

Form No.J(1)

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. 429 of 2018

**Shibu Shaw @ Shibu Shah
versus
The State of West Bengal and another**

For the Appellant : Mr. Sabir Ahmed,
Mr. Mujibar Ali Naskar.

For the State : Mr. Saswata Gopal Mukherjee, Ld.P.P.,
Mr. Sandip Chakraborty,
Mr. Saryati Datta.

Heard On : 18.08.2022.

Judgement On : 18.08.2022.

Tirthankar Ghosh, J. :

The present appeal has been preferred challenging the judgment and order of conviction dated June, 18, 2018 passed by the learned Additional Sessions Judge, First Court, Sealdah, 24 Parganas (South) in connection with Sessions Trial No.1(11) of 2016 wherein the learned trial court was pleased to hold the accused/appellant guilty of

offence under Section 304 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for seven years and to pay fine of Rs.20,000/-, in default to undergo imprisonment for three months more.

The genesis of the case relates to Entally Police Case No.235 dated 10.06.2014 under Section 304 of the Indian Penal Code which was registered for investigation pursuant to statement of one Tapasi Majhi (hereinafter referred to as complainant) being recorded by one Prasanta Bhowmick, Sub-Inspector of Police, Entally Police Station. The complainant stated that she is a house wife residing at room no.239 (1st floor) of “Jyoti Basu Sramik Abasan” at 6/1, Palmar Bazar Road, Kolkata-700 015 and her husband was an employee of Water Supply Department, Kolkata Municipal Corporation. They had a daughter aged about six years.

It has been contended that on 09.06.2014 in the evening hours the complainant's paternal grand father, namely, Kanai Chandra Kar, a resident of 1 Refugee Lane, Kolkata 700 012, P.S. Muchipara, came to her house at Palmar Bazar Road. At about 10.00 a.m. on 10.06.2014 when she was gossiping with her grand father at her home, Shibu Shaw/appellant came there searching for her brother Avijit Kar at her residence. The complainant contends that there was a long standing dispute between the appellant and Avijit Kar as there was an illicit

relationship between the wife of Shibu Shaw and her brother Avijit Kar. The complainant informed the accused Shibu Shaw that Avijit Kar was not present at her residence. At this the appellant became furious and uttered filthy languages and when her paternal grand father Kanai Chandra Kar raised objection and asked Shibu Shaw/appellant to leave as her husband was not present, then suddenly the appellant punched her grand father on his chest with his fist and pushed him on the floor. The complainant thereafter rushed towards her grand father when the appellant fled away. Her grand father thereafter complained chest pain and asked the complainant to take to his residence at 1 Regfugee Lane. As such, they boarded an auto rickshaw and got down in front of Sealdah Court where she met her aunty Renuka Das and both of them took Kanai Chandra Kar to his residence at 1 Refugee Lane. Later, health condition of Kanai Chandra Kar deteriorated and police was informed when on the point of jurisdiction they were referred to Entally Police Station. It has been stated that Kanai Chandra Kar/deceased was taken to NRS Medical College & Hospital where the doctor declared him as "brought dead". The complainant alleged that Kanai Chandra Kar died due to punch inflicted on his chest by Shibu Shaw/appellant.

The police authorities after registration of the case conducted investigation and on completion of investigation submitted

charge-sheet under Section 304 of the Indian Penal Code. The case being sessions triable, the learned ACJM, Sealdah committed the case to sessions court.

On consideration of the statement and documents relied upon by the prosecution and after affording the accused/appellant an opportunity of hearing, charge was framed under Section 304 of the Indian Penal Code. The prosecution in order prove its case relied upon 11 witnesses and number of documents which included statement of Tapasi Majhi (which was treated to be FIR), formal FIR, medical examination report, medical death report, inquest report, postmortem report and T.I.Parade report.

On an appreciation of the evidence, it is reflected that P.W. 3, Tapasi Majhi, who happened to be the complainant and at whose residence the incident took place consistently stated in the same manner as that was stated by her before the police officer in her statement which was treated to be the First Information Report of the case. The same narration of facts are also revealed from the medical report which is corroborated by P.W.4, Dr. Sagarika Bhattacharjee.

I have considered to this extent that so far as the issue of the accused/appellant being present at the residence of P.W.3, Tapasi

Majhi at the time of incident the same cannot be ruled out in view of the consistent documentary and oral version.

Mr. Sabir Ahmed, learned advocate appearing for the appellant submits that the veracity of the witnesses relied upon by the prosecution are questionable and their evidence cannot be relied upon to arrive at a conclusion of guilt so far as the present case is concerned. Mr. Ahmed has taken the court through the evidence of P.W.3 wherein, according to the learned advocate, there has been a deviation in respect of the fact of taking the deceased to the hospital directly or firstly to the house of the deceased and thereafter from there to N.R.S. Hospital. The appellant contends that purposely P.W.3 has manipulated the facts to her advantage and raised serious doubt regarding the acceptability of her version before the court. Additionally, learned advocate submits that there are no evidence from which it can be said that the appellant was present at the place of occurrence, as such, the scanty materials against the appellant do not make out a case for conviction. Thus, the judgment and order of conviction passed by the learned trial court be interfered with and the same should be set aside.

Mr. Sandip Chakraborty, learned advocate appearing for the State resists such contention of the appellant and submits that there are consistent version so far as the presence of the appellant is concerned

and his complicity in the offence is substantiated by both oral and documentary evidence. It has been submitted on behalf of the State that the FIR, the evidence of P.W.4, the contents of exhibit 2 and the deposition of P.W.3 in court if compared would lead any man of ordinary prudence to come to a conclusion that it was only the appellant who struck the fatal blow at the chest leading to the deceased's untimely death.

I have considered the evidence as a whole and I find that the prosecution has by way of cogent oral and documentary evidence succeeded in proving the offence under Section 304 of the Indian Penal Code. Accordingly, the order of conviction so passed by the learned trial court on 18.06.2018 need not be interfered with.

However, the appellant during the trial and pendency of the appeal has already suffered imprisonment for 1 year 8 months and 18 days. Having regard to the period of detention already suffered by the appellant, I am of the opinion that, for the act complained of, the sentence must be commensurate. Thus, the sentence is modified to the extent which has already been undergone and suffered by the appellant as stated above.

Accordingly, CRA 429 of 2018 is partly allowed.

Pending application, if any, is consequently disposed of.

Department is directed to send back the lower court records to the learned court below immediately.

Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all requisite formalities.

(Tirthankar Ghosh, J.)

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