

IN THE HIGH COURT AT CALCUTTA

**Criminal Appellate Jurisdiction
(Appellate Side)**

Before:

The Hon'ble Mr. Justice Ananda Kumar Mukherjee

C.R.A. 316 of 2006

Anil Mondal

Vs.

The State of West Bengal

For the Appellant: None

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

Heard on : 17.03.2022

Judgement delivered on: 17.03.2022

Ananda Kumar Mukherjee, J. :-

1. This appeal has been filed by the convict/appellant under Section 374 (2) of the Code of Criminal Procedure, 1973, assailing the judgment and order of conviction and sentence dated 20.03.2006 and 21.03.2006 respectively passed by the learned Sessions Judge, Dakshin Dinajpur at Balurghat in Sessions Case No. 125/2005 (Session Trial Case No 35/2005), whereby the appellant was convicted

for the offence under Section 326 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs.5,000/-, in default to suffer rigorous imprisonment for two years.

2. After the matter was listed before this Bench, administrative notices were issued to the appellant and respondent. Notice was served duly upon the appellant at his residence at Bijpukur in Harirampur Police Station, Dakshin Dinajpur but the appellant did not appear.

3. Learned advocates for the State are present. L.C.R. has been received. Perused the memorandum of appeal, the impugned judgment and order passed by the learned Sessions Judge, Dakshin Dinajpur dated 20.03.2006 and 21.03.2006.

4. Paper Book has also been prepared. Since the appellant is unrepresented, the appeal is taken up for consideration and disposal as per the provision of Section 386 of the Code of Criminal Procedure.

5. Before embarking upon the grounds of appeal raised by the appellant, it would be necessary to have a synoptical resume of the case, which has given rise to this appeal.

6. Precisely the fact of the case is that on 17.11.2004 Dharmu Mondal lodged a written complaint before the Officer-in-Charge, Harirampur Police Station alleging that on 15.11.2004 at about 1 a.m. at night, accused Anil Mondal called

Kali Mondal, the son of the de facto complainant from his house and started an altercation with him. At that time, accused Anil Mondal, appellant herein, assaulted Kali Mondal on his belly with a sharp cutting knife (chaku) causing cut injury in his intestine. Kali raised hue and cry, which attracted the villagers, and the accused fled away. The injured person was taken to Itahar Hospital for his medical treatment. Subsequently, he was transferred to Raiganj Sadar Hospital, where he remained admitted in a serious condition. On the basis of the complaint, Harirampur P.S. Case No. 47 of 2004 dated 17.11.2004 was registered under Section 326 of the Indian Penal Code. After completion of investigation, police submitted a charge sheet against the accused/appellant on 31.12.2004 under Section 326/307 of the Indian Penal Code.

7. Subsequently the victim Kali Mondal expired on 04.01.2005 and the Investigating Officer submitted a supplementary charge sheet on 7.4.2005 under Section 302 of the IPC. The case was committed to the Court of Sessions and charge was framed against the accused/appellant under Section 302 of the IPC for causing death to Kali Mondal. Prosecution examined Dharma Mondal, the defacto-complainant as P.W. 1, Achintya Mondal as P.W. 2, Sitesh Mondal as P.W. 3, Tilok Mondal as P.W. 4, Sudharani Mondal as P.W. 5, Gunodhar Mondal as P.W. 6, S.I. Kazi Sarwar Parvez as P.W. 7, Khagendra Nath Mondal as P.W. 8, Ramendra Nath Mondal as P.W. 9 and Dr. Prabir Kumar Basak as P.W. 10. FIR

has been marked as Exbt. 2. Endorsement of Receipt of the complaint as Exbt. 1, rough sketch map of P.O. with index as Exbt. 3, Seizure List of weapon of assault as Exbt. 4, Inquest report as Exbt. 5 and Post Mortem Report as Exbt. 6. Medical Papers as Exbt. 7 series. Alamat relating to weapon of assault has been produced as Mat Exbt. I. Accused pleaded his innocence at the time of his examination under section 313 of Cr. P.C. No Defence witness has been examined.

8. Having assessed the evidence on record and the opinion of the doctor, learned Sessions Judge took into consideration the fact that the injured person was admitted in the hospital on 16.11.2004 and was discharged from the hospital on 9.12.2004 after an operation which was necessary on account of the injury caused by the accused. Subsequently, the victim Kali Mondal expired on 5.1.2005 due to Septicemia which was anti mortem in nature following an abdominal operation due to a stab injury. On the basis of such evidence adduced, learned Sessions Judge despite framing a charge under Section 302 of the IPC, found the accused guilty of a lesser offence under Section 326 of the IPC and invoking Section 222 (2) of the Cr. P.C. sentenced him to suffer rigorous imprisonment for 7 years with a fine of Rs.5,000/-, in default, rigorous imprisonment for further two years.

9. Learned advocate for the State argued that the judgment passed by learned Sessions Judge is consistent with the evidence on record and there is no

doubt of the fact that the appellant is guilty for causing stab injury to the victim which in course of time resulted in his death. Learned advocate for the State could not give any satisfactory explanation as to why an offence which resulted in death of a person had to be reduced to a lesser offence under Section 326 of the IPC. In this matter, the State has not preferred any appeal against the judgment of conviction and sentence.

10. I have carefully considered the evidence on record, the documents produced by prosecution and the impugned judgment. Heard learned advocate for the respondent state.

11. Achinta Mondal, P.W. 2 appears to be an eyewitness of the occurrence and he was present on 15.11.2004 at 1 p.m. when there was a scuffle between the victim Kali and the accused person. He stated that suddenly the accused stabbed Kali with a knife. At the relevant time other people rushed to the place and the victim was taken to Itahar Hospital for his treatment. P.W. 1 also deposed that on that night accused, Anil Mondal called his son Kali Mondal and in the courtyard of their house an altercation started between the two when Anil Mondal stabbed Kali with knife on his belly. Other people came there and Kali narrated the incident to P.W.1 and others. P.W. 3 deposed that on that night on hearing hue and cry he rushed to the P.O. and found Kali was lying with bleeding injury. From there he was taken to Itahar Hospital and then to Raiganj

Hospital. The witness further deposed that the victim was admitted at the hospital for 20 to 22 days and after his discharge he died at his house after seven to ten days.

12. From the evidence of the aforesaid witnesses it clearly transpires that the victim was assaulted by the appellant with a knife causing injury in his abdomen. The victim received medical treatment and died after 20 to 22 days. The doctor who held the post-mortem examination opined that the death was caused due to septicaemia which developed after the victim underwent operation in his abdomen, related to faulty post operational care.

13. Considering all these aspects, Learned Sessions Judge found that the proximate cause of death of the victim was not the stab injuries but due to subsequent developments of septicaemia. If adequate post operational medical care was taken the victim could have survived saved but unfortunately the victim succumbed due to some intervening circumstances, which were avoidable in nature.

14. Having considered the evidence on record and the reasoning of the Learned Sessions Judge for arriving at such a decision, I am of the view that there is nothing to interfere the judgment of conviction and sentence passed by Learned Sessions Judge.

15. Accordingly, the appeal is without merit and the same is dismissed on the basis of the materials in record. The judgment and sentence passed by the Learned Sessions Judge is affirmed.

16. Interim order of stay, if any, stands vacated. Let a copy of this of judgment alongwith the L.C.R. be sent to the Court of Learned Sessions Judge, Dakshin Dinajpur, Balurghat for information and for executing the sentence, if the same has remained unexecuted in any manner.

17. Urgent Photostat certified copies of this order be supplied to the parties, if applied for, on fulfilling necessary conditions.

(Ananda Kumar Mukherjee, J.)

A.K.G./S.D./K.S.