

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

Before: Hon'ble Justice Sugato Majumdar

CRA 405 of 2013

**Kali Shankar Paul
Vs.
The State of West Bengal**

For the Appellant : **Mr. Debabrata Roy,
Mr. Avijit Addya,
Mr. Souvik Mondal.**

For the State : **Mr. Binoy Kumar Panda,
Mr. Pravash Bhattacharjee,
Mr. Subham Bhakat.**

Hearing concluded on : **12/07/2022**

Judgment on : **15/07/2022**

Sugato Majumdar, J.:-

The present appeal is preferred against the judgment dated 29/04/2013 and sentence dated 30/04/2013 passed by the Additional Sessions Judge, Second Court, Howrah in Sessions Trial Case No. XXIX (7) OF 1996 connected to Jagacha P.S. Case No. 22 of 1980 dated 30/01/1980, by which the present appellant was convicted under Section 304 Part II of the Indian Penal Code.

In nutshell, the case is that the appellant came to his home at Balitikuri Karati Bagan under Jagacha Police Station carrying his service revolver with him on 30/01/1980. He went at 08:00 P.M. to Baliti kuri Netaji Sangha Club and began to play carom with the members. One of the members requested him to show his service revolver. While showing the service revolver, he was in the process of unloading the bullets. At that time one bullet went off causing injury on the chest of a member of the club Srijan Banerjee who subsequently died on 31/01/1980.

Investigation was initiated on the basis of First Information Report. On completion of investigation, charge sheet was submitted against the present Petitioner under Section 338/304A of the Indian Penal Code. In Sessions Trial charges were framed under Section 304 Part II of the IPC read with Section 36 of the Arms Act. The appellant pleaded not guilty hence trial began.

Defense of the Appellant all throughout was accident. While examined under section 313 of the Code of Criminal Procedure, 1973, the appellant stated that a boy took out the revolver and fired for which the victim sustained fatal injury.

The Trial Court found the appellant guilty of offence punishable under Section 304 Part II of the Indian Penal Code. He was sentenced to suffer rigorous imprisonment for five years and also fine of Rs.5,000 in case of default of which a further imprisonment for one year.

Aggrieved by the impugned judgment and order, the instant appeal is preferred.

Mr. Roy appearing for the appellant submitted that convincing and cogent evidences are there in the record to establish that the alleged incident was nothing but an accident. Material evidences, if properly appreciated, who lead to one unequivocal conclusion that the alleged incident was nothing but an accident. For more than forty years the appellant has been subjected to harassment, prejudice and unwarranted burden of prosecution. He further submitted that when two views are possible one favoring the accused should be adopted. The Trial Court committed error in appreciating material evidences and coming to the conclusion. On that ground, according to him, the impugned judgment and order should be set aside.

Mr. Pravash Bhattacharjee appearing for the State submitted that statement of eyewitnesses clearly established that there was a negligence on the part of the appellant. Appellant was negligent because he carried the

loaded revolver inside a crowded club room and handled it negligently. More so, it was his service revolver and the appellant is a person of experience in handling such fire arms. Had he not been negligent, he would not show the revolver to satisfy unwanted curiosities. According to him, the Trial Court came to a correct conclusion in convicting the appellant.

I have heard rival submissions.

P.W. 1 who was present at the place of occurrence stated in evidence that the appellant was carrying the fire arms in his waist. One of the members asked him to misfire. Thereafter, he heard a sound and Srijan Banerjee fell down. The evidence is not very specific on the point that the appellant fired or the particular fire arms was in hand of the appellant at that moment. In cross-examination he stated that one boy took out the revolver from the waist of the appellant and began to examine the same. At that time trigger was pulled by the boy and the victim sustained injury.

P.W. 2 who was also present on the spot stated that the appellant fired mistakenly. In cross-examination he stated that the appellant was about to taking out only cartridges from the revolver. When he unloaded $\frac{3}{4}$ of the cartridges, one suddenly went out of the revolver causing the casualty. He denied suggestions that misfire took place while a revolver examining by the other boys.

P.W. 3 stated in examination-in-chief that the appellant was unloading cartridges in presence of the member of the club. All of a sudden, he heard a deep sound. In cross-examination he stated that he could not say how firing took place but he heard sound only. So, evidence of P.W.3 is not help.

P.W. 4 stated examination-in-chief that on being requested by the members, the appellant misfired. In cross-examination he stated that it was an accident.

Statements of witnesses reveal number of possibilities. One is that the alleged act of firing was done by a boy who took out the revolver from the appellant. The appellant himself stated this in his examination under section 313 of the Code of Criminal Procedure, 1973. The other possibility is that the accused himself misfired on request of one or other members of the club. The third one is that while unloading the bullets from the revolver, trigger was accidentally pulled causing misfire.

When evidences are contradictory and ambiguous not corroborating each other, clouds of doubts obscure the truth in such circumstances. Such evidences are hardly reliable. It is now a well-settled principle of law that if two views are possible, the one in favour of the accused and the other adversely against it, the view favouring the accused must be accepted [***Raghunath Vs. State of Haryana, (2003) 1 SCC 398***].

It is evident that the Trial Court while appreciating evidences failed to notice the contradictions and ambiguity in evidences and came to erred conclusion. Therefore, it is a fit case that the order of conviction and sentence should be set aside.

Accordingly, the impugned judgment dated 29/04/2013 and sentence dated 30/04/2013 passed by the Additional Sessions Judge, Second Court, Howrah in Sessions Trial Case No. XXIX (7) OF 1996 connected to Jagacha P.S. Case No. 22 of 1980 dated 30/01/1980 is hereby set aside.

The appellant is set at liberty and he is also discharged from bail bond.

Let a copy of this order along with the lower court record be set back to the trial court.

(Sugato Majumdar, J.)