

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. 511 of 2016

CRAN 2 of 2022

Md. Entaj Ali @ Intaj Ali & Anr.

Vs.

State of West Bengal

For the appellant No. 1: Kazi Safiullah, Adv.

For the appellant No. 2: Ms. Sreyashee Biswas, Adv.

For the State : Mr. Partha Pratim Das, Adv.
Ms. Amita Gaur, Adv.

Heard on : 05.12.2022

Judgment on : 05.12.2022

Joymalya Bagchi, J.:-

1. The appeal is directed against judgment and order dated 27.6.2016 and 28.6.2016 passed by the learned Additional Sessions Judge, Fast Track Fast Court Malda in Sessions Case No.91 of 2013, Sessions Trial no. 09 (04)/2013 convicting the appellants for commission of offence punishable under Sections 302/34 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for life and to pay fine of

Rs. 5,000/- each, in default to suffer rigorous imprisonment for one year more.

2. Prosecution case, as alleged, against the appellants and co-accuseds is to the effect that on 9.7.2012 a dispute cropped up between the family of Majidan Bewa (PW1) and that of the appellants regarding a goat. On 10.7.2012 at 8 am a 'salish' was held to resolve the dispute. Appellants and their family members attended the 'salish'. Subsequently, they attacked the house of PW1. Hasumudin, husband of PW1 was dragged in front of the courtyard and was assaulted with 'bhojali' on his head, face and belly resulting in bleeding injuries. He fell down on the ground and became senseless. PW1 was also physically assaulted. Hasimuddin was taken to Manickchak Gramin Hospital and thereafter to Malda Medical College Hospital. PW1 lodged written complaint resulting in registration of Manikchak PS Case no. 186 of 2012 dated 10.7.2012 under sections 448/326/307/354/34 IPC against the appellants and five others. At night Hasimuddin died in the hospital and section 302 IPC was added to the FIR.

3. In the course of investigation, appellants were arrested. As per leading statement of Md. Entaj a 'bhojali' was recovered. Charge sheet was filed and charges were framed against the appellants and three co-accuseds under sections 147/ 148/ 448/149/354/149 and 302/149 IPC.

4. Appellants pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined 10 witnesses and exhibited a number

of documents. Upon consent, post mortem report was exhibited under section 294 Cr.P.C.

5. Defence of the accused persons were one of innocence and false implication. It was their specific defence that Hasimuddin and his family members were aggressors. They assaulted the appellants and their family members. As a result, co-accused Md. Morid (father of the appellants) suffered injuries. A separate criminal case being GR case no. 3268/12 was registered wherein it is alleged Hasimuddin (the deceased herein), threatened Md. Morid. Thereafter, his son Md. Khaisul assaulted him with 'hasua'.

6. In conclusion of trial, the learned Judge by the impugned judgment and order convicted and sentenced the appellants, as aforesaid. However, he acquitted the co-accuseds including Md. Morid of the charges levelled against them.

7. Mr. Safiullah for the first appellant Md. Entaj Ali argues vital witnesses have not been examined. None of the persons present during 'salish' have been examined. Scribe to the FIR has also not been examined. PW1 suppressed the genesis of the incident. She is silent with regard to assault on Md. Morid. Explanation of PW 6 with regard to injury on Md. Morid due to throwing of brickbats by Md. Sabdul is inherently improbable. Place of occurrence has not been fixed. While PW1 stated incident occurred in front of the courtyard of her house, PW6 claimed it occurred in the courtyard of the accuseds. Injury report was not collected

from the hospital. Post mortem doctor has not been examined. Hence, cause of death is not proved. Accordingly, he prays for acquittal.

8. Ms. Biswas for the second appellant Md Sabdul submits PW1 did not ascribe any overt act to Md. Sabdul. He stands on the same footing with acquitted accuseds. No recovery was made from her client. In addition, she adopts the submission of Mr. Safiullah that the prosecution case has not been proved beyond doubt.

9. In reply, Mr. Das with Ms. Gaur for the State submits PW1 and PW6, eye-witnesses of the incident, are reliable. They were present at the place of occurrence and have implicated the appellants in the assault of Hasimuddin. Post mortem report shows injuries on the back, head and abdomen of the deceased corroborating their ocular version. Non-examination of other witnesses does not affect the unfolding of the prosecution case. Injury on Md. Morid has been explained by PW6. Hence, prosecution case is proved beyond doubt.

10. PWs 1 and 6 are the eye-witnesses.

11. PW1 Majidan Bewa is the wife of Hasimuddin, the deceased. She deposed dispute occurred between her husband and the accused persons over a goat. A 'salish' was held in front of her house. Accused persons attended the 'salish'. In the meantime, her husband had returned home. Accused persons assaulted her husband. Entaj assaulted her husband with 'bhojali' on the stomach and head. Other accuseds also assaulted him. Her husband fell down at the spot. He was taken to Manickchak PHC

and thereafter to Malda Medical College Hospital. She lodged written complaint.

12. PW6 Roushan Bibi is the daughter-in-law. She deposed there was a 'salish' in the house of Tarjun, a co-accused. Accuseds were directed to settle the matter amicably. In the meantime Hasimuddin returned home. A hot altercation broke up between him and Tarjun. Sabdul threw bricks at PW1 who sustained injury. Co-accused Morid also sustained injury due to throwing of bricks. Hasimuddin was forcibly brought out in the courtyard in front of the house of the accused. Entaj assaulted Hasimuddin with 'bhojali' on the back, face and stomach. Md. Sabdul assaulted him with 'hasua' on backside of waist. He suffered bleeding injuries. He was taken to hospital. He died at night. She made statement before the Magistrate.

13. PW2 Md Samser is a post occurrence witness. Hearing hue and cry, he came to the spot. He found Hasimuddin lying with bleeding injuries. He heard Sabdul, Entaj and his family members had killed Hasimuddin. Hasimuddin was taken to hospital where he expired at night.

14. PWs 5 and 7 also saw Hasimuddin lying in front of the house of the accused persons with bleeding injuries.

15. PWs 9 and 10 are the police officers.

16. PW10 Gour Ch. Dey is the Investigating Officer. Upon receipt of complaint from PW 1, he drew up formal FIR. He visited the place of occurrence. He prepared rough sketch map along with index. He seized blood stained mud, lathis and brickbats from the place of occurrence. As

per statement of Md. Entaj he seized iron 'bhojali' from his house. He collected post mortem report.

17. PW 9 Debdulal Biswas was posted as Sub-Inspector at English Bazar P.S. He held inquest over the body of the deceased at Malda Medical College Hospital. He proved the inquest report.

18. Learned counsels for the appellants have strongly contended place of occurrence has not been established. While PW1 claimed incident occurred in front of her house, PW 6 and other witnesses stated it occurred in front of the house of the accused persons. Ocular version of the aforesaid witnesses with regard to place of occurrence requires to be examined in the backdrop of documentary evidence namely sketch map prepared by IO (Ext 6). The sketch map shows the place of occurrence i.e. courtyard is situated between the houses of PW1 and the first appellant Entaj. Hence, place of occurrence has been interchangeably described as the courtyard of PW 1 or of the accused persons.

19. Credibility of PWs 1 and 6 has been challenged on the ground that they are relations of the deceased. Merely because a witness is a relation of the deceased, her evidence ought not to be discarded. A relation would not falsely implicate a person in the death of her near one to screen the real offender. That apart, PWs 1 and 6 are the wife and daughter-in-law of the deceased. They are the most natural witnesses who were present in the house when the incident occurred. They remained unshaken during cross-examination. Thus, I am of the opinion, PWs 1 and 6 were present at

the place of occurrence when Hasimuddin was murdered and are the most probable witnesses.

20. It has been argued these witnesses did not come out with the genesis of the incident. PW 1 was silent with regard to injury on Md Morid, a co-accused while explanation of PW 6 with regard to his injury is unconvincing.

21. From the evidence on record it appears Md. Morid had suffered injury in the course of the incident. A counter case being GR 3268/12 was registered which was tried with the present case. From the materials on record it appears immediately after the 'salish' there was a free fight between the parties and Md. Morid had suffered injury in the course of the fight.

22. The aforesaid circumstances, even if true, do not render the version of PWs 5 and 6 with regard to grave injuries suffered by Hasimuddin at the behest of the appellants improbable. Moreover, deposition of the aforesaid eye-witnesses with regard to assault on Hasimuddin by the appellants is corroborated by post-occurrence witnesses like PWs 2, 5 and 7. Hearing hue and cry these witnesses came to the spot and found Hasimuddin lying with grave injuries on his body. PW 2 was informed that the appellants and their family members had caused the injuries.

23. Post mortem report of the deceased shows sharp cutting injuries on the back, head and stomach of the deceased. Cause of death has been

stated to be multiple stab injuries, ante mortem and homicidal in nature. This corroborates the ocular version of PWs 1 and 6.

24. Incident occurred after the 'salish' had been concluded. It is unclear whether 'salish' members were present when Hasimuddin was assaulted. Hence, non-examination of the witnesses to the 'salish' or the scribe does not affect the unfolding of the prosecution case.

25. However, there are ample evidence on record that the incident occurred in the course of a free fight between relations, i.e., appellants on one hand and Hasimuddin and his family members on the other hand. In the course of the quarrel, both the sides suffered injuries. While deceased was assaulted by the appellants with 'hasua' and 'bhojali' on the head, back and stomach, resulting in his death. Md. Morid (father of the appellants) also suffered injuries.

26. These circumstances attract the fifth exception to section 300 IPC and the conviction of the appellants is liable to be converted from section 302 IPC to section 304 Part I of IPC.

27. Accordingly, I convert conviction of the appellants to section 304 Part I of IPC.

28. With regard to the sentence, I note appellants and deceased are related. Incident occurred in the course of a sudden quarrel. Appellants had no criminal antecedents. But, they used sharp cutting weapons and caused serious injuries on the vital parts of the body of the deceased.

29. Balancing the aforesaid aggravating and mitigating circumstances, I hold it would enure to the interest of justice if appellants

are directed to suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 5000/- each, in default, to suffer imprisonment for 1 year more.

30. With the aforesaid modifications, appeal is disposed of.

31. Period of detention suffered by the appellants 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.

32. Bail Bond of appellant no. 2 Md. Sabdul is cancelled and he is directed to forthwith surrender before the trial Court and serve out the remainder of the sentence, failing which the trial Court shall issue appropriate process to execute the sentence in accordance with law.

33. In view of disposal of the appeal, connected applications, if any, also stand disposed of.

34. 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.

35. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)