

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

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ananya Bandyopadhyay

***C.R.A. 652 of 2019
with
CRAN 1 of 2022***

**Raju Mallick @ Jahiruddin
-Vs-
The State of West Bengal**

For the Appellant : Mr. Jayanta Kumar Pain, Adv.

For the State : Ms. Zareen N. Khan, Adv.
Mr. Ashok Das, Adv.

Heard on : 11th August, 2022

Judgment on : 11th August, 2022

Joymalya Bagchi, J. :-

Rahila Khatoon (P.W. 2) was in love with one Sesad Mallick. On 25th Magh at 3:00 p.m. his friend Raju @ Jahiruddin Mallick (appellant herein) informed Rahila that Sesad wanted to meet her in the Chawbera field. Accordingly, Rahila met Sesad who told her to bring money so that they could elope. Rahila went to her house and brought Rs. 20,000/-, one gold ring, gold chain and two gold bangles. She again went to the field and handed over the valuables to Sesad. At that time,

appellant tied her hand and Sesad took out a knife and cut her neck. As a result, she suffered bleeding injuries. The miscreants left the spot stating that she would die. She untied her hand and went to the house of a nearby villager Sagar Hembram (P.W. 5). She requested him to inform her family members over mobile phone. Her brother, Nabur Mallick (P.W. 1) received the information and reached the place of occurrence. Rahila was shifted to Pandua Hospital and thereafter to Chinsurah Sadar Hospital. She was admitted for 16 days. P.W. 1 lodged written complaint against the appellant, Sesad Mallick and one Ajgar Mallick (father of Sesad Mallick) and Jamshed Mallick (father of Raju Mallick).

In conclusion of investigation, charge-sheet was filed. As Sesad Mallick absconded, charges were framed against the appellant and one Ajgar and Jamshed under sections 341, 326, 307, 120B of the Indian Penal Code.

In the course of trial, prosecution examined eight witnesses and exhibited a number of documents. Defence of the appellant is one of innocence and false implication.

In conclusion of trial, trial Judge by the impugned judgment and order dated 01.07.2019 and 02.07.2019 convicted the appellant for commission of offence punishable under section 341, 324, 307 read with section 34 IPC and sentenced him to suffer simple imprisonment for 15 days and pay a fine of Rs. 500/-, in default, to suffer simple

imprisonment of 5 days for the offence punishable under section 341 IPC, to suffer rigorous imprisonment for three years and to pay a fine of Rs. 1,000/-, in default, to suffer simple imprisonment for one month for the offence punishable under section 324 IPC and to suffer rigorous imprisonment for ten years and to pay a fine of Rs. 6,000/-, in default, to suffer further simple imprisonment for three months for the offence punishable under section 307 IPC. All the sentences to run concurrently. 80 per cent of the fine amount, if realized, shall be awarded to the victim Rahila Khatoon (P.W. 2) as compensation under Section 357 of the Code of Criminal Procedure. By the self-same judgment and order, co-accused Ajgar and Jamshed were acquitted.

Mr. Pain, learned Advocate for the appellant submitted his client has been falsely implicated out of suspicion. Although the incident occurred in the evening in an open field, there is no independent eye-witness. P.W. 8, Ashim Mondal, stated the victim did not mention the name of the appellant to the treating doctor. Hence, the appellant is entitled to an order of acquittal.

Ms. Khan with Mr. Das, learned Counsel for the State submitted P.W. 2, the injured victim graphically disclosed the role of the appellant in the crime. Appellant was a friend of Sesad. He called the victim to the spot. He tied the hands of the victim when Sesad assaulted her with a knife. Her deposition is corroborated by other evidence on record

including medical evidence (P.W. 7). Hence, the appeal is liable to be dismissed.

P.W. 2, Rahila Khatoon, is the injured witness. She had a love affair with Sesad. She deposed on 25th Magh at 3:00 p.m. Raju met her in a field at Chawbera village and told her to meet Sesad. Sesad told her to bring money so that they could elope. She went to her house and brought Rs. 20,000/-, one gold ring, gold chain and two gold bangles. Then they went to the field where she handed over the valuables to Sesad. At that stage, Raju tied her hand with a rope and Sesad took out a knife and cut her throat. She sustained bleeding injuries. Miscreants left the spot laughing saying that she had already died. She untied her hand and went to the house of a nearby villager, Sagar Hembram (P.W. 5) and told him to inform her family members through mobile phone. Thereafter, she became senseless. She was treated at Chinsurah Sadar Hospital. She was admitted for 16 days. She made statement before Magistrate. In cross-examination, she stated she disclosed the names of the persons who assaulted her in the hospital.

Nabur Mallick (P.W. 1) is the brother of the victim. He deposed his sister Rahila had a love affair with Sesad Mallick. His parents were not agreeable to the relationship. One day Rahila went to the field. The couple had planned to elope with the assistance of the appellant who is a friend of Sesad. Incident took place beside the bank of a river near village Chawbera. A local villager, namely, Sarada Hembram phoned

and informed him about the incident. He rushed to the spot and found his sister lying unconscious. She was taken to Pandua Hospital and then admitted at Chinsurah Sadar Hospital for 16 days. He lodged FIR.

P.W. 4, Sabu Mallick, is another brother of Rahela. He was not present at the place of occurrence. After hearing the news, he reached the spot and saw Rahila lying in village Chawbera in bleeding condition. He took her to Pandua Hospital and thereafter to Chinsurah Sadar Hospital.

P.W. 5, Sagar Hembram, is a resident of Chawbera village. He stated a woman bleeding profusely from lower portion of her face came to his house. She told him to inform her family members through mobile phone. He informed her family members. They came and took away the victim.

P.W. 6, Rakib Mallick, is the Pradhan of the village. He stated there was a love affair between Sesad and Rahila. He had accompanied to the victim to the hospital. Rahila had stated that she had been called by Raju. When she came to the spot, her hands were tied and Sesad stabbed her on the neck.

P.W. 7, Dr. Avijit Mishra, is the medical officer who examined Rahila at Chinsurah Sadar Hospital. He found multiple injuries at least three sharp cut wounds crossing each other from left side of the neck and ending at posterior aspect of neck. There was beveling of margins on the left side and anterior aspect of the wound at back of the neck. It

was almost vertical. Both sternomastoids muscles are cut. He proved the injury report. He also stated if no treatment was available, such injury may cause death of the victim.

P.W. 8, Ashim Mondal, is the investigating officer. He drew a formal FIR. He prepared draft sketch map of the place of occurrence. He examined witnesses. He arrested the appellant, Ajar Mallick, Jahiruddin Mallick and forwarded them to the Court. He forwarded victim girl for recording her statement under section 164 Cr.P.C. which was marked as Exhibit-6. He submitted charge-sheet.

Version of P.W. 2 clearly discloses the role of the appellant in the crime. She stated appellant was a friend of Sesad. She had a love affair with Sesad. Appellant was his friend. On the fateful day, appellant requested her to meet Sesad. She met Sesad in a field near Chawbera village whereupon the latter told her to bring money so that they could elope. She brought money and valuables from her home and they came to the same spot. She handed over the valuables to Sesad. Thereupon, the appellant tied her hands and Sesad struck her with a knife on her neck. She somehow survived and informed the incident to a local villager, namely, Sagar Hembram (P.W. 5). Her family members were informed. Her brothers, P.Ws. 1 and 4 came to the spot. She was taken to Pandua Hospital and thereafter to Chinsurah Sadar Hospital. She was treated for 16 days. Her version is corroborated by the local villager (P.W. 5) and brothers, P.Ws. 1 and 4. P.W. 7, Dr. Avijit Mishra,

medical officer examined the victim at Chinsurah Sadar Hospital and found three deep sharp cutting injuries on her neck. He opined if the injuries not treated, would have caused death.

The aforesaid evidence on record leaves no doubt in my mind that the victim had been stabbed in the neck by Sesad with the assistance of the appellant. As the incident occurred in an empty field there was no other eye-witness to the incident. However, her version is corroborated by a local villager, namely, Sagar Hembram (P.W. 5) in whose house the victim took refuge after the incident. Referring to the version of P.W. 6, learned Counsel for the appellant argued the victim had not taken the name of the appellant in hospital. I find little substance in such argument.

In cross-examination, P.W. 2 stated she disclosed the names of the persons who assaulted her in hospital. P.W. 6 stated victim told the doctor she was tied by a rope and Sesad assaulted her. This substantially corroborates P.W. 2 with regard to the appellant tying her hands when Sesad assaulted her. During investigation, statement of P.W. 2 was recorded before Magistrate under section 164 Cr.P.C. (Exhibit-6). In the said statement P.W. 2 has clearly depicted the role of the appellant in assisting Sesad to assault her. Hence, I am of the opinion there is no lacunae in the prosecution case with regard to the role played by the appellant in the crime.

Accordingly, I am of the opinion prosecution case against the appellant is proved beyond doubt.

In the light of the aforesaid discussion, I uphold the conviction and sentence imposed upon the appellant.

Appeal is accordingly dismissed. In view of disposal of the appeal, connected application being CRAN 1 of 2022 is disposed of.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon him in terms of section 428 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.

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

I agree.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)