

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

C.R.A. 344 of 2015

Paresh Majhi

-Vs-

State of West Bengal

For the Appellant : Mr. Moinak Bakshi, Adv.

For the State : Mr. Swapan Banerjee, Adv.
Mr. Suman De, Adv.

Heard on : 17th March, 2022

Judgment on : 17th March, 2022

Joymalya Bagchi, J. :-

The appellant has assailed the impugned judgment and order dated 19.03.2015 and 20.03.2015 passed by the learned Additional Sessions Judge, 1st Court, Purulia, in Sessions Trial No. 06 of 2015 arising out of Sessions Case No. 09 of 2015 convicting the appellant for commission of offence punishable under Section 302 of the Indian Penal Code and directing him to suffer rigorous imprisonment for life and also to pay fine of Rs.10,000/-, in default, to suffer simple imprisonment for a period of six months more.

Prosecution case as alleged against the appellant is to the effect that there was previous enmity between the appellant and the deceased, Manohar Majhi. Owing to such dispute the appellant called the deceased from his house and shot him with an arrow resulting in instantaneous death. F.I.R. was lodged by Methar Majhi, son of the deceased (P.W. 1) resulting in registration of Barabazar Police Station Case No. 85 of 2014 dated 19.09.2014 under Section 302 of the Indian Penal Code. During investigation, investigating officer (P.W. 9) held inquest over the dead body of the deceased and sent the body for post mortem examination. Three days later the appellant was arrested. On his leading statement offending weapon namely bow and arrows were recovered. Charge-sheet was filed against the appellant and charge was framed under Section 302 of the Indian Penal Code. Appellant pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined ten witnesses and exhibited a number of documents. Defence of the appellant was one of innocence and false implication. In conclusion of trial, learned trial Judge by the impugned judgment and order dated 19.03.2015 and 20.03.2015 convicted and sentenced the appellant, as aforesaid.

Mr. Bakshi, learned Counsel appearing for the appellant submits that the evidence of P.W. 1 who claimed to be an eye-witness is improbable and suffers from various inconsistencies. Motive has not been proved. It is his further submission neither P.W. 1 nor his mother (P.W. 2) were present in the house at the time of occurrence. It is unlikely deceased would accompany the appellant with whom he had inimical relationship.

Conduct of the appellant improbabilises the prosecution case. He did not run away and was at his residence till his arrest three days after the incident. Hence, prosecution case is improbable and appellant is entitled to an order of acquittal.

On the other hand, Mr. Banerjee along with Mr. De, learned Counsels for the State submits that the relation between the appellant and the deceased was strained. Out of grudge the appellant shot arrow at the victim resulting in instantaneous death. Incident occurred in front of the house of the deceased and was witnessed by his son (P.W. 1). His version is corroborated by his mother (P.W. 2) and other witnesses. On the leading statement of the appellant, bow and arrow were recovered. Hence, appeal is liable to be dismissed.

P.W. 1, Methar Majhi, is the son of the deceased and the most vital witness. He deposed on 18.09.2014 around 6 p.m. the appellant who was his youngest uncle had called his father from their house. He had gone to play football and returned home. Thereafter he was washing himself in the tubewell. Appellant shot at his father with an arrow resulting in his death. Place of occurrence is 15 cubits from their house. He lodged written complaint. The police came to the spot and seized various articles. Police held inquest and prepared inquest report. He signed on the inquest report. Appellant was arrested and bow and arrows were recovered from his house. He signed on the seizure list. He made statement before the learned Magistrate. In spite of extensive cross-examination the said witness remained unshaken.

Deposition of P.W. 1 is corroborated by his mother, Mailo Majhi (P.W. 2) who stated that the appellant had come to their house and taken her husband away.

Other neighbours namely P.Ws. 3, 4, 5 and 6 had come to the spot soon after the incident. They deposed they heard from P.W. 1 and his mother (P.W. 2) that the appellant had shot at the victim with an arrow resulting in his death.

P.Ws. 3, 4 and 5 namely Debi Majhi, Faku Majhi and Kalyani Prosad Singh also deposed on the showing of the appellant bow and arrows were recovered from his residence. These witnesses are signatories to the inquest report as well as the seizure list prepared regarding the seizure of bow and arrows from the house of the appellant.

P.W. 10, Dr. Amal Nath, post mortem doctor, found the following injuries of the deceased :

“1. incised wound sharp margin oblique $\frac{1}{2}$ an inch x $\frac{1}{2}$ an inch x thoracic cavity at middle of anterior chest.

After dissection I found that puncture right side of heart anteriorly.”

He opined the death was caused by bow and arrow and owing to a punctured heart, ante mortem and homicidal in nature. He proved the post mortem report marked as “Exhibit-11”.

Mr. Bakshi, learned Counsel for the appellant contends evidence of P.W. 1 is unnatural and suffers from various inconsistencies. He has not explained why in spite of prior enmity his father accompanied his uncle.

He has also not stated that the uncle was armed with bow and arrows when he came to their house. His mother (P.W 2) also did not speak that the appellant was armed when he came to their residence.

I have given anxious consideration to the aforesaid submissions. Appellant was the brother of the deceased. The incident occurred in the course of "Paus Parab" i.e. a day after "chata mela". Generally the people of the community consume country liquor during such festival. As the incident coincided with social festivities it is likely that the deceased in spite of continuing dispute had accepted the request of the appellant to accompany him from the house. At that stage, P.W. 1 was washing himself in a tubewell in front of the house and his mother was inside the house. Although they were aware that the appellant had come and called the victim from the house they may not have noticed he was armed with bow and arrow. Immediately thereafter, incident occurred 15 cubits away from their house. P.W. 1 who was outside the house saw the appellant shoot arrow at his father resulting in his death. He raised hue and cry and local people came to the spot. He and his mother narrated the incident to them. They have corroborated the deposition of P.W. 1 and his mother (P.W. 2).

In view of the aforesaid facts, I find no reason to doubt the presence of P.W. 1 or his mother (P.W. 2) at the place of occurrence. P.W. 1 saw the incident and is corroborated by his mother, P.W. 2. Plea that the appellant had been falsely implicated by the aforesaid witnesses due to previous grudge also does not survive as local people namely P.Ws. 3, 4, 5 and 6 who had rushed to the spot corroborated the prosecution case and

stated they were informed by P.Ws. 1 and 2 that the appellant had murdered the deceased.

Moreover, the manner of assault as narrated by PW 1 finds corroboration from the post mortem doctor who found punctured wound in the heart caused by a bow and arrow.

P.W. 9, investigating officer arrested the appellant and interrogated him. He made a statement and pursuant to such statement bow and three arrows were recovered from his residence. P.W. 9 prepared a seizure list in connection with such recovery "Exhibit-4/3" which was witnessed not only by P.W. 1 but independent witnesses namely P.Ws. 3, 4 and 5.

It has been argued appellant had not been promptly arrested. He remained in his residence and was arrested after three days. There is no evidence that the appellant was available in the village for three days. No suggestion was given to the investigating officer that he had not arrested the appellant although he was available in the village. Hence, I am unable to accept the submission on behalf of the defence that the appellant although available in the village had not been arrested for three days.

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

Appeal is, accordingly, dismissed.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon them 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.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)

tkm/sdas/PA (Sohel)