

Form No.J(1)

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side

Present :

The Hon'ble Justice Rabindranath Samanta

C.R.A. 239 of 1994

Madan Dhibar & Ors. Appellants

Versus

The State respondent

For the State : Mr. Narayan Prasad Agarwala, Adv.
Mr. Pratick Bose, Adv.

Heard on : 24.12.2021, 07.01.2022 & 28.01.2022.

Judgment on : 28th January, 2022.

Rabindranath Samanta, J:

None appears for the appellants.

The respondent, the State of West Bengal, is represented by Mr. Narayan Prasad Agarwala, learned Advocate with Mr. Pratick Bose, learned Advocate.

Their appointments be regularized in due course.

It appears from the case record that as the appellants remained undefended, this Court appointed Ms. Minoti Gomes as an amicus curiae to conduct the appeal on behalf of the appellants. But, she also fails to appear before the Court.

Mr. Agarwala, learned lawyer submits that this Court may pass necessary orders as the Court deems just after going through the evidence on record.

The instant appeal has been preferred by the appellants being aggrieved by the judgment and the order of conviction and sentence passed by the learned Additional Sessions Judge, Birbhum at Rampurhat passed in Sessions Trial No. 1 of July, 1994 arising out of Sessions Case No. 29 of 1989. By the judgment, the appellants were convicted for commission of the offence punishable under Section 304, Part I read with Section 34 of the Indian Penal Code and each of them was sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for one year more.

Considering the age of the appeal, I feel that the appeal should be disposed of after going through the evidence on record with more care and circumspection in the absence of any lawyer on behalf of the appellants.

The prosecution case, in a nutshell, may be stated as under.

S.I. Dilip Kumar Mukherjee attached to Mayureswar Police Station in October, 1987 received an information from a member of Zilla Parishad that a trouble broke out at village Bajarhat. Soon thereafter, he left police station for the village. After reaching Kumarpur village, he found that some persons assembled at an Adivasi School. Then Ajmat Sheikh submitted a written complaint to him to the effect that on 9th

October, 1987, during night, Asgar Sheikh @ Julum Sheikh, a son of Rustum Sheikh of village Bajarhat went to a tank named Domopukur at Mouza Kumarpur. Then the appellants suspecting him to be a thief brutally assaulted him. The informant Ajmat Sheikh reached there and persuaded the appellants not to assault him, but to no effect. The injured sustained several injuries on his person and he was firstly taken to Basudevpur hospital for medical treatment. Thereafter, he was shifted to Suri Sadar hospital where the attending doctor declared him 'brought dead'.

On the basis of the written complaint lodged by the informant, Mayureswar Police Station Case No. 10 dated 9th October, 1987 was registered under Sections 304/34 IPC against the appellants for investigation. During the course of investigation, they were apprehended by the Investigating Officer and forwarded to the Court.

After completion of the investigation, the I.O. submitted charge-sheet against the appellants under Sections 304/34 IPC.

Charge under Section 304, Part I read with Section 34 of Indian Penal Code was framed against the appellants who pleaded not guilty to the charge and claimed to be tried.

In order to bring home the charge, the prosecution examined as many as 11 witnesses. Amongst the witnesses examined by the prosecution, PW 1 Ajmat Sheikh is the informant and eye witness to the occurrence, PW 10 Dr. Nemai Bhattacharyya is the autopsy surgeon and PW 11 S.I. B.P. Singh is the IO of the case.

On analyzing the ocular and medical evidence as adduced by the prosecution, the learned Trial Judge recorded the conviction and inflicted the sentence as above.

Now, the point which falls for determination is as to whether the learned Trial Judge was justified in convicting the appellants and passing the quantum of sentence as above.

As stated above, it is alleged by the prosecution that on 9th October, 1987 in night while the deceased Asgar Sheikh @ Julum Shiekh went to a tank at Mouza Kumarpur, all the appellants suspecting him to be a thief brutally assaulted him in order to kill him.

Perusal of the evidence of PW 1, Ajmat Sheikh, shows that in his evidence he has unequivocally testified that after hearing a trouble he went to the place of occurrence and found that all the appellants brutally assaulted the injured/victim Asgar Sheikh @ Julum Shiekh. He also states that initially he was taken to Basudevpur hospital and therefrom he was shifted to Suri Sadar hospital for his better treatment. But the attending doctor at Suri Sadar hospital declared him 'brought dead'. I find that nothing has been elicited from his cross-examination to discredit the evidence as adduced by him in chief. The evidence of PW 2 Anwar Hossain, PW 3 Abdul Jabbar, PW 4 Manwar Ali Khan, PW 5 Harej Sheikh and PW 6 Saiyad Ali Sheikh speak up a trouble at the aforesaid village and they came to learn that the injured Asgar Sheikh was brutally assaulted by the appellants and

ultimately he succumbed to the injuries sustained by him on his person.

The evidence of autopsy surgeon shows that the victim died due to the injuries sustained by him which were ante mortem and homicidal in nature.

On careful analysis of the evidence as above and its assessment, I am of the view that the findings recorded by the learned Trial Judge are quite justified.

No evidence is forthcoming from the cross-examination of the prosecution witnesses that the appellants caused death of the deceased on sudden provocation or on a spur of moment. Therefore, the conviction as recorded under Section 304, Part I of the Indian Penal Code is quite justified.

The learned Trial Judge sentenced each of the appellants to suffer rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for one year.

Before the trial case, the appellants were detained in judicial custody for some time.

After they were convicted and sentenced, they were remanded to judicial custody to serve out sentence on 6th August, 1994. As against such conviction and sentence, the appellants preferred the instant appeal on 7th September, 1994. After the appeal was admitted, the appellants were given liberty to apply for bail. But, their prayer for bail was rejected on 13th September, 1994.

In view of the above, the appellants have already served out the entire period of sentence.

Having considered all aspects of the matter, I find that the judgment and the order of conviction and sentence passed by the learned Trial Judge does not suffer from any illegality or irregularity.

Accordingly, the appeal is dismissed.

The judgment and the order of conviction and sentence passed by the learned Additional Sessions Judge, Birbhum at Rampurhat in Sessions Trial No. 1 of July, 1994 arising out of Sessions Case No. 29 of 1989 is hereby confirmed.

Send down the LCR along with a copy of this judgment to the learned Court below for information.

Urgent certified photostat copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta, J.)