine of Rs. 5000/- in default, simple imprisonment for a further period of 2 years.

The prosecution case narrated an incident of 19.04.2013 at about 8 pm when the complainant was dining at the courtyard of his house he saw his sister-in-law, the victim namely Sarati Soren, wife of Bablu Soren fall on the ground in a bleeding condition, crying aloud. The complainant hastened to the spot and saw the appellant namely Saidul Islam standing there having inflicted an injury to his sister-in-law with a knife. The complainant tried to catch hold of him who however, slipped from his clutches and ran away. The complainant raised a hue and cry but could not captivate the appellant and returned to the spot where his sister-in-law lay unconscious in a bleeding condition. Thereafter, the victim was taken to a doctor namely Tulu Babu who declared her dead. The appellant stayed behind the house of Bablu Soren, the husband of the victim. The complainant demanded the assailant to be punished.

In pursuance of the aforesaid complaint, a case was registered namely PS case No. 96/2013 dated 20.04.2013 under Section 302 IPC, initiating an investigation which culminated into submission of the chargesheet. Subsequently, charges were framed under Section 302 IPC to which the appellant pleaded not guilty and claimed to be tried.

The prosecution in support of its case examined 9 witnesses and exhibited certain documents.

The Ld. Advocate for the appellant submitted that the evidence on record was not appreciated in entirety since the chain of circumstances was not complete. The substantive evidence of PW1 differed from his complaint. He being a post occurrence witness deposed before the Court for the first time. Moreover, the offending weapon, control earth and blood stained earth were not seized. The wearing apparels were not sent to the FSL for examination. The motive to commit the offence was not established. That the appellant had waited at the place of occurrence for a considerable period of 4 minutes after stabbing the victim was improbable. The prosecution having failed to prove the motive to commit the crime and the chain of circumstances not been complete, prosecution case has not been proved beyond reasonable doubt and therefore, the appeal may be allowed.

The Ld. Advocate for the State submitted that the injuries enumerated in the post mortem report were in consonance with that of the inquest report as well as the manner and intent of inflicting injury on the victim. The de facto complainant i.e. PW 1 saw the appellant to flee from the place, tried to grab him, holding on to his “*Genji*” who however escaped from his clutches forcibly, established direct evidence and his version was corroborated through the Post Mortem Report and other post occurrence witnesses. The prosecution was able to prove its case beyond reasonable doubts. Therefore, the appeal was liable to be dismissed.

PW 1, the de facto complainant stated the incident occurred on 19.04.2013 at about 8 P.M. Consequent to a clamour, discarding his meal, he went out of his house and saw the appellant Sk. Saidul inflicting, stab injury on to the chest of his sister-in-law Sarati Soren with a knife and thereafter stood beside the victim. The victim cried aloud and the complainant along with his brother Jugal Soren rushed to her. The victim reached the courtyard of the house of the complainant and fell on the ground sustaining bleeding injury. In the mean time, the complainant tried to apprehend the appellant, caught hold of his “*Genji*” who incidentally fled from his clutches. Subsequently, many people assembled at their courtyard and a doctor namely Tulu came to their house and declared his sister-in-law to be dead. Thereafter, on information the local police appeared at the place of occurrence, held inquest and took photographs of the dead body and despatched the same for Post Mortem examination. On the next day of the incident PW 1, the complainant lodged the written complaint at Panskura Police Station written by his nephew Sushil Soren under his direction, subsequently signed by him and the said written complaint was marked as Exhibit -1 in the Court.

PW 2 Jugal Soren stated that his sister-in-law Sarati Soren had gone out of her house to attend nature’s call when the appellant had caught hold of her hair with one hand and stabbed on her chest with a knife. The victim instantly cried aloud, which awakened PW 2 and he reached the place of occurrence. He was joined by his brother Sibu

Soren PW 1 and both of them found the victim lying on the ground behind their courtyard. PW1 and PW 2 chased the appellant and PW 1 caught hold of his "*Genji*". However, the appellant managed to escape therefrom. Both of them returned and found the victim to have died. PW 2 identified his LTI appearing on the inquest report dated 20.04.2013 which was marked as Exhibit 2/1. During cross examination PW 2 confirmed to have stated the incident to the Investigating Officer on earlier occasion.

PW 3's evidence was based on hearsay.

PW 4 Nanda Mishra stated that his house was situated at a distance of $\frac{1}{2}$ kilometre from the house of the complainant Sibbu Soren. A commotion caused him to reach the place of occurrence and see the deadbody of the victim in front of the house of Bablu Soren and the complainant Sibbu Soren informed him how the victim received stab injuries and died. He saw the inquest conducted and had signed the inquest report as a witness and his signature was marked as Exhibit 2/2. He had further written a letter addressed to the OC of Panskura P.S. for conducting the post mortem examination which was marked as Exhibit 3.

PW 5 Sk. Mujaffar Mohammad stated the victim was known to him since she visited his house for the purpose of work. On the date of the incident at 8-8:30 pm he visited to the house of Bablu Soren, saw the deadbody of the victim lying on their courtyard and learnt

from Bablu Soren that the appellant had stabbed the victim with a knife.

PW6 Manohar Das Rudra was the constable posted at Panskura P.S, who went to the place of occurrence on 19.04.2013 being informed over telephone. He reached the place of occurrence and learnt from Bablu Soren that the victim was murdered by a person who eventually escaped. Inquest of the deadbody was conducted in his presence to which he was a witness. The dead body was taken by him to the District Hospital, Tamluk for post mortem examination. He had been the witness to the seizure of wearing apparels of the deceased by the Investigating Officer namely Swadesh Majumdar in connection with Panskura P.S. UD Case no. 17/13 dated 20.04.2013 corresponding to Panskura P.S. case No. 96/13 dated 20.04.2013. The wearing apparels were labelled and the same were marked as Mat Ext-I, II and III respectively with his signature appearing on the seizure list dated 20.04.2013 marked as Exhibit 4/1. On interrogation he stated the entire episode to the *“Darogababu.”*

PW 7 Dr. Pradip Kumar Das was posted at Purba Medinipur District Hospital at Tamluk as Medical Officer on 20.04.2013, the date on which he held the post mortem examination of the deadbody of the victim in connection with the aforesaid registered case and found the following injuries:

1. *One lacerated injury over medial aspect of right breast about 8” below upper margin of right shoulder measuring 5 cm.X 2cm. X*

underneath rib (4th)-out surface notched-deep i.e. fracture incomplete with periostium permanently tinged with blood. The injury lies obliquely and mid point is 4.7 cm. From mid line chest wall.

2. *One horizontally placed lacerated injury about 7 cm. Below above mentioned wound measuring 2.4 cm. X 0.3 cm. X chest cavity deep (punctured wound). Through the anterior coastal space of right 5th and 6th rib causing gutter fracture of underneath surface of 5th rib and piercing underneath tissues causing lacerated (penetrating) wound over medial aspect of right lung and ultimately causing punctured wound of right heart chamber and wide exposure of thoracic cavity made by dissection. Two half fist like clots of blood seen in right posterior aspect of heart within pericardial sac and another fist like clot over entrance of injury to heart. The septum between two sided chambers remained uninjured. The thoracic cavity filled with dark blood smearing mopping of posterior aspect of both lungs. The injury over heart is a little bit oblique and about 2.3 cm. Involved right sided lower atrium and upper ventricle. The pericardial fat is also swathed with blood. Both chambers of heart is empty except right wall which is more with continuation of clot as cited before.*
3. *One lacerated injury at the base of upper half of right nipple about 4cm. X 0.1 cm. With a fissure like blood at the wound margin.*

4. *One lacerated injury over left side of abdomen 4½" from mid line and 1 cm. Above umbilicus measuring 2.5 cm. X 0.7 cm. Subcutaneous fat deep plus piercing and left oblique muscular internal oblique remains uninjured. On further dissection. The wound does not penetrate the abdominal cavity.*
5. *One punctured wound over the junction right arm and right lateral aspect of shoulder joint obligately placed about 4cm. X 1cm. The wound reached at subcutaneous fat deep.*
6. *One punctured wound over right side of wound no. 5 i.e. over right arm and about 3.7 cm. Lateral to the said wound and measuring about 5 cm. X 1cm. The wound reached at S.C. Fat deep. Both 5 & 6 No. Wound having fine hair line blood marks. On prawning the body only the wound no. 2 emits dark blood profusely. The direction of this wound is upward, backward and towards left.*
7. *One lacerated injury at the base of web space of 4th and 5th finger of right hand measuring 1.3 cm. X 2 cm. X mussel deep.*

He further deposed that the front portion of the weapon may be sharp at both end and the cutting edge is sharp and weapon is not heavy. The No. 5 & 6 are injuries of threatening. The 7th injury is one of defence injury. From practical point of view all the injuries are of same age. All the injuries having vital reaction positive. Time of death elapsed since post mortem examination is approximately 18 hours plus minus 2 hours.

He concluded the cause of death was the aftermath of the lacerated injuries of the heart as aforesaid, anti mortem and homicidal in nature. The nature of injury was supposedly caused by "*a general household knife*".

PW 8 Swadesh Majumdar was posted at Panskura P.S. as SI of Police on 20.04.2013. He deposed that one Deba Prasad Samanta being the duty Officer of the Police Station received one complaint from Sibbu Soren. OC Biswajit Haldar initiated a case i.e. Panskura P.S. case No. 96/13 dated 20.04.2013 under Section 302 IPC based on the complaint of PW 1 i.e. Sibbu Soren on spot. The endorsement of the Duty Officer Deba Prasad Samanta was identified and marked as Exhibit 1/1. The formal FIR was drawn up accordingly and PW8 was endorsed to investigate the case which was marked as Exhibit 6 as a whole.

Accordingly, PW 8, visited both the place of occurrences, prepared the rough sketch map with index and the same were marked as Exhibit 7 series and 8 series respectively. The statements of the available witnesses were recorded under Section 161 Cr.P.C and the inquest of the victim lying dead on the veranda of her matrimonial home was conducted in presence of the witnesses whose signatures were obtained on the inquest report and the said inquest report was marked as Exhibit 2. Thereafter, the deadbody was sent for post mortem examination through PW 6 Manohar Das Rudra. After the completion of the post mortem examination the wearing apparels of

the deceased were seized by him under a seizure list bearing the signature of the witness marked as Exhibit 4. The post mortem examination report was collected on 12.05.2013. PW 8 initially failed to apprehend the appellant who was ultimately arrested and produced before the Ld. Court below and was sent on police remand for the purpose of recovery of the offending weapon but in vain. He further identified the MAT Ext. I series and the photograph of the deceased which were marked 'X' for identification. On completion of the investigation the chargesheet was submitted under Section 302 IPC.

Having heard the rival submissions it is imperative to assess the evidence on record.

PW1 and PW2 corroborated each other's version to have seen the appellant flee from the Place of Occurrence after commission of the offence.

PW1 Sibul Soren tried to apprehend the appellant who escaped from his grip and the said effort to intercept the appellant was witnessed by PW 2 who had chased to capture the appellant along with his brother PW 1 Sibul Soren but did not succeed. The Place of Occurrence was lit with the electric light therefore, the appellant could be easily identified by the PW 1 and PW2. PW 1 in his evidence stated the victim went to attend nature's call at a bush. Thereafter, she cried aloud being injured by the appellant. She reached the court yard of PW 1 Sibul Soren and fell thereon. The credibility of his statement is proved by the existence of an open space on the eastern side of a

bamboo bush of Bablu Soren as delineated in the rough sketch map marked as Ext. 7. Being injured she tried to save herself from the appellant, traversed the distance and fell on the open courtyard on the eastern side of the house of PW1 Sibbu Soren as depicted in the rough sketch map marked as Exhibit 8.

The Ld. Advocate for the appellant contended the fact that the miscreant to have remained at the spot for 4 minutes after committing the crime is improbable. The post mortem report marked as Exhibit 5 revealed multiple stab injuries from time to time. The victim struggled to free herself is evident from the opinion of PW 7 with regard to the injury No. 7 which is categorised as "*defence injury*". The injury No. 5 and 6 had been "*injuries of threatening*". The entire episode of initial threatening thereafter exercising private defence by the victim and the ultimate blow of severity resulting in her death must have consumed more than 4 minutes and therefore, the presence of the appellant at the spot throughout the process of commission of the crime cannot improbabilise the evidence of PW1 corroborated by PW 2. The evidence of post occurrence witnesses i.e. PW 3, PW 4 and PW5 cannot be disregarded as they had visited the place of occurrence and had seen the deadbody of the victim lying on the courtyard. They had learnt the cause of her death from the other witnesses. The nature of injuries as enumerated in the post mortem report corroborates with the description of the injuries by the prosecution witnesses including an injury on the abdomen. Though the offending weapon could not be

recovered but its structure was described by the post mortem Doctor i.e. PW 7 to be a knife and the same was corroborated by the evidence of PW 1 and 2 that the appellant murdered the victim with the help of a knife. The abscondence of the appellant created a strong inference that in order to evade arrest he remained untraceable till he was finally arrested.

Ld. Advocate for the appellant argued that the wearing apparels were not sent for FSL examination. PW 8 during his cross-examination stated he did not send the wearing apparels of the deceased to FSL for medical examination though he had seized the wearing apparels of the deceased marked as MAT Ext. 1 series. In case of negligence on the part of the Investigating Agency or omission thereof resulting in defective investigation it is incumbent upon the Court to circumspect the evidence evaluating the same in such a manner that the grave irregularities can be mitigated.

In the decision cited in ***The State of Rajasthan vs. Kishore***¹ the Hon^{ble} Supreme Court observed that:

“It is equally true that the investigating officer PW.8 committed grave irregularity in omitting to send the burnt clothes and other incriminating material for chemical examination to lend corroboration to the evidence. Mere fact that the Investigating Officer committed irregularity or illegality during the course of the investigation would not

¹ (1996) SCC(Cri) 646

and does not cast doubt on the prosecution case not trustworthy and reliable evidence can be set aside to record acquittal on that account.”

In ***Amar Singh vs. Balwinder Singh***² and ***Sambhu alias Bijoy Das and another vs. State of Assam***,³ it has been further observed by the Hon’ble Supreme Court that,

“if the prosecution case is established by the evidence adduced, any failure or omission on the part of the Investigating Officer cannot render the case of the prosecution doubtful.”

Minor contradictions in the evidence of the prosecution witnesses are negligible in presence of strong corroborating evidence to establish the commission of the crime. In case of corroboration by the ocular witnesses as well as the medical evidence the non recovery of the offending weapon will not be fatal to discredit the case of the prosecution.

In the case of ***Mekala Sivaiah vs. The State of Andhra Pradesh (Criminal Appeal No. 2016 of 2013)*** the Hon’ble Apex Court observed as follows:

24. ..

ii. When there is ample ocular evidence corroborated by medical evidence, mere non-recovery of weapon from the appellant would not materially affect the case of the prosecution.

iii. if the testimony of an eye witness is otherwise found trustworthy and reliable, the same cannot be disbelieved and

² **AIR (2003) SC 1164**

³ **AIR (2010) SC 3300**

rejected merely because certain insignificant, normal or natural contradictions have appeared into his testimony.

In the case of **State of U.P. Vs. Kishanpal & Ors.**,⁴ the Hon'ble Supreme Court observed that:

"The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction."

PW 1 and PW2 had conjointly witnessed the appellant at the place of occurrence and chased him, however, failed to captivate him. The presence of the appellant at the place of occurrence and being successful to release himself from the clutches of PW 1 amply justifies the testimony of the eye witnesses credible corroborated by the medical report. Accordingly, to substantiate the motive to commit the offence becomes nugatory.

In my opinion the prosecution has been successful in establishing its case.

⁴ (2008) 16 SCC 73

In light of the aforesaid discussion, I uphold the conviction and sentence of the appellant.

The appeal is, accordingly, dismissed.

Connected applications, if any, also disposed of.

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

Lower court records along with copies of this judgment be sent down at once to the learned trial Court as well as the Superintendent of Correctional Home for necessary compliance.

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

I agree.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)