

**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. 637 of 2016**  
**CRAN 2 of 2021**

***Narayan Mondal @ Naru Mondal***  
**-Vs-**  
***State of West Bengal***

**For the Appellant:** Mr. Jayanta Samanta, Adv.

**For the State :** Mr. Saswata Gopal Mukherjee .. Ld. Public Prosecutor  
Mr. Parthapratim Das, Adv.  
Mrs. Manasi Roy, Adv.

**Heard on :** 25.02.2022

**Judgment on :** 25.02.2022

**Joymalya Bagchi, J. :-**

With the consent of the parties, the appeal is taken up for hearing.

The appeal is directed against judgment and order dated 26.07.2016 and 27.07.2016 passed by the learned Additional District & Sessions Judge, Special Court, Balurghat, Dakshin Dinajpur in Sessions Trial No. 84 of 2010 arising out of Sessions Case No. 284 of 2010 convicting the appellant for commission of offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for

life and to pay a fine of Rs.1,00,000/-, in default, to suffer further imprisonment for two years more.

The prosecution case as alleged against the appellant is to the effect that on 02.04.2010 at night, Kartick Mondal was sleeping in the varendah of his house with his wife namely, Rubi Mondal (PW 1). Appellant, who is the brother of Kartick, suddenly attacked him with a *ramda*. Hearing his groaning sound, Rubi woke up and saw the incident in the light of a battery charged lamp. Appellant fled away from the spot. On the written complaint of Rubi Mondal (PW 1), Tapan Police Station Case No. 70 of 2010 dated 02.04.2010 under Section 302 of the Indian Penal Code was registered for investigation. In the course of investigation, appellant was arrested. Battery charged lamp and blood stained mosquito net were seized. Upon collecting post-mortem report, charge-sheet was filed. Charge was framed against the appellant under Section 302 IPC. Appellant pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined 10 witnesses and exhibited a number of documents. Defence of the appellant was one of innocence and false implication. It was his specific defence that Kartick had been murdered by some other person and he was falsely implicated. He, however, did not adduce defence evidence to probabilise such plea. In conclusion of trial, the learned trial Judge by the judgment and order dated 26.07.2016 and 27.07.2016 convicted and sentenced the appellant, as aforesaid.

Mr. Jayanta Samanta, learned Advocate, appearing on behalf of the appellant submits the eyewitnesses are not reliable. It is doubtful whether

PW 1 was sleeping with her husband in the verandah. Presence of light at the place of occurrence has also not been proved. Evidence of the daughter of the deceased (PW 2) who was sleeping inside the room also suffers from various improbabilities. She was sleeping inside the room and could not have seen the incident. Presence of PWs. 3 and 4 at the place of occurrence is most doubtful. Their presence at place of occurrence is not noted in the FIR and PW 4 in cross-examination claimed he was hospitalised in the morning due to assault by the appellant. Motive to commit the crime has not been proved. On the other hand, evidence has come on record deceased had inimical relationship with one Ganga Gain and the latter had filed a criminal case against the deceased. Ocular version of the eyewitnesses is not supported by medical evidence. Post-mortem doctor found extensive incised as well as lacerated injuries on the body of the deceased. This improbabilises assault by a single person. Blood stained earth collected from the place of occurrence was not sent for FSL examination. There is delay in seizure of the lamp as well as mosquito net. Hence, manner and circumstance in which the murder took place has not been proved. Accordingly, appellant is entitled to benefit of doubt.

Per contra, Mr. Parthapratim Das, learned Advocate, appearing for the State submits that wife of the deceased (PW 1) has graphically narrated the brutal assault upon her husband by the appellant. She saw the incident in the light of a battery charged lamp. Her version is corroborated by her daughter (PW 2) and other family members i.e. her sister-in-law (PW 3) and brother-in-law (PW 4). Local people including PW 5 rushed to the spot and

heard the incident from PW 1. PW 1 stated that the appellant was hitting the victim with a *ramda* which gives an impression of multiple strikes. Post-mortem doctor (PW 9) stated blunt as well as incised injuries on the deceased may be caused by a *ramda*. Thus, ocular version is corroborated by the medical evidence on record. Hence, the prosecution case is proved beyond doubt and the appeal is liable to be dismissed.

PW 1 (Rubi Mondal) is the wife of the deceased. She is also the informant. On the fateful night, she was sleeping with her husband in the verandah. She woke up hearing a groaning sound and found the appellant hitting her husband with a *ramda*. She saw the appellant in the light of a battery charged lamp. Appellant ran away. At that time her daughter (PW 2) and other relations namely, brother-in-law (PW 4) and sister-in-law (PW 3) were sleeping inside the house. They also came out. She lodged FIR which was scribed by PW 8. She signed on the inquest report. She was also a witness to the seizure of the battery charged lamp as well as one mosquito net.

In cross-examination, she denied the suggestion that she was sleeping in the room with her daughter. She admitted one Ganga Gain had lodged criminal case against her husband as well as the appellant. She stated her mother-in-law had not given any property to her husband. They were not allowed to stay in the house of her mother-in-law. Hence, her husband was residing separately.

Her deposition is corroborated by her daughter namely, Alpana Mondol (PW 2) who stated around 12:30 at night, she heard groaning of her

father. She woke up and saw her father had been assaulted on the head with a sharp weapon and the appellant was fleeing away from the spot. Local people arrived at the spot. She made statement before the Magistrate. She was a signatory to the seizure list prepared in connection with the seizure of blood stained earth from the place of occurrence, lamp and mosquito net.

In cross-examination, she stated that door of the room was open. She also stated that they had good relations with her paternal grandmother as well as Narayan Mondal.

PW 4 (Rabi Mondal) is the brother of the deceased while PW 3 (Purnima Mondal) is his wife. Both of them had come to the residence of the deceased and was staying there in the night. They slept inside the room along with PW 2, daughter of the deceased. They deposed on hearing hue and cry they came out and saw the appellant assaulting Kartick Mondal. Thereafter, appellant fled away. Local people came to the spot.

PW 3 made a statement before the Magistrate. In cross-examination, she stated such statement was made 14 days after the incident. She also stated her husband had good relationship with the appellant.

PW 5 (Taslim Sarkar) is a neighbour who is a post-occurrence witness. He found the appellant lying in the verandah with bleeding conditions. At that time younger brother, daughter and wife of the deceased were present. Daughter of the deceased stated that appellant had murdered him.

PW 7 (Sanatan Mondal) is a nephew of the deceased. He used to stay at Kardahakatabari. He deposed PW 3 telephoned him and informed the incident. He came to the place of occurrence and found the victim was lying on the verandah with bleeding injury. He heard the appellant had murdered the deceased and had run away. He also saw his youngest uncle namely, Rabi Mondal at the place of occurrence.

These are the witnesses of fact. It is argued evidence of PW 1 is unreliable. She was inside the room and could not have seen the incident. I am unable to accept such contention. PW 1 categorically stated she was sleeping in the verandah with her husband while her daughter (PW 2) and the guests to the house namely, her brother-in-law and sister-in-law were occupying the room. Reference has been made with regard to the deposition of PW 4, brother-in-law of the deceased that PW 1 was sleeping with them in the room and not in the verandah. This fact, however, is not corroborated by other witnesses, namely, PW 2 and 3. Both of them stated PW 1 was sleeping with her husband in the verandah. Hence, I do not give credence to the stray observation of PW 4 which is clearly ruled out by the deposition of his own wife (PW 3) and daughter of the deceased (PW 2). Hence, presence of PW 1 by the side of the deceased is clearly established.

It is further contended PW 1 could not have seen the incident at night. It is improbable the lamp would be kept burning while they were asleep. Evidence has come on record the battery charged lamp was kept burning at night. PW 2, daughter of the deceased, proved such fact. As the couple was sleeping in the verandah and there was no boundary wall

around the house, it is most natural for security purposes the lamp was kept burning at night while the couple slept. I do not find anything unnatural in such conduct. Hence, source of light at the place of occurrence is duly proved.

It is also to be borne in mind that the appellant was none other than the own brother of the deceased. PW 1 was fully acquainted with him and had the opportunity of seeing him at very close quarters at the time of occurrence since she was sleeping in the same bed with her husband when the assault occurred. Identification of the appellant by PW 1 in the light of the lamp is most probable and does not cast any doubt on the prosecution case.

That apart, other witnesses who were present at the place of occurrence have substantially corroborated the prosecution case. They are the daughter of the deceased (PW 2), his brother (PW 4) and sister-in-law (PW 3). All of them were sleeping inside the room. Hearing groaning sound they came out and saw the appellant assaulting the deceased and thereafter running away from the spot.

It has been argued presence of PWs. 3 and 4 at the place of occurrence is doubtful. Their presence is not noted in the FIR and PW 4 claimed he had been assaulted in the morning by the appellant and had been admitted to hospital.

FIR is not an encyclopaedia of facts. Hence, failure to mention presence of PWs. 3 and 4 in the house at the time of occurrence cannot be said to be fatal.

On the other hand, not only PWs. 1 and 2 but a neighbour (PW 5) also noted the presence of brother of the deceased (PW4) at the spot soon after the incident. PW 7, nephew of the deceased, deposed his aunt (PW 3) telephoned and informed him about the incident. He rushed to the residence of the deceased and found his uncle (PW 4) at the spot. These evidence clearly establish the presence of PWs. 3 and 4 at the place of occurrence on the fateful night.

It is true during cross-examination PW 4 deposed that he had been assaulted by the appellant and was hospitalized in the morning. However, claim of PW 4 that he was hospitalized appears to be false and a desperate effort on his part to protect the appellant who is also his brother. His wife, PW 3, has not supported her husband with regard to hospitalisation. Neither any document relating to hospitalization has been placed on record in support of such plea. Thus, I am of the opinion if the evidence of PWs. 3 and 4, is taken as a whole and read in the backdrop of other materials on record, there can be no doubt in one's mind that they were present in the house of the deceased in the night of occurrence.

It is also argued that statements of PW 3 was recorded before the Magistrate after 14 days. Incident was graphically narrated by PW 1 in the FIR which had been promptly lodged. PW 2 is the daughter of the deceased and her presence at the place of occurrence is most natural. Thus, delay in recording statements of PW 2 and PW 3 (sister-in-law of the deceased) before the Magistrate is a remissness in investigation and does not affect the intrinsic truth of their depositions in court. It may not be out of place to

note that the depositions of the aforesaid witnesses in court are substantially corroborated with their earlier statements before Magistrate.

It is also argued there is delay in seizure of lamp and mosquito net. Blood stained earth from the place of occurrence was not sent for FSL examination. In view of the clear and convincing depositions of the eyewitnesses particularly the wife and the daughter of the deceased, I am of the opinion failure of the Investigating Agency to make prompt seizure or dispatch blood stained earth for FSL examination does not affect the unfolding of the case. Furthermore, as the prosecution case is clearly established through eyewitness version of PWs. 1 and 2 which is substantially corroborated by other evidence on record including medical evidence, failure to seize the weapon of offence does not affect its credibility of the prosecution case.

It has been strenuously argued manner of assault as narrated by the eyewitnesses does not find corroboration from medical evidence.

PW 9 (Dr. Jnanprakas Bandyopadhyay) found the following injuries on the deceased :

- 1) *Abrasion over (a) right side of neck 3" x 2" x ¼", (b) angle of right jaw 1" x ½" (c) front of right knee ½" x ½" (d) dorsum of left wrist 1" x ½";*
- 2) *Lacerated wound – right side of forehead 1" x ½" x bone with cut fracture ½" x ¼" over corresponding frontal bone;*
- 3) *Lacerated wound over right side of mastoid region 1" x ½" x bone with cut fracture ½" x ¼" over mastoid process of right temporal bone;*

- 4) *Lacerated wound vault of scalp measuring 3" x ¼" x subcutaneous tissue over right parietal bone with linear fracture 3" long over right parietal bone;*
- 5) *Incised chop wound 2" x ½" x bone over left parietal bone;*
- 6) *Fracture – right side of jaw bone with extravasation;*
- 7) *Subdural hemorrhage all over the brain (both cerebral hemisphere)*

He deposed injuries were caused by moderately heavy, sharp and blunt weapon. He opined death was due to effect of injuries ante mortem and homicidal in nature.

In cross-examination, he admitted such injuries cannot be caused by one stroke of a single weapon but due to multiple strikes. He, however, denied the suggestion such injuries may not be caused by sharp and blunt weapon like *ramda*.

It is settled law only when ocular version of witnesses is wholly contradicted by the opinion evidence of a doctor, the ocular version is to be disbelieved and the prosecution case thrown out. Such is not the situation in the present case. PW 1 and other eyewitnesses stated they saw the appellant striking the victim with *ramda*. It is nobody's case that the appellant dealt a single blow. Hence, I am of the opinion eyewitnesses' version in the case is substantially corroborated by medical evidence on record.

Finally, it is argued PW 2 did not support her mother (PW 1) with regard to motive to commit the crime. PW 1 stated there was enmity in the family as her mother-in-law had deprived her husband and gifted her properties to other sons including the appellant. They were not allowed to

stay in the same house and were residing separately. PW 2, however, claimed there was good relationship with her paternal grandmother. PW 2 was a young girl and may not have been aware of the internal tensions arising out of unequal distribution of properties between her father and uncles. Hence, I am of the opinion evidence of PW 2 does not render the version of PW 1 with regard to enmity between the brothers over distribution of property absurd or inherently improbable. That apart, when prosecution case is proved beyond doubt through the evidence of eyewitnesses, failure to prove motive would not render the case improbable.

On the other hand, suggestion by the appellant that the victim may have been murdered by an outsider appears to be farfetched one. Referring to the evidence on record that one Ganga Gain had lodged a criminal case against the deceased, it is argued that the latter had enemies and could have done away by them. Neither during cross-examination nor by leading defence evidence appellant was able to probabalise this defence. Mere registration of criminal case against the deceased by Ganga Gain cannot lead to an irresistible inference that he would intend to kill him. Thus, I am of the opinion defence plea with regard to murder by an outsider is clearly a figment of imagination which was desperately resorted to by the appellant to save his own skin.

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

The appeal is accordingly, dismissed.

In view of dismissal of the appeal, the connected application being CRAN 2 of 2021 is also disposed of.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellant in terms of Section 428 of the Code of Criminal Procedure

Lower court records along with a copy of this judgment be sent down at once to the learned trial court for necessary action.

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

I agree.

**(Bivas Pattanayak, J.)**

**(Joymalya Bagchi, J.)**