

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. 303 of 2012

Kripanath Biswas and Others

-Vs-

State of West Bengal

For the Appellants : Mr. Sekhar Kumar Basu, Sr. Adv.
Mr. Sujan Chatterjee, Adv.
[for appellant No. 1, 2, 4, 6, 7 & 8]

Mr. Rajdeep Mazumdar, Adv.
Mr. Pritam Roy, Adv.
[for appellant No. 5]

Mr. Mrityunjay Chatterjee, Adv.
[for appellant Nos. 3 & 9]

For the State : Mr. Bidyut Kr. Ray, Adv.
Mr. Narayan Prasad Agarwal, Adv.
Mr. Pratick Bose, Adv.

Heard on : 26.07.2022, 02.08.2022 and 03.08.2022

Judgment on : 03.08.2022

Joymalya Bagchi, J. :-

Appeal is directed against judgment and order dated 26.04.2012 and 27.04.2012 passed by the learned Additional District & Sessions Judge, 1st Court, Nadia at Krishnagar in Sessions Trial No. 1(1X) of

2005 arising out of Sessions Case No. 68(4) of 2005 convicting the appellant for commission of offence punishable under Section 302/34 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life and also pay a fine of Rs. 10,000/-, in default, to suffer rigorous imprisonment for a further of six months each of the offence punishable under Sections 302/34 IPC. Fine amount, if realised, 60% of the same be paid to the family of the victim as compensation under Section 357 Cr.P.C.

Prosecution case as alleged against the appellants are as follows:-

One Rakhi Biswas was married to Shyamal Biswas (appellant No. 3). Prior to marriage, she had an affair with one Dilip Biswas. As a result, relationship between the two families was strained. Few days prior to the incident, Dilip's grandmother died. After her death on 28.11.2001, Rabindra Nath Biswas, a neighbour of Mahadeb Biswas @ Das, father of Rakhi (appellant No. 6) proposed an amicable settlement between the parties. A salish was held where Rakhi Biswas insulted Rabindra Nath Biswas by saying "*Dasher mathai lathi mari*". Rabindra was insulted and shouted "*Dharto ray*". Rakhi fled from the spot. On the next day around 2:30 p.m., all the appellants who are either related or friends of Shyamal Biswas, came to the residence of Rabindra and searched for him. They also threatened to kill Rabindra. Rabindra was not at his residence and had gone to Akandadanga. Hearing this, his wife Menaka rushed towards Akandadanga through the fields to inform

her husband. Appellants also proceeded in search of Rabindra Nath through the village road. At a spot between Bramhanitala and Sasthitala, Menaka saw her husband proceeding towards their house. Appellants accosted her husband and assaulted him with a branch of Jewli tree on the head. They also assaulted him with bhojali. Menaka arrived at the spot. She was kicked by Mahadeb and fell down on the ground. She raised hue and cry. Her nephews Baneswar Biswas (P.W. 2) and Bhagirath @ Nimai Biswas (P.W. 3) who were following her also came to the spot. As a result of assault, Rabindra Nath died at the spot. Menaka lodged written complaint which was scribed by P.W. 9 resulting in registration of Nakasipara P.S. Case No. 169/2001 dated 29.11.2001 under Sections 302/34 IPC against the appellants. Inquest was held over the dead body of the deceased. Post mortem was conducted by P.W. 11.

In conclusion of investigation, charge-sheet was filed against the appellants.

Charges were framed under Sections 302/34/148 IPC against the appellants. Appellants pleaded not guilty and claimed to be tried.

In course of trial prosecution examined 15 witnesses in support of its case. Defence of the appellants was one of innocence and false implication.

In conclusion of trial, learned trial Judge by the impugned judgment and order dated 26.04.2012 and 27.04.2012 convicted and sentenced the appellants, as aforesaid.

Mr. Basu, learned Sr. Advocate with Mr. Chatterjee appearing for appellant Nos. 1, 2, 4, 6, 7 and 8 argued eye-witnesses P.Ws. 1, 2 and 3 are unreliable. Their versions are contradictory to one another. While P.W. 1 claimed the appellants came to her residence at 3:30 p.m., P.W. 2 stated they had come at 2:30 p.m. P.Ws. 2 and 3 claimed after threatening to kill their uncle Rabindra Nath, appellants had gone to the house of appellant No. 6, Mahadeb but P.W. 1 is silent with regard to such fact. As per P.W. 1, P.Ws. 2 and 3 came to the spot after the incident and are post occurrence witnesses. Although the incident occurred around 4:00 p.m. on a village road, no independent witness supported the prosecution case. Although the place of occurrence is not within Nakasipara Police Station, it is unclear how FIR came to be registered at the said police station. P.W. 1 deposed FIR was registered after preparation of inquest. However, perusal of the FIR shows it was registered at 6:25 p.m. while inquest was held at 7:20 p.m.. Prosecution case is riddled with contradictions and improbabilities. Hence, appellants are entitled to acquittal.

Learned lawyers appearing for the other appellants adopt the submissions of Mr. Basu.

Mr. Roy and Mr. Agarwal, learned advocates for the State submitted P.Ws. 1, 2 and 3 are eye-witnesses. They deposed one day prior to the incident, dispute cropped up between Rakhi Biswas and the deceased Rabindra Nath Biswas. On the next day, appellants came to the house of Rabindra and searched for him. They could not find him. They threatened to kill him. P.W. 1 rushed to Akandadanga where Rabindra Nath Biswas had gone. On the way, she saw the appellants assault Rabindra Nath resulting in his death. P.Ws. 2 and 3, nephews of Rabindra Nath followed P.W. 1 and saw the incident from a distance. Depositions of eye-witnesses are corroborated by the post mortem doctor, P.W. 11 who found severe injuries on the vital parts of the body of the deceased. Prosecution case is therefore proved beyond doubt.

P.Ws. 1, 2 and 3 are the eye-witnesses.

P.W. 1 deposed, one day before the murder of her husband he had tried to resolve the dispute between the family of Rakhi Biswas and that of Dilip. Prior to marriage, Rakhi had an affair with Dilip. Subsequently, she had married Shyamal Biswas. In the course of salish, Rakhi insulted her husband stating "*Dasher mathai lathi marī*". Her husband got annoyed and shouted "*Dharto ray*". Rakhi fled from the spot. In order to teach her husband a lesson, appellants came to their residence around 3:30 p.m. on the next day. Her husband had gone to Akandadanga. Appellants searched for him and threatened they would kill him. Hearing this she rushed towards Akandadanga through

the field to alert her husband. On the way she saw her husband coming towards the house. Appellants accosted him. When she intervened, Mahadeb kicked her. She fell on the ground. Dulu Biswas caught hold of her husband with a cycle chain. Biswanath assaulted her husband with a branch of Jewli tree. Shyamal, Kripanath, Kalipada and Jayanta assaulted him with bhojali. Pantha Biswas had called her husband to the place of occurrence. Place of occurrence was on a kaccha road between Sasthitala and Bhramhanitala near a pond. Her husband fell down at the spot. She raised hue and cry. Many people came including her nephews, namely, Baneshwar and Nimai. Someone gave information over telephone to Nakashipara Police Station. Police came to the spot. Santanu Daw, P.W. 9, scribed the written complaint which was signed by her. Police prepared inquest over the body of the deceased. Police seized blood stained wearing apparels of her husband.

P.W. 2, Baneshwar Biswas deposed Rakhi Biswas had a love affair with Dilip. Subsequently, Rakhi married Shyamal. Dilip married another girl. There was strained relationship between the families of Rakhi and that of Dilip. One day prior to the incident, his uncle Rabindra Nath Biswas tried to amicably settle the dispute. A salish was organized. At the salish, Rakhi misbehaved with her uncle. Her uncle got enraged and shouted "*Dharto ray*". Rakhi ran from the spot. On the next day, appellants came to the house of his uncle and threatened to kill him. At that time, his uncle was not present in the house.

Thereafter, the appellants went to the house of appellant No. 6, Mahadeb Biswas. Then they proceeded towards Majhergram through the village road. In the meantime, her aunt Maneka went through the field towards Bhramhanitala to inform her uncle. He along with his brother Bhagirath also followed her aunt. From a distance of one bigha, they saw the appellants assault his uncle with a branch of Jewli tree and other weapons. When they reached the spot, his uncle was lying on the ground and the appellants had fled away.

P.W. 3, Bhagirath Biswas has substantially corroborated his brother Baneshwar, P.W. 2.

P.W. 10, Maya Mondal, is the daughter of the deceased. She had come to her parental home on the occasion of Nabanna. She corroborated her mother with regard to the salish and the dispute between Rekha Biswas and her father in the course of salish. She also deposed on the next day the appellants came to their house in search of her father and threatened to kill him. Thereafter, her mother and her cousins Baneshwar and Nimai proceeded down the field. Subsequently, she heard from them that her father was murdered by the appellants.

P.W. 6, Madhusuda Mondal is a neighbour. He deposed with regard to the salish organized by deceased Rabindra Nath between the families of Dilip Biswas and Rekha Biswas. He stated during salish Rekha misbehaved with Rabindra Nath. On the next day in the afternoon, the appellants came to the house of the deceased and

threatened him. Deceased Rabindra Nath was not present in the house. The appellants went to the house of Mahadeb Biswas, appellant No. 6. Thereafter, they proceeded towards Majhergram. He heard from Baneshwar (P.W. 2) that appellants had murdered his uncle. He went to the place of occurrence and saw the dead body of Rabindra Nath Biswas.

P.Ws. 4, 12 and 13 were declared hostile.

P.W. 4 is the uncle of Dilip. Though declared hostile, he supported the prosecution case with regard to the salish organized by deceased Rabindra Nath between their family and that of Rakhi. He also stated on the next day around 2:30 p.m., he had seen the appellants near the house of appellant No. 6, Mahadeb. They were creating commotion in the locality. When he enquired from appellant No. 8, Biswanath, he stated "*Toke bolbo kano*". Subsequently, heard from local people including Baneshwar (P.W. 2) that deceased had been murdered by the appellants. He went to the place of occurrence and found body of the deceased.

P.W. 11, Dr. Ajit Kumar Biswas, conducted post mortem examination over the body of the deceased. He noted the following injuries:-

- (i) *Lacerated injury on the occipital region of head measuring 2" X 1" X bone deep;*
- (ii) *Sharp-cut penetrating wound at the front of right side of chest ½" below right clavicle on mid-line measuring 1" X ½" X chest cavity deep;*

- (iii) *Sharp-cut penetrating injury on right side of lower abdomen 2" below and 4" right lateral to umbilicus measuring 1" X ½" abdominal cavity deep.*
- (iv) *Sharp-cut penetrating injury on right lateral side of lower abdomen measuring 1" X ½" X abdominal cavity deep.*
- (v) *Right lung punctured.*
- (vi) *Liver punctured.*
- (vii) *Coils of small intestine punctured at various sites.*
- (viii) *Left kidney punctured.*

He opined injury No. 1 may be caused by hitting with a branch of Jewli tree. The other sharp-cut penetrating injuries may be caused by blow of bhojali. Injuries were sufficient to cause instant death. He proved injury report, Exhibit-6.

P.Ws. 14 and 15 are the investigating officers.

P.W. 14, S.I. Sougata Roy, deposed he was endorsed investigation of the case. He arrived at Brahmanitala at 19:15 hours. He held inquest over the body of the deceased. He found marks of the injury below right collar bone, right abdomen and back of head. He proved the inquest report, Exhibit-4/1. He sent the dead body for post mortem examination. He prepared rough sketch map of the place of occurrence. He seized blood stained earth, control earth from the place of occurrence. He examined witnesses. He seized blood stained wearing apparels of the deceased under seizure list, Exhibit- 3/1. He unsuccessfully searched for recovery of weapons. He collected post mortem report.

P.W. 15, S.I. Suman Chatterjee, concluded the investigation and submitted charge-sheet.

Firstly, appellants have challenged the registration of FIR by P.W. 1 at 6:25 p.m. It is contended P.W. 1 in-chief stated FIR was registered after the preparation of inquest report at 7:20 p.m. Hence, FIR is ante-timed. In cross-examination, P.W. 1 has clarified the position. She deposed police came to the spot after two hours, that is, around 6:00 p.m.. Thereafter, she again came to the place of occurrence by police van. Police took away the dead body after holding inquest around 8:00 p.m. Reading the evidence of P.W. 1 as a whole in the light of the other evidence on record, it appears on receiving a telephonic call police had come to the spot around 6:00 p.m. Thereafter, P.W. 1 went to the police station and lodged FIR which was scribed by P.W. 9. Subsequently, she again went to the place of occurrence in a police van and inquest was held. The aforesaid version corroborates registration of FIR at 6:25 p.m. and, thereafter, preparation of inquest report at 7:20 p.m. A comment by P.W. 1 in-chief that FIR was lodged after inquest is a slip of tongue and cannot be read out of context in the backdrop of her entire evidence and other corroborative materials on record. Though the incident did not occur within Nakasipara Police Station, police attached to the said police station upon receiving telephonic information had reached the spot. Accordingly, P.W. 1 lodged FIR at the said police station. Failure on the part of the police to transfer the investigation to the adjoining police station does not affect either the legality or credibility of the

prosecution case. In this regard, reference may be made to sub sections (1) and (2) of section 156 Cr.P.C. which read as follows:-

“156. Police officer’s power to investigate cognizable case.-

- (1)** Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
- (2)** No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.”

Prosecution case essentially hinges on the depositions of the eye-witnesses, P.W. 1 (wife of the deceased) and P.Ws. 2 and 3 (nephews of the deceased).

Analysis of the evidence of P.Ws. 1, 2 and 3 would show on the day prior to the incident a salish was held under the auspices of the deceased Rabindra Nath between the families of Rakhi Biswas and that of Dilip Biswas. In the course of Salish, Rekha misbehaved with the deceased. Appellants got enraged and shouted “*Dharto ray*”. Rakhi ran away from the spot. On the next day in the afternoon, appellants came to the residence of the deceased. Deceased had gone to Akandadanga and was not present at the house. Appellants searched for him and threatened to kill him. Thereafter, they went to the residence of appellant No. 6, Mahadeb. From there they proceeded towards Majhergram through village road. In the meantime, P.W. 1, Menaka (wife of the deceased) proceeded towards Brahmanitala through the fields. Menaka saw her husband proceeding towards Brahmanitala

through village road. At that juncture, appellants accosted him. Menaka also reached the spot and Mahadeb kicked her. Dulu caught hold of her husband with a cycle chain by the neck. Biswanath assaulted him with the branch of Jewli tree on the head. Shyamal, Kripanath, Kalipada and Jayanta assaulted him with bhojali. Pantha Biswas had called her husband. P.Ws. 2 and 3 (nephews of the deceased) had followed their aunt through the fields. From a distance of one bigha, they saw the appellants assault the deceased. When they reached the spot, deceased was already lying on the ground and the appellants had fled away.

Learned Counsels for the appellants argued the prosecution case is not supported by independent witnesses. There are many contradictions in the depositions of the related eye-witnesses, P.Ws. 1, 2 and 3. Their depositions also suffer from various omissions when compared with their earlier statements to investigating officer, P.W. 14. I have compared the depositions of P.Ws. 1, 2 and 3. Their narrations are substantially corroborative of one another. There are minor variations with regard to the time when the appellants assembled in front of the house of the deceased. P.W. 1 stated they came around 3:30 p.m. while P.W. 2 stated they came at 2:30 p.m. P.W. 3 claimed the appellants had come between 2:30 p.m. and 3:00 p.m. The aforesaid variation with regard to time when the appellants assembled in front of the house of Rabindra Nath is barely half an hour and does not affect the unfolding of the prosecution case. Similarly, failure of P.W. 1 to

state that the appellants had initially gone to the house of Mahadeb Biswas (appellant No. 6) is of little consequence. After hearing the threat, P.W. 1 rushed through the fields towards Brahmanitala to warn her husband. Hence, she may have failed to notice the appellants go to the house of Mahadeb before proceeding towards Majhergram through kaccha road. With regard to the so-called omissions in their earlier statements to investigating officer, I note no contradiction/omission was taken by the defence with regard to P.W. 1, Menaka. Even the omissions in the depositions of P.Ws. 2 and 3 vis-a-vis their earlier statements are minor and do not affect the crux of the prosecution case. Minor variations in the evidence of a witness which do not go to the root of the prosecution case cannot be treated as material contradictions affecting the credibility of the witness. On the other hand, depositions of P.Ws. 1, 2 and 3 have a ring of truth. Hearing the threats, all the witnesses rushed down the field to alert Rabindra Nath. P.W. 1 rushed first and was followed by P.Ws. 2 and 3. As a result, P.W. 1 reached the place of occurrence at the time of assault and P.Ws. 2 and 3 saw the incident from a distance of one bigha. Their depositions substantially corroborate each other and prove the prosecution case.

No doubt the aforesaid witnesses are related to the deceased. However, it is trite law evidence of a witness ought not to be rejected merely because he is related to the deceased. It is common knowledge a person related to the deceased would be most eager to ensure that the

offender is punished. Merely on the score of relationship between the witnesses and the deceased, I am unwilling to reject their versions.

Evidence of the aforesaid witnesses find corroboration from independent sources too.

P.W. 6 is an independent witness who has corroborated the prosecution case with regard to the motive of crime as well as initial threat held by the appellants at the residence of the deceased on the day of incident. He went to the place of occurrence and saw the dead body with multiple injuries. Subsequently, he heard from P.W. 2 that the appellants had murdered the deceased.

Similarly, P.W. 4 a relation of Dilip Biswas, though declared hostile, corroborated the prosecution case with regard to motive of crime and the fact that the appellants had assembled near the house of the deceased and were creating a commotion.

Post mortem doctor (P.W. 11) found extensive injuries on the body of the deceased which corroborated the manner of assault as deposed by P.W. 1. P.W. 11 deposed injury No. 1 in the report may be caused by hitting with branch of Jewli tree and the penetrative injuries may be caused by bhojali.

Thus, the eye-witnesses, P.Ws. 1, 2 and 3 have been corroborated from independent sources as well as the medical evidence on record.

Appellants had come to the residence of the deceased in a body and searched for him. They could not find the deceased and threatened

to kill him. Thereafter, they proceeded to search for the deceased and upon finding him had assaulted him mercilessly with the branch of Jewly tree and bhojali. Large number of serious injuries were found on the vital parts of the body of the deceased, namely, head, chest and abdomen. Internal organs of the deceased, namely, lung, liver, intestine and kidney were damaged. After assault, all the appellants fled from the spot. Conduct of the appellants before, during and after the incident, nature of weapons used by them and the manner and the situs of injuries on the deceased clearly prove they shared common intention to murder the deceased. Motive to commit the crime has also been proved.

In the light of the aforesaid discussion, I am inclined to uphold the conviction and sentence of the appellants.

The appeal is, accordingly, dismissed.

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

Lower court records along with a copy of this judgment be sent down at once to the learned trial Court for necessary action.

We note that the incident occurred in the course of a family dispute. Appellants have strong roots in society and do not have any criminal antecedent. Some of the appellants are advanced in age. In the event, they make application for remission of their sentences under

section 432 Cr.P.C. upon completion of 14 years of actual imprisonment, the appropriate authority may consider such prayer in the light of the aforesaid circumstances and other relevant factors including their conduct in the correctional home.

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.)

PA (Sohel & Sourav)