

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. 380 of 2017

Iman Ali Mondal @ Tanmoy Halder

-Vs-

State of West Bengal

For the Appellant : Mr. Fazlur Rahaman, Advocate,
Mrs. Nasra Ali Rahaman, Advocate.

For the State : Mr. Nuguive Ahmed, Id. A.P.P.,
Ms. Zareen N. Khan, Advocate,
Ms. Amita Gaur, Advocate.

Heard on : 24th and 28th February, 2022

Judgment on : February 28, 2022.

Joymalya Bagchi, J. :-

The appeal is directed against the judgement and order dated 08.05.2017 and 11.05.2017 passed by learned Additional District & Sessions Judge, 2nd Court, Krishnagar, Nadia in Sessions Trial No.VI (III)/2017 arising out of Sessions Case No. 12(01)2017 convicting the appellant for commission of offence punishable under Sections 326A and 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life i.e. imprisonment for the remainder of the person's

natural life and to pay a fine of Rs.50,000/-, in default to suffer rigorous imprisonment for one year more.

On the day of Nabami in 2016 i.e. 11th October, 2016 around 1/1.30 a.m. Mou Rajak, the deceased herein was sleeping in a tin-shed room in her house. An unknown person threw acid upon her through the open space above the door of the room. Mou suffered acid burn injuries on her face and bodies. Her mother Tulu also suffered acid burn injuries. Mou was initially moved to Bagula Hospital and thereafter referred to N. R. S. Medical College and Hospital for better treatment. Bholanath, her father lodged written complaint resulting in registration of Hanskhali P. S. Case No. 347 of 2016 dated 11.10.2016 under Section 326A of the Indian Penal Code. In course of investigation, Investigating Officer (P.W. 22) recorded the statement of Mou, Exhibit 21 on 12.10.2016 wherein she disclosed the appellant who was known to her friend Piyali had introduced himself as Tanmoy Halder. Thereafter, he gave romantic proposals to her but she refused. Subsequently, it was revealed that the appellant was of a different religion and his name was Iman Ali Mondal. When Mou refused to associate with him, he threatened he would throw bomb at her house or pour acid on her face. She suspected the appellant had committed the crime. Similar statement of the victim was recorded by a lady constable (P.W. 9) on 15.10.2016 in presence of the treating Doctor (P.W. 5). Ultimately, Mou succumbed to her injuries and Section 302 of the Indian Penal Code was added to the First Information Report. Appellant was arrested and made statements before the police. Pursuant to the

statements, a mobile phone and acid bottle were recovered. Co-accused Nepal Saha who allegedly sold acid to the appellant was also arrested. Nepal Saha made a statement before the Magistrate. Charge-sheet was filed against the appellant and Nepal Saha. Charges were framed under Sections 326A/302 of the Indian Penal Code against the appellant and under Section 6 of the Poison Act against the co-accused Nepal Saha. They pleaded not guilty and claimed to be tried. To prove its case, prosecution examined 23 witnesses and exhibited a number of documents.

In conclusion of trial, the Trial Judge by the impugned judgment and order dated 08.05.2017 and 11.05.2017 convicted and sentenced the appellant, as aforesaid.

Learned Counsel appearing for the appellant submits that there is no direct evidence that the appellant had thrown acid at the deceased. Statements of the deceased recorded in the hospital even if believed to be true show that she was unable to identify the person who threw acid at her. Out of mere suspicion, appellant has been apprehended. Independent witnesses to the seizure do not state recovery of mobile phone and bottle allegedly containing acid were made upon showing of the appellant. No forensic examination of the seized bottle was made. Evidence of P.Ws. 4 and 13 to the effect they saw the appellant on the night of occurrence running across the road suffers from improbabilities and contradictions. Prosecution failed to establish who had made telephone call to P.W. 4 stating the victim had suffered acid burn injuries. Evidence of P.W. 5 in

Court is at variance to his previous statement to Magistrate with regard to his prime acquaintance with the appellant. Distance between the place of occurrence and the spot where the appellant was seen by the said witnesses has also not been proved. Hence, the evidence on record does not unerringly point to the guilt of the appellant and he is entitled to be acquitted.

Mr. Ahmed, learned Additional Public Prosecutor along with Ms. Khan appearing for the State argues appellant had strong motive to commit the crime. Piyali (P.W. 10) friend of the deceased and the statements made by the deceased while on death bed viz., Exhibits 21 and 3 show that the appellant had given a different identity and tried to befriend the deceased. When the deceased resisted, he threatened to throw acid on her. Immediately after the incident the appellant was seen running away by P.Ws. 4 and 13. Appellant made statement before the police and on his leading statement mobile phone and acid bottle were recovered near the place of occurrence. Hence, the prosecution case is proved beyond doubt.

Analysis of the evidence on record in the backdrop of the aforesaid submissions show the prosecution case is based on circumstantial evidence. Prosecution has strongly relied on the following circumstances:-

- a) Appellant was a friend of one Piyali (P.W. 10) who was acquainted with the deceased. Through her, he introduced himself as Tanmoy Halder though he was a Mohammedan. Deceased was not impressed by him and resisted his advances. Later on, she came to know the real identity of the appellant.

Thereupon, appellant threatened to throw acid on her. Hence, the appellant had motive to commit crime;

- b) Appellant had procured acid from co-accused Nepal Saha;
- c) P.Ws. 4 and 13 saw the appellant running across the road when they were crossing Gazna enroute to Bhajan Ghat;
- d) On the leading statement of the appellant acid bottle and other articles were recovered.

Let me see whether the prosecution has been able to prove the aforesaid circumstances or not.

With regard to motive, prosecution has strongly relied on the dying statements of the deceased, Exhibits 3 and 21. On 11.10.2016 around 1/1.30 a.m. deceased suffered acid burn injuries in her house. She was initially taken to Bagula Hospital where she was treated by P.W. 12. Thereafter, she was shifted to N. R. S. Medical College and Hospital. In the meantime, her father (P.W. 1) lodged complaint at the police station and First Information Report came to be registered against unknown person.

P.W. 22, Shib Sankar Bose, S.I. of Police who was assigned the investigation of the case proceeded to N. R. S. Medical College and Hospital and recorded the statement of the victim, Exhibit 21. In her statement, the victim disclosed her suspicion that appellant may have thrown acid upon her. She stated the appellant had been introduced to her through her friend Piyali. Initially, he had stated his name was Tanmoy Halder. Victim was not impressed by the look of the appellant and refused his romantic proposal. Subsequently, she came to know of his real identity. Thereafter,

appellant threatened her to throw acid on her. Hence, she suspected that it was the appellant who had committed the crime. On 15.10.2016, similar statement of the victim was recorded by a lady Constable (P.W. 9). The statement was recorded in presence of the treating Doctor (P.W. 5) who signed on the document. Piyali has been examined as P.W. 10. She has substantially corroborated the aforesaid statements with regard to the association between the appellant and the victim and threat held out by the appellant to throw acid upon her. Hence, motive to commit the crime appears to be fully established. However, it is evident neither the victim nor any of her relations i.e. her father (P.W. 1), her mother (P.W. 11) or her brother Sanjoy (P.W. 17) who were in the house at the time of occurrence had seen the miscreant who threw acid on the victim.

The other circumstance strongly relied upon by the prosecution to implicate the appellant is that the appellant was seen by P.Ws. 4 and 13 running across the road while they were crossing village Gajna in a vehicle.

P.W. 4, Sambhu Das deposed on the night of Nabami, he and Binay Biswas were coming to their house in a Maruti van after witnessing Puja. While travelling down the main road, he saw the appellant crossing the road. When he reached Bhajan Ghat, he received a phone call that someone had suffered acid attack at the house of Bholanath. He turned back and went to the house of Bholanath. He took the victim to the hospital. He also made statement before Magistrate.

In cross-examination, he stated that he had reached at Bhajan Ghat at 1.10 a.m. He received phone call from his house. After about a

month from the date of incident, he made statement before Magistrate. Prior to giving statement, he did not disclose the incident to anyone.

Binay Biswas (P.W. 13) deposed that he and Sambhu had gone out to witness Durga idols and while they were proceeding to Bhajan Ghat he saw a person running away. Sambhu received a phone call at Bhajan Ghat that someone suffered acid attack. Thereafter, they returned and took the injured to Bagula Hospital. He made statement before the Magistrate.

In cross-examination, he stated at the time of incident they were crossing Gajna and at Gajna there were number of puja pandals. He had not seen any known person on that day.

Analysis of the evidence of P.Ws. 4 and 13 would show they had seen a person crossing the road at Gajna while they were travelling in a vehicle from Bagula to Bhajan Ghat. While P.W. 4 identified the appellant in court as Iman Ali Mondal, P.W. 13 did not name him and gave an impression that he had no prior acquaintance with the appellant. P.W. 13's deposition in Court is clearly at variance with his earlier deposition before Magistrate. In his statement before the Magistrate, P.W. 13 claimed that he had seen the appellant crossing the road. He further stated he knows the appellant as Iman Ali Mondal who used to sell vegetables. However, in Court he claimed he had seen an unknown person cross the road. He identified that person as the appellant. Thus, identification of the appellant by P.W. 13 is extremely doubtful and creates a severe dent with regard to the identity of the individual he had seen on that fateful night. In the absence of the corroboration from P.W. 13, it is extremely unsafe to rely on

P.W. 4 with regard to the identity of the appellant as the person whom they had seen crossing the road on the fateful night. Even if such deposition is believed no investigation was made to establish the distance between the place where the witness had seen the appellant and the place of occurrence, that is the residence of Bholanath. It is nobody's case that either of the witnesses had seen the appellant in and around the place of occurrence. At its height, their evidence if believed, would show that the appellant was seen crossing the main road adjoining village Gajna. Evidence has come on record that Gajna is a large village and, therefore, their evidence on record does not establish that the appellant was seen in or around the place of occurrence at that time when the incident occurred. On the other hand, P.W. 4, in cross-examination, stated that he heard about the incident by way of telephonic conversation at 1.10 a.m. when they arrived at Bhajan Ghat. None of the witnesses corroborated this fact and stated they had made a phone call informing P.W. 4 of the incident. No family member of P.W. 4 was examined to prove the so-called phone call made to P.W. 4. Thus, the aforesaid circumstance is a weak one and based on shaky and unreliable version of P.Ws. 4 and 13.

Other circumstances, also do not appear to have been proved. Although Investigating Officer (P.W. 22) claimed that accused made statements in custody leading to recovery of the acid bottle, independent witnesses to the seizure of the acid bottle, namely P.Ws. 17 and 18, have not supported his version. Neither the seized bottle has been sent for FSL examination to prove its presence of acid therein. Thus, circumstance of

recovery of acid bottle pursuant to the leading statement of the appellant has not been proved. Finally purchase of acid from the co-accused, Nepal Saha (who was acquitted in the course of trial) also remains unproved. Prosecution relied on a confessional statement made by Nepal before the Magistrate. Learned Magistrate who recorded the statement has not been examined. In spite thereof, the learned trial Judge exhibited statement of co-accused as Exhibit 22 with objection. Objection raised by the defence with regard to the proof of said statement is of considerable force. Second Investigating Officer (P.W. 23) had collected the statement and prosecution sought to prove the document through him. Admittedly, the witness was not present when the statement was recorded. He cannot be said to be aware of the writing of the Magistrate and by no stretch of imagination statement recorded by the Magistrate and his certificate under Section 281 of the Code of Criminal Procedure can be proved through the police officer. Thus, confessional statement of the co-accused, in my estimation, has not been proved and could not be utilised by the prosecution to establish the purchase of acid by the appellant.

In conclusion, what remains is a strong motive on the part of the appellant to commit the crime and if P.W. 4 is believed that the appellant was seen crossing the road adjoining village Gajna. These two pieces of evidence by themselves do not form a complete chain far less they unerringly point to the guilt of the appellant. Suspicion, howsoever high, cannot be a substitute of proof. No doubt, the offence alleged against the appellant is a heinous one. Acid was thrown on the body of the victim and

she succumbed to the injuries. Irrespective of the gruesome nature of the crime, onus lies on the prosecution to prove the guilt of the offender beyond reasonable doubt. Gravity of the crime, in fact, puts a stricter burden on the prosecution to prove the case. Prosecution in the present case has singularly failed to discharge its onus. The present case, in my opinion, does not transcend from one of strong suspicion to legal proof. Failure of the prosecution to prove the guilt of the offender beyond reasonable doubt adversely impacts the administration of criminal justice and a heinous crime in society goes unpunished. However, agony and anguish in that regard cannot justify conviction based on suspicion or moral conviction. One may aptly refer to the observation of the Hon'ble Apex Court in ***Mousam Singha Roy And others vs. State of West Bengal***¹ case held as follows:-

“27. Before we conclude, we must place on record the fact that we are not unaware of the degree of agony and frustration that may be caused to the society in general and the families of the victims in particular, by the fact that a heinous crime like this goes unpunished, but then the law does not permit the courts to punish the accused on the basis of moral conviction or on suspicion alone. The burden of proof in a criminal trial never shifts, and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence. In a similar circumstances this Court in the case of *Sarwan Singh Rattan Singh v. State of Punjab* stated thus: (AIR p. 645, para 12)

It is no doubt a matter of regret that a foul cold-blooded and cruel murder should go unpunished. There may also be an element of truth in the prosecution story against the accused. Considered as a whole, the prosecution story may be true; but between ‘may be true’ and ‘must be true’ there is inevitably a long distance to travel and the whole of this distance must be covered by

¹ (2003) 12 SCC 377

the prosecution by legal, reliable and unimpeachable evidence before an accused can be convicted.

28. It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused.”

In the light of the aforesaid discussion, I am constraint to extend the benefit of doubt to the appellant and acquit him of the charges levelled against him.

Accordingly, conviction and sentence of the appellant are set aside.

Accordingly, the appeal being CRA 380 of 2017 is allowed.

The appellant shall be released from custody forthwith, 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.

Let a copy of this judgment along with the lower court records be forthwith sent down to the trial court at once.

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

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)