

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Rabindranath Samanta

C.R.A. 195 of 2005

Gour Mondal @ Gallu
Subodh Chandra Roy @ Mondal
Sukesh Mondal
Sunil Roy @ Mondal
Fekan Mondal @ Fekua Mondal
Vs.
The State of West Bengal.

For the Appellant/Amicus Curiae : Ms. Suruchi Saha

For the State : Mr. Narayan Prasad Agarwal,
Mr. Saryati Dutta.

Heard on: April 01, 2022.

Judgment on: April 01, 2022.

The Court: This appeal has been preferred by the appellants being aggrieved by the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, First Court, Malda in Sessions Trial No. 2 of 2001 arising out of Sessions Case No. 50 of 1995.

By the impugned judgment, the learned trial Judge convicted the appellants for commission of offence punishable under Sections 304-Part-I/34 of the Indian Penal Code and each of them was

sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs. 5,000/-, in default to suffer rigorous imprisonment for ten months.

The prosecution case, in short compass, may be stated as under:

Raghunath Mondal, the husband of the informant Kamala Mondal of Vill. Hariagarh, PS – English Bazar, Dist. Malda, went to the house of Khagendra Mondal, a moneylender of Vill. Jotprithi 19th March 1988 for redeeming his mortgaged mango garden. At that time, a scuffle took place between the sons of Khagen Mondal and the husband of the informant Kamala. While the scuffle was going on, the appellants detained the husband of the informant and assaulted him indiscriminately with knife, lathi and 'hansua' etc. Because of the assaults inflicted upon him with the weapons as above, he sustained bleeding injuries on his person. The injuries sustained by him were so severe that he was then about to die.

Narrating the episode above, the informant Kamala lodged a written complaint at English Bazar Police Station and on the basis of the written complaint, one English Bazar Police Station Case no. 11 dated 19th March 1988 under Sections 341/325/326/34 of the Indian Penal Code was registered against the appellants for investigation. During the course of investigation, the husband of the informant succumbed to the injuries and because of his death, Section 304-Part-I was added to the case. During investigation, the Investigating Officer arrested the appellants and forwarded them to the Court. The Investigating Officer examined all the available witnesses and recorded their statements under Section 161 of the Code of Criminal Procedure. He collected the injury report, inquest report and the post mortem examination report and thereafter submitted the charge-sheet against the appellants under Sections 341/325/326/34 with added Section 304-Part-I of the Indian Penal Code.

After the case was committed to the Court of learned Sessions Judge, the learned Sessions Judge transferred the case to the Court of learned Additional Sessions Judge, First Court, Malda for trial.

The trial commenced before the learned trial Judge on framing of charges under Section 304-Part-I of the Indian Penal Code.

To bring home the charges, the prosecution examined as many as 13 witnesses.

Amongst the prosecution witnesses PW7 is the informant Kamala Mondal, PW8-Pratima Mondal, the daughter of the deceased, PW11-Usha Mondal, a sister of the deceased and PW12-Uday Mondal, the son of the deceased. I find that the witnesses, namely, PW1-Khoka Mondal, PW2-Jogendra Nath Mondal, PW3-Rabindra Nath Mondal, PW4-Chhedon Chandra Mondal, PW5-Shymapada Mondal and PW6-Utpal Mondal turned hostile.

PW7-Kamala Mondal in her evidence states that in the year 1988, in the morning, her husband had been to the house of Khoka Mahajan for releasing of a land, which was mortgaged to him. It was Saturday. Then the appellants (hereinafter called as 'accused persons') assaulted her husband with iron stick and as a result of which her husband died. Her husband narrated the incident to her.

PW8-Pratima Mondal, the daughter of the deceased, also deposes that hearing the information that her father was brutally assaulted by the appellants she had been to her paternal home. She heard from her father that the appellants brutally assaulted him with lethal weapons and ultimately her father succumbed to the injuries.

PW11-Usha Mondal, a sister of the deceased, also deposes that she came to learn from her brother that the appellants brutally assaulted her father with iron rod, brick and as a result of which he succumbed to the injuries.

PW12-Uday Mondal, the son of the deceased, also deposes in the same manner as was deposed by PW7, PW8 and PW11.

It is evident from the evidence of the aforesaid witnesses that they came to know from the deceased while he was alive that the appellants brutally assaulted him with knife, lathi, iron rod and he sustained bleeding injuries on his person and ultimately he died of such injuries.

Learned Advocate appearing as Amicus Curiae submits that the witnesses as above are the interested witnesses and the Court cannot record any conviction on the evidence of such interested witnesses.

But, it is the legal proposition that the relatives of a victim ordinarily do not get the real offenders scot free and they do not falsely implicated any person, who is not a perpetrator of offence. In view of this, this Court does not find any reason to disbelieve the witnesses, who are closely related to the deceased.

On assessment of the evidence as above, it is crystal clear that because of the assault inflicted upon the deceased by the appellants, the deceased sustained severe injuries on his person and ultimately he died of such injuries.

In this context, the evidence of Autopsy Surgeon, Dr. Ajoy Kumar Das (PW9) being an important piece of evidence may be referred. Dr. Das in his evidence deposes as under:

- “1. Lacerated wounds $\frac{1}{2}$ ” x $\frac{1}{4}$ ” scalp dead on left parietal region of scalp.
2. Lacerated wounds $\frac{1}{2}$ ” x $\frac{1}{4}$ ”, $\frac{1}{2}$ ” x $\frac{1}{4}$ ”, 1” x $\frac{1}{2}$ ” all skin deep on left side of fore-head.
3. Abrasion 1” x 1” on left side of forehead.
4. Haematoma 3” x 2 $\frac{1}{2}$ ” with fracture upper end of radius and ulna and fracture lower end of humerous at right elbow.
5. Lacerated wound $\frac{1}{2}$ ” x $\frac{1}{4}$ ” bone deep at outer aspect of lower part of right forearm with fracture of both bones.
6. Lacerated wound $\frac{1}{2}$ ” x $\frac{1}{4}$ ” bone deep at back of left elbow.
7. On desection of the part 3” x 3” haematoma was found and lower end of humerous and upper end of radius and ulna were found to be fractured.
8. Abrasion 1 $\frac{1}{2}$ ” x 1” at left gluteal region.

9. Lacerated wound $\frac{1}{4}$ " x $\frac{1}{4}$ " bone deep at anterior aspect of upper part of left leg.

On dissection of the part 3" x 2" haematoma was found and both bones were found to be fractured.

10. Lacerated wound $\frac{1}{2}$ " x $\frac{1}{2}$ " bone deep at outer aspect of left ankle with fracture of lower end of fibula.

11. Lacerated wound 1" x $\frac{1}{2}$ " one deep at anterior aspect of upper part of the right leg."

On analysis of the evidence of the Autopsy Surgeon, the learned trial Court observed that the injuries reported by the Doctor show that there were injuries on scalp, forehead, elbow and forearm of the deceased. Besides, arms of the deceased were fractured. Lacerated wounds and fracture of both legs were noticed on his person. Learned trial Judge has recorded the finding that according to the opinion of the Doctor, the injuries sustained by the deceased were sufficient to cause his death in the ordinary course of nature.

Therefore, the evidence of the aforesaid witnesses coupled with the evidence of Dr. Ajoy Kumar Das clearly establish the fact that because of the injuries inflicted upon the deceased by the appellants with lethal weapons, he succumbed to the injuries. It is in the evidence of PW13, the investigating officer of this case, that he conducted the investigation properly and after completion of investigation, he submitted the charge sheet.

On assessment and analysis of the evidence as above, I find that the prosecution has been able to prove that the appellants caused the death of the deceased.

Now the question is under which provision of the Indian Penal Code the appellants should be convicted.

From the evidence on record, it transpires that on the fateful date, the husband of the informant went to the house of Khoka Mahajan to pay off his loan and get his mango garden released from mortgage and on that day the appellants brutally assaulted with lethal

weapons. After struggling with life for sometime, he breathed his last. As it appears from the evidence on record, the incident took place all on a sudden and on spur of moment. Therefore, the offence under Section 304 of Culpable Homicide is attracted. Now, under which head of Section 304 of the Indian Penal Code, the appellants would be convicted and sentenced. Section 304 of the Indian Penal Code reads as under:

“304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death,

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

Considering the circumstances under which the offence took place and on analyzing the evidence on record, I find that in the instant case the offence of Section 304-Part II of the Indian Penal Code is attracted.

As Section 304-Part II enjoins, a convict may be sentenced to suffer imprisonment upto 10 years or with fine or with both.

From the Lower Court Records it appears that all the accused persons after their arrest were detained in custody for 90 days and they were released on bail. Some of the accused persons were arrested in March 1988 and someone of them was arrested in May 1988. The appellants have been continuing the proceedings before the learned Court below since 1988 and continuing the instant appeal before this Court since 2005 after the conviction and sentence was inflicted upon them on 18th March 2005. I feel that during this long period since

1988, the appellants had gone through the trauma and mental agonies. By suffering the ongoing mental agonies they have already been penalized.

Having considered the age of the appellants and the age of the proceedings below the learned Court below and this Court, I feel that sentence as imposed upon the appellants may be reduced to the detention already undergone by the appellants for 90 days.

Accordingly, the conviction recorded by the learned Trial Judge under Section 304-Part I is converted to the conviction under Section 304-Part II of the Indian Penal Code. The sentence as imposed by the learned trial Judge is reduced to the detention already undergone by the appellants for the aforesaid period of 90 days.

In view of the above, the appeal is dismissed.

As the appellants have already served out the sentence as modified, they be set at liberty forthwith. They be discharged from the bail bonds, if furnished by them.

Send down the Lower Court Records along with the copy of the judgment to the learned Court below for information.

Let photostat certified copy of this judgment, if applied for, be given to the parties on priority basis.