

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 404 of 2018

**Debdut Bagdi
-Vs-
State of West Bengal**

For the Appellant : Mr. Asimes Goswami, Adv.
Mr. Satyen Banerjee, Adv.
Ms. Shubhra Banerjee, Adv.
Ms. Priyanka Dutta, Adv.
Ms. Paulomi Banerjee, Adv.
Ms. Monalisa Maity, Adv.

For the State : Mr. Avishek Sinha, Adv.

Heard on : 09.09.2022 & 14.09.2022

Judgment on : 14.09.2022

Joymalya Bagchi, J. :-

Appeal is directed against the judgment and order dated 17.05.2018 and 18.05.2018 passed by the learned Additional District and Sessions Judge, Fast Track Court, Suri, Birbhum in Sessions Trial No. 04/March/2016 arising out of Sessions Case No. 157 of 2015 convicting the appellant for commission of offence under Section 302 of

the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/-, in default to suffer further imprisonment for six months.

Prosecution case levelled against the appellant is to the effect that on 22.06.2014 in the morning Jagannath Bagdi, the deceased, and his wife Sukhi (PW 1) went to the residence of their daughter, Rita Bagdi (PW 3) at village – Agulia. Around 5.00P.M. Debdut Bagdi, appellant herein, (grandson-in-law of Jagannath Bagdi) came to the house of Rita Bagdi and started quarreling with his wife, Saiba Bagdi (PW 2). He was in an inebriated state. Family members of the appellant were contacted but they did not turn up. Finally, the appellant was sent back to his house. At night Jagannath was sleeping in a motor van in the courtyard of the house. Appellant being armed with a thick stick (dung) came to the house and struck him. He was chased by Rita Bagdi and went to the roof. On the roof, son of the appellant, Dulchand Bagdi (PW 8) and his cousin, Jagannath Bagdi (PW 11) were sleeping. He assaulted Jagannath Bagdi. Dulchand and Jagannath apprehended the appellant. He was tied by a rope to a post. PW 1 lodged written complaint at the police station resulting in registration of Dubrajpur Police Station Case No. 114 of 2014 dated 23.06.2014 under Sections 302/34 of the Indian Penal Code against the appellant and two others.

In conclusion of investigation, charge-sheet was filed against the appellant alone. Charge was framed under Section 302 of the Indian

Penal Code. Appellant pleaded not guilty and claimed to be tried. To prove its case prosecution examined 18 witnesses. Defence of the appellant was one of innocence and false implication. In conclusion of trial, learned trial Judge by the impugned judgment and order convicted and sentenced the appellant, as aforesaid.

Mr. Goswami, learned Counsel for the appellant argues the prosecution case suffers from patent improbabilities and/or inconsistencies. A prior intimation had been given to the police before registration of F.I.R. PW 4 (Sk. Abul Khayer), scribe, stated police came to the place of occurrence before his arrival. Hence, written complaint lodged by PW 1 is not the earliest information received by police with regard to the incident. This intimation has not been produced before the Court. He further submits description of the incident in the F.I.R. militates with the evidence of the prosecution witnesses. While in the F.I.R. it is alleged appellant along with Bipad Taran Bagdi and Monchora Bagdi had come to the house at night, in Court the de-facto complainant (PW 1) and other witnesses stated appellant came to the place of occurrence alone. Evidence of the prosecution witnesses with regard to the manner and circumstances in which the incident occurred is contradictory while most of the witnesses claimed they had apprehended the appellant at the spot after the incident and had handed him over to the police, investigating officer (PW 18) does not support their version. PW 18 deposed he had apprehended the

appellant from his village – Utadda and not the place of occurrence which completely demolishes the prosecution case. Hence, prosecution has failed to prove its case beyond reasonable doubt. Appellant is entitled to an order of acquittal.

Mr. Sinha, learned Counsel for the State, submits P.Ws 1,2,3,8 and 11 were present at the house when the incident occurred. All the witnesses stated in unison appellant had assaulted the deceased and upon being chased went to the roof of the house and assaulted Jagannath Bagdi (PW 11). Their depositions are corroborated by other post occurrence witnesses viz. PWs. 9,10 and 12 who saw the appellant at the place of occurrence. Postmortem doctor, Dr. Debasis Sarkar (PW 14) opined appellant had a fracture on his scalp which was ante mortem and homicidal in nature. Evidence of PW 18 with regard to the arrest of the appellant at a different place ought not to be a ground to disbelieve the consistent ocular evidence of other prosecution witnesses.

I have considered the evidence on record in the light of the rival submissions.

PW 1 is the de facto complainant and wife of the deceased. She deposed she along with her husband had come to the residence of her daughter, Rita Bagdi on the fateful day. In the evening appellant had come to the residence of Rita and misbehaved with his wife Saiba, her granddaughter. They sent the appellant back. In the night, her

husband was sleeping in a motor van which was parked in the courtyard of the house. Around 1.00 A.M. appellant came with lathi and hit her husband on the head. Thereafter he went to the roof and assaulted his son and nephew. They raised hue and cry. Appellant was apprehended at the spot and handed over to the police. She lodged complaint which was scribed by PW 4.

In the F.I.R. PW 1 (Sukhi Bagdi) stated appellant had come along with two others viz. Bipad Taran Bagdi and Monchora Bagdi. She also stated she had been sleeping inside the room when the incident occurred. However, in court she altered her version and claimed she was sleeping in the veranda and appellant had come to the house alone. In view of such contradiction in her deposition with regard to the place where she was sleeping in the night, I am unable to rely on her as an eye-witness to the incident.

PW 2 (Saiba Bagdi) is granddaughter of the deceased and wife of the appellant. She deposed in the evening of the fateful day appellant had come to the house and misbehaved with her. At night she had gone to the residence of one of her relations, Mantu Bagdi. Hearing hue and cry she returned to her house and found that her grandfather was dead and appellant had been apprehended. Hence, PW 2 is also not an eye-witness to the incident.

PW 3 (Rita Bagdi) is the daughter of the deceased. She stated deceased was sleeping in the courtyard of her house. She was sleeping

with her mother inside the room. At night appellant came to the house and hit her father with a log on the head. She saw the incident and chased the appellant. He escaped to the roof and assaulted Jagannath Bagdi (PW 11). They informed police who came to the spot and arrested the appellant.

Apparently, PW 3 appears to be an eye-witness. However, deeper scrutiny of her evidence would show she was sleeping inside the room with her mother. Her father Jagannath Bagdi was sleeping in a motor van which was parked in the courtyard of the house. There is nothing on record to show that PW 3 who was sleeping inside the house would be able to see an assault on the victim who was sleeping in a motor van in the courtyard. During cross-examination, in a desperate bid PW 3 tried to change her version and stated she was sleeping in the veranda. I am unable to subscribe to this prevaricating stance of PW 3 to portray herself as an eye-witness.

Other two inmates of the house are PW 8 (Dulchand Bagdi) and PW 11 (Jagannath Bagdi). Both of them were sleeping on the roof and there is no chance of the said witnesses having seen the assault on the deceased.

From the aforesaid analyses of the evidence of the prosecution witnesses, I am of the view none of the inmates of the house had seen the actual assault on the deceased. However, all of them claimed the appellant was found inside the house and upon being chased went to

the roof where he was apprehended by Dulchand Bagdi and Jagannath Bagdi. Immediately thereafter F.I.R. was lodged at the police station and police came to the spot and apprehended the appellant. This aspect of the prosecution case also suffers a fatal blow from the deposition of the investigating officer (PW 18) himself.

PW 18 (SI Santosh Bhakat) deposed upon receipt F.I.R. he went to the place of occurrence and seized blood stained earth and controlled earth. He prepared inquest report and forwarded the dead body for postmortem examination. He is completely silent about the presence of the appellant at the spot. On the other hand, he deposed appellant was arrested from his village at Utadda and upon his interrogation a lathi was recovered.

I have examined the memorandum of arrest of the appellant which is a part of the record. From the memorandum of arrest it appears that the appellant had been arrested from village Utadda on 23.06.2014 at 18.45 hours. This completely demolishes the prosecution case that the appellant had been apprehended at the place of occurrence and upon arrival of police was handed over to the officer. Mr. Sinha, learned Counsel for the State argues this variation is a defect in investigation and ought not affect the consistent version of the prosecution witnesses. I am not unmindful of the fact that remissness or defect in investigation would not affect the credibility of a prosecution case if the same is otherwise well-founded on legally

admissible evidence. However, if the evidence of an investigating officer vitally contradicts the very unfolding of the prosecution case relating to presence and apprehension of the accused at the place of occurrence, it goes to the very root of the case. This irreconcilable contradiction in the prosecution case is palpable and casts serious doubt on the credibility of the prosecution witnesses particularly inmates of the house who claimed they had seen the appellant and apprehended him at the spot.

Other aspects of the prosecution case also suffers from various infirmities. It is unclear why PW 1 had implicated not only the appellant but two others in the F.I.R. Police had arrived at the spot even prior to the lodging of F.I.R. These issues remain unanswered and adversely impact the truthfulness of the prosecution case.

All was not well between the appellant and his wife Saiba Bagdi. In the evening he had come to the residence of PW 3 and quarreled with her. Though such enmity may be the motive to commit the crime, it is apposite to bear in my mind that motive is a double edged sword. It can also prompt the family members of Saiba to implicate the appellant out of mere suspicions. In this factual matrix, possibility of false implication of the appellant due to his earlier conduct cannot be wholly ruled out.

In the light of the aforesaid discussion, I am inclined to extend the benefit of doubt to the appellant and acquit him of the charge

levelled against him. Conviction and sentence of the appellant is set aside.

Appellant shall be forthwith released from custody, if not wanted in any other case, upon execution of a bond to the satisfaction of the trial court which shall remain in force for a period of six months in terms of Section 437A 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 for necessary compliance.

Photostat certified copy of this judgment, if applied for, shall be made available to the appellants upon completion of all formalities.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

as/sdas/PA