

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. 604 of 2014

Monirul Molla

Vs.

The State of West Bengal

With

C.R.A. 626 of 2014

Jiarul Molla @ Jiarul Ali Molla

Vs.

The State of West Bengal

For the Appellant [In C.R.A. 604 of 2014]	:	Mr. Fazlur Rahman, Adv. Mrs. Nasra Ali Rahman, Adv. Ms. Krishna Yadav, Adv. Ms. Priya Ghosal, Adv.
For the Appellant [In C.R.A. 626 of 2014]	:	Mr. Uday Sankar Chattopadhyay, Adv. Mr. Suman Sankar Chattopadhyay, Adv. Mr. Santanu Maji, Adv. Mr. Subhayu Das, Adv. Ms. Snigdha Saha, Adv. Mr. Pronoy Basak, Adv.
For the State [In C.R.A. 604 of 2014]	:	Mr. Swapan Banerjee, Sr. Adv. Mr. Anindya Sundar Chatterjee, Adv.
For the State [In C.R.A. 626 of 2014]	:	Mr. Sudip Ghosh, Sr. Adv. Mr. Bitasok Banerjee, Adv. Mr. Apurba Kumar Dutta, Adv.
Heard on	:	24.02.2022, 02.03.2022, 04.03.2022, 09.03.2022, 15.03.2022, 22.03.2022
Judgment on	:	06.04.2022

Joymalya Bagchi, J. :-

Appeals are directed against judgment and order of conviction and sentence dated 25.08.2014 and 26.08.2014 passed by the learned Additional District & Sessions Judge, 2nd Court, Tamluk convicting the appellants for commission of offence punishable under section 302/34 of the Indian Penal Code and sentencing Monirul Molla to suffer imprisonment for life till his death and to pay a fine of Rs. 10,000/-, in default, to suffer simple imprisonment for another three years and Jiarul Molla @ Jiarul Ali Molla to suffer imprisonment for life and to pay a fine of Rs. 5,000/-, in default, to suffer simple imprisonment for two years and six months and further convicting Jiarul Molla for commission of offence punishable under section 25(1-A) and 25(1-B) of the Arms Act and sentencing him to suffer imprisonment for five years and pay a fine of Rs. 3,000/-, in default, to suffer simple imprisonment for three hundred days for the offence punishable under section 25(1-A) of the Arms Act and further to suffer imprisonment for three years and pay a fine of Rs.2,000/-, in default, to suffer simple imprisonment for two hundred days for the offence punishable under section 25(1-B) of the Arms Act. Sentences imposed on Jiarul Molla to run concurrently.

Prosecution case:-

Prosecution case as alleged against the appellants are as follows: On 10.11.2011 at 7 a.m. Monirul Molla had contacted a driver, namely, Sanjay

Mondal (P.W. 1) who belonged to an adjacent village, for the purpose of visiting Digha in his car along with his mother and wife. Sanjay Mondal agreed to such proposal. Around 7 p.m. he went to village Kataliya and Monirul and another companion boarded the vehicle. The other person got out of the vehicle and they proceeded. Thereafter, Monirul stated his mother would not go for the trip but a lady who was introduced as the wife of Monirul boarded the vehicle. Monirul and the lady sat in the rear of the vehicle whereas the other person who was referred to as Jiarul sat beside Sanjay. Around 9:15 p.m. they reached Kolaghat and had a dinner in a hotel which was situated opposite to hotel Ser-e-Punjab. Thereafter, they again proceeded on their journey. After 15-20 minutes, there was a sudden feud inside the car. Sanjay felt irritation in his eyes and some liquid drops fell on his left hand which caused burning sensation. When he raised alarm, Jiarul who was sitting beside him, put a gun to his head and threatened him to proceed. He proceeded for sometime and upon reaching an island he somehow turned around and proceeded towards Mecheda. At that time Monirul again abused the lady and started assaulting her. When they reached near Ser-e-Punjab Sanjay saw few vehicles and to save his life he tried to stop the car but the car fell into a drain. Sanjay ran out of the car shouting "*dakat dakat*". Hearing commotion Tarlok Singh, cashier of Ser-e-Punjab Hotel rushed to the spot and saw two persons running away from the vehicle. He sent intimation to Kolaghat Police Station which was diarised by

duty officer Dipak Chakraborty (P.W. 24). Pursuant to intimation, the then Officer-in-Charge, Basukinath Banerjee (P.W. 23) came to the spot along with his force. He found a dead body of a lady with severe acid burn injuries inside a Scorpio vehicle. He found a firearm on the seat of the vehicle. He recorded the statement of Sanjay which was dispatched to the police station through Constable Asit De (P.W. 22) and Kolaghat Police Case No. 313 dated 11.11.2011 under section 326/302/34 and 25/27 Arms Act was registered against Monirul Molla and another. In the meantime, inquest was made over the dead body and the vehicle along with a firearm and other articles were seized. Investigation of the case was entrusted to Kashinath Chowdhury, P.W. 25. On the next day he went to Kashipur Police Station, under South 24-Parganas, to investigate the first information report. On interrogation he found the identity of the deceased. He examined her family members including her brother (P.W. 9). Body of the deceased was identified by the said witness on 13.11.2011. Statement of Sanjay Mondal was recorded under section 164 of the Code of Criminal Procedure. He arrested Monirul Molla and filed charge-sheet showing Jiarul Molla as absconder. Subsequently, Jiarul was arrested and put on trial. Charges were framed under section 326/302/34 and 25(1A) (1B) of the Arms Act against the appellants. They pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined 25 witnesses and exhibited a number of documents. Defence of the appellants is one of innocence and false implication. In conclusion of trial,

trial Judge by the impugned judgment and order dated 25.08.2014 and 26.08.2014 convicted and sentenced the appellants, as aforesaid.

Arguments at the Bar:-

Mr. Rahman appearing for Monirul Molla argued that the evidence of P.W. 1, Sanjay Mondal, is unreliable. His deposition in Court suffers from both embellishments and contradictions. His behavior in the course of the incident is most unnatural. It is not explained how he could turn the vehicle when Jiarul has put up a gun in his head. P.W. 7, mother of the owner of the vehicle stated Sanjay telephoned her around 10:30-10:45 p.m. and informed he was in danger. It is unclear how Sanjay could have contacted her in the course of the incident. P.W. 1 also admitted he was in the police station for three days till he was sent to the Magistrate for recording statement under section 164 of the Cr.P.C. Hence, the witness was under the influence of the police and his evidence ought not to be believed. It is further argued there is a three day delay in sending first information report to Magistrate which raises doubt with regard to the truthfulness of the prosecution case. No customer of Ser-e-Punjab hotel was interrogated. P.W. 3, the manager of the hotel did not corroborate P.W. 2, the cashier, that two persons were seen running away from the car. Name of the accused persons had not been disclosed by P.W. 1 to the medical officer, P.W. 16. Motive for commission of the crime is stated for the first time in Court. Manner of the incident as disclosed by P.W. 1 is at variance to the F.I.R. or earlier statement of the

case. No fingerprints were collected from the vehicle nor was F.S.L. report with regard to articles seized from the vehicle placed on record. Identification of Monirul by P.W. 8 for the first time in Court does not inspire confidence. Hence, prosecution case is riddled with improbabilities and inconsistencies and ought not to have been believed.

Mr. Chattopadhyay while adopting the arguments of Mr. Rahman submits Jiarul was belatedly implicated in the instant case. P.W. 1 did not state his name in the first information report. Upon tutoring, the witness disclosed its name in his statement before Magistrate which was recorded after two days on 13.11.2011. His client was arrested from his residence and there was no question of abscondence. Hence, he prayed for acquittal.

Mr. Swapan Banerjee with Mr. Sudip Ghosh, learned Senior Government Advocates submit P.W. 1 is the most natural witness to the instance case. He was the driver of the vehicle which was hired by Monirul and his associate Jiarul to go to Digba. Victim lady boarded the vehicle and was introduced as the wife of Monirul. In the course of the journey, acid was thrown on her body. P.W. 1 also suffered acid burn injuries. Hence, he is an injured eye-witness. He has narrated the entire incident with vivid details. Minor variation in his deposition from his earlier statement does not affect the intrinsic truth and credibility of the witness. P.W. 1 resided in an adjacent village and was known to Monirul. He did not have enmity with the appellants. His evidence receives corroboration from medical evidence as well

as other witnesses. P.W. 25 immediately commenced investigation and went to Ghatakpukur to interrogate the family members of the deceased and other witnesses. Hence, delay in dispatch of the first information report does not affect the credibility of the prosecution case. P.W. 1 voluntarily remained at the police station. It cannot be said he had been prevailed by the police officers to make out a false case against the appellants. P.W. 1 came to know of the name of Jiarul Molla in the course of the transaction. P.W. 9 stated the deceased Bijali had left her residence with Monirul and his associate Jiarul. These circumstances clearly establish the presence of Jiarul in the vehicle and his actual participation with Monirul to commit the crime. Hence, the prosecution case is proved beyond doubt.

Prosecution evidence: An analysis-

P.W. 1 is the star witness of the prosecution case. He was the driver of the vehicle which had been hired by Monirul to go to Digha. Monirul boarded the vehicle with his associate Jiarul. The victim lady boarded the vehicle and was introduced to P.W. 1 as wife of Monirul. Monirul and victim sat in the rear seat while Jiarul sat beside P.W. 1. On the way, they stopped at hotel opposite to Ser-e-Punjab hotel. They had lunch and proceeded towards Digha. After sometime, there was a smoke inside the car and few drops of liquid also fell on the hand of P.W. 1 which caused burning sensation. When he raised alarm, Jiarul put a gun at his head and asked him to continue on the journey. Upon reaching a crossing, P.W. 1 suddenly turned the vehicle

and proceeded towards Mecheda. In the meantime, Monirul again abused and assaulted the victim. Reaching Ser-e-Punjab, P.W. 1 found a number of vehicles standing there. To save his life, he tried to stop the car and the car fell into a ditch. He ran out crying “*dakat dakat*” and the miscreants also ran away. He informed the incident to the employees of Ser-e-Punjab, P.W. 2 and 3. Police came to the spot. He narrated the incident to the police. He also informed his owner about the incident. He made statement to the police which was reduced into writing and treated as first information report. He was medically treated. Police seized the vehicle and other papers. He made statement before Magistrate on 13.11.2011.

P.W. 2 and 3 are the cashier and manager of Ser-e-Punjab respectively. Hearing hue and cries, P.W. 2 came out and saw dead body of a lady inside a vehicle. A gun was lying beside the seat of the driver. He also saw two persons running away from the vehicle. Police came to the spot and seized various articles including vehicle. He signed on the seizure list. P.W. 3 corroborated the version of P.W.2.

P.W. 5 is the owner of the hotel opposite to Ser-e-Punjab where P.W. 1 claimed they had lunched. He stated Pravash Barik was a waiter who was in-charge of service on that day. He had been interrogated by police but had left his job one month after the incident.

P.W. 6 is the owner of the black coloured Scorpio vehicle bearing No. WB-02Z/7208 which was found at the place of occurrence. He deposed P.W. 1 was his driver and had informed his mother an accident had occurred on the fateful day.

P.W. 7, mother of P.W. 6, stated on 10.11.2011 P.W. 1 had taken permission from her to use the vehicle on hire to take a family belonging to his village to Digha. At 10:30/10:45 hours she received a phone call from P.W. 1 who stated he was in danger. Soon thereafter, he disconnected the call. On 11.11.2011, she went to Kolaghat Police Station and came to know of the incident.

P.W. 8 was employed at the petrol pump known as Bhangar Service Station which was owned by the family member of P.W. 6. He deposed on 10.11.2011 P.W. 1 had come to the service station to fill petrol in the Scorpio vehicle. He had seen Monirul give money to P.W. 1 to buy petrol.

P.Ws. 9 to 14 are the family members of the deceased.

P.W. 9 is brother of the deceased Bijali. He deposed she was married to one Kanta Malik and had two issues. Four or five years ago, there was a quarrel and she started residing with them. She had developed close relationship with Monirul who was dealer in timber. Jiarul was also involved in wood business and is an associate of Monirul. On the fateful day, his sister told him she was going to the residence of Monirul as his mother is

unwell. She had been taken by Monirul and Jiarul. On 12.11.2011 police came to their residence and showed him a photograph. He identified his sister by her dress. Thereafter, he went to the morgue and identified her. He identified the appellants in Court. P.W. 10, father of Bijali, P.Ws. 11 and 13, cousins of Bijali have corroborated P.W. 9. P.Ws. 12 and 14 are son and daughter of Bijali respectively. P.W. 12 said Monirul used to regularly visit his mother and a relationship cropped up between them. He had given a mobile phone to her mother. After the incident Monirul had threatened him to withdraw the case using the same mobile number. P.W. 14 is the married daughter of the deceased. She corroborated her brother, P.W. 12.

P.Ws. 16 and 20 are medical witnesses.

P.W. 16 treated P.W. 1 at Paikpara B.P.H.C., Kolaghat. He found multiple burn marks on the left forearm of P.W. 1. He proved the injury report. P.W. 20 held post mortem over the body of the victim. He found 17 injuries lacerated in nature of different depth and dimension. Except injury Nos. 15, 16 and 17 other injuries related to compression of neck by ligature. Injury No. 16 is the acid burn injury. He opined death was due to combined effects of shock and haemorrhage resulting from the acid burn injury and compression of neck which were ante-mortem and homicidal in nature.

P.Ws. 21 to 25 are police officials.

P.W. 23, Basukinath Banerjee was the Officer-in-Charge of Kolaghat Police Station. Around 11:05 hours one Dipak Chakraborty (P.W. 24) received telephonic information from one Tarlok Singh, manager of Ser-e-Punjab hotel that one car had capsized just beside the hotel and dead body of an unknown female was found inside the car. The information was diarised and P.W. 23 along with force came to the spot. On reaching the spot, he found a Scorpio car capsized in the drain beside Ser-e-Punjab hotel. Tarlok Singh introduced him to the driver of the car. P.W. 23 found a female with burn injuries lying in the vehicle. A gamcha was tied down her neck. He found a pipe gun in the rear seat along with some bottles containing drinks. He called a photographer to take video photographs of the spot. P.W. 23 recorded the statement of Sanjay Mondal. The statement was sent before him through Constable Asit Dey to the police station to register specific case. Duty Officer Dipak Chakraborty received the complaint and drew up F.I.R. and the present case was registered. In the meantime, night patrolling car with Officer Satyajit Chanak came at the spot. Inquest was held and inquest report was prepared by Satyajit Chanak, Exhibit-6. Body was sent for post mortem examination through Constable Goutam Kumar Ghosh, P.W. 21.

Investigation of the instant case was handed over to Kashinath Chowdhury, P.W. 25. P.W. 25 proceeded to the place of occurrence. He drew up rough sketch map. He interrogated the witnesses. He arranged for medical treatment of P.W. 1. He received seizure articles from Goutam Ghosh

in presence of P.Ws. 18 and 19. On 12.11.2011, he proceeded to Kashipur Police Station with the complainant to investigate the case. He identified the residences of Monirul and Jiarul but could not trace them out. He interrogated the family members of deceased, that is, Uday Mondal and Shyam Mondal. They identified the deceased as their sister and daughter of Pravat Mondal. Pravat Mondal also identified the deceased. On 13.11.2011, he prayed to record the statement before the Magistrate. He interrogated the owner of the vehicle and his mother. In the course of investigation he found a blood stained blouse, one sari, seat cover of vehicle, gamcha, one bottle containing of 30 ml. of liquid like acid and a bottle of 7up and 10 ml. of liquid suspected as acid. He sent the articles for examination by the forensic department. He received the report of arms expert, Exhibit-14. He obtained sanction from District Magistrate, Exhibit-15. He submitted charge-sheet against Monirul and Jiarul. In the course of investigation, he obtained warrant of arrest, proclamation and attachment against Jiarul who was absconding. He was finally arrested on 07.08.2013, that is two years after the incident.

Whether the sole eye-witness (P.W. 1) is reliable?

P.W. 1 is an injured eye-witness. His deposition has been assailed on behalf of the defence on various grounds. It is contended he embellished his deposition in Court which is at variance to the F.I.R. and his earlier statement to Magistrate. He was detained at the police station and under

dictation of police the FIR and his statement under section 164 of the Cr.P.C. was recorded on 13.11.2011, that is, two days after the incident. He had not named Jiarul in the first information report but on tutoring disclosed the name of the said accused in his statement under section 164 of the Cr.P.C. His behavior in the course of the incident is most strange. It is unclear how he turned the vehicle when Jiarul had put a gun on his head.

I have given anxious considerations to the aforesaid submissions. P.W. 1 stated Monirul had hired his vehicle on 10.11.2011 to go to Digha. Monirul resided in an adjacent village and was known to P.W. 1. He further stated Monirul and his associate who was referred to as Jiarul had boarded the vehicle. Thereafter, another lady boarded the vehicle from Ghatakpur who was introduced to him as the wife of Monirul. P.W. 7, mother the owner of the vehicle corroborated P.W. 1. She stated P.W. 1 had taken permission from her to use the vehicle to take a family of his village to Digha. P.W. 6, owner of the vehicle admitted although the vehicle was a private one, he used to let it out on hire on occasions.

Evidence of P.W. 1 is also corroborated by P.W. 9. P.W. 9 is the younger brother of the deceased. He deposed there was close relationship between Monirul and his sister who was living separately from her husband. Monirul used to regularly visit his sister. Monirul was a dealer in timber. Jiarul was also in timber business and a friend of Monirul. On the fateful day, that is, 10.11.2011 his sister stated that she was going to the residence

of Monirul to meet his ailing mother. He further stated Monirul and Jiarul accompanied his sister from their residence.

These witnesses corroborate P.W. 1 that Monirul, Jiarul and the victim lady had boarded his vehicle on the fateful day to go to Digha.

In the course of the incident, P.W. 1 suffered acid burn injuries. This is corroborated by P.W. 16 who treated him at Paikpara B.P.H.C., Kolaghat. The medical officer found acid burn injuries on the left hand of P.W. 1. Aforesaid evidence establishes beyond doubt that P.W. 1 was the driver of the vehicle wherein acid was thrown on the victim and he was also injured in the course of the incident. Hence, I am of the opinion that the prosecution has been able to prove P.W. 1 was an injured eye-witness to the incident.

It has been argued that P.W. 1 has not truthfully stated the manner in which the incident occurred. He was kept in the police station for three days and was tutored by the police to implicate the appellants. I am unable to accept the aforesaid contentions. Incident of over-turning of the Scorpio vehicle wherein the deceased lady with burn injuries and ligature marks around her neck was found was reported to the police station around 11:05 hours on 10.11.2011. Officer-in-Charge of Kolaghat Police Station (P.W. 23) immediately proceeded to the spot and recorded the statement of P.W. 1 by 00:45 hours on 11.11.2011. Written complaint was dispatched to the police station and formal F.I.R. was registered at 2:15 hours on 11.11.2011. Hence,

within a couple of hours of the incident, F.I.R. came to be registered which rules out any possibility of concoction. It is argued the F.I.R. has been ante dated as it was dispatched to the Magistrate after two days, that is, 13.11.2011 when P.W. 1 was forwarded for recording his statement under section 164 of the Cr.P.C. Delay in sending the first information report to the nearest Magistrate by itself does not affect the truthfulness of the prosecution case. Impact of such delay has to be assessed in the background of attending facts and circumstances of the case. Learned Counsels for the appellants submit that the investigating officer, P.W. 25, admitted in Court that there is no note in the C.D. when F.I.R. was sent to the Magistrate on 13.11.2011. However, analysis of the prosecution evidence on record show P.W. 25 had already commenced investigation on the first information report from the day of its registration and on 12.11.2011 had proceeded to Kashipur Police Station in South 24-Parganas to examine the family members of the deceased as well as hold raids at the residence of the appellants for their apprehension. Thus, investigation on the first information report had commenced in full swing immediately upon its registration and in all probability due to pre-occupation of the investigating officer to immediately collect evidence it had slipped out of his mind to forward the first information report to the Magistrate. In ***Pala Singh And Another Vs. State of Punjab***¹ the Apex Court held as follows:

¹ (1972) 2 SCC 640

“8. ...FIR was actually recorded without delay and the investigation started on the basis of that FIR and there is no other infirmity brought to our notice, then, however improper or objectionable the delayed receipt of the report by the Magistrate concerned it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable.”

In ***Shiv Ram And Another Vs. State of U.P.***² the Apex Court held if the prosecution evidence is otherwise credible and trustworthy, mere delay in sending F.I.R. to Magistrate which is attributable to remissness in investigation, would not demolish the prosecution case. (See also ***State of U.P. Vs. Gokaran And Others***³, ***State of J & K Vs. S. Mohan Singh And Another***⁴, ***Anil Rai Vs. State of Bihar***⁵ and ***Mahmood And Another Vs. State of Uttar Pradesh***⁶.)

In the present case, ample evidence is forthcoming that F.I.R. was promptly registered within couple of hours of the incident. Investigation commenced on the F.I.R. and the investigating officer proceeded to various places including the village of the accused persons and raided their residence. In this backdrop, delay in sending the F.I.R. to the Magistrate in all probability was due to preoccupation of the investigating officer to collect evidence and apprehend the offenders and cannot be said to be a ground to throw out the prosecution case.

² (1998) 1 SCC 149 (see para 5)

³ 1984 Supp SCC 482

⁴ (2006) 9 SCC 272

⁵ (2001) 7 SCC 318

⁶ (2007) 14 SCC 16

It is contended that P.W. 1 improved his version in Court when compared with his earlier statement in F.I.R. or before the Magistrate. While in the F.I.R. and before the Magistrate, P.W. 1 only spoke of acid attack on the victim, in Court he stated the victim was also assaulted repeatedly by Monirul after the acid attack. Whether such variation in P.W. 1's deposition would discredit him must be assessed in the backdrop of the circumstances of the case. P.W. 1 is an injured eye-witness. He was driving the vehicle. Monirul and the victim were sitting in the rear seat when the incident occurred. P.W. 1's deposition in Court finds corroboration from the autopsy doctor P.W. 20 who found acid burn injuries as well as compression on the neck of the deceased. P.W. 2, the cashier of Ser-e-Punjab as well as Officer-in-Charge, P.W. 23, police officer who arrived at the spot immediately after the incident also noted acid burn injuries and a ligature around the neck of the deceased. Thus, the version of P.W. 1, with regard to the manner of assault is fully corroborated and ought not to be discarded due to minor contradictions in his statement in F.I.R. or before the Magistrate.

After the incident, hearing the hue and cry of P.W. 1, P.W. 2, cashier of Ser-e-Punjab rushed to the spot and noted two persons running away from the vehicle. P.W. 2's evidence lends credence to P.W. 1 and ought not to be discarded as he is an independent witness. P.W. 3, manager of the hotel came to the spot later which explains the reason why he did not notice the persons running away from the spot. This circumstance also supports the

prosecution case with regard to presence of two other persons in the vehicle wherein the victim was murdered.

Non-examination of the customers of the hotel has been explained away by the investigating officer. He stated they were flying customers and in being apprehensive they may not be traceable during trial, they were not examined.

Learned Counsels for the appellants also expressed doubt with regard to the unnatural conduct of P.W. 1. It is contended how the witness could have turned his car when Jiarul had put a gun on his head. Mr. Ghosh, learned Senior Government Advocate contended P.W. 1 had taken advantage of the topography of the area to turn around the vehicle. I find much substance in his submission. After throwing acid on the victim, Jiarul had threatened P.W. 1 and had put a gun on his head. P.W. 1 proceeded for some time and on reaching a crossing with multiple arms, took advantage of the topography and he turned round the vehicle towards Mecheda. This conduct of P.W. 1, when seen in the light of the attending circumstances, cannot be said to be unnatural. He did this in a desperate attempt to reach a populated area and seek help. When he reached Ser-e-Punjab hotel and saw a number of vehicles standing, he tried to stop the car suddenly and lost control. The car fell into a ditch. He rushed for help crying “*dakat dakat*” and P.W. 2 and others came to the spot. Police also arrived at the spot and he narrated the incident to the police. He also informed P.W. 7, mother of the owner of the

vehicle with regard to the incident. On the next day, P.W. 7 came to the police station and acknowledged the identity of P.W. 1 to the police. Thereafter, police proceeded to work out the information given by P.W. 1 and contacted the family members of the deceased. Police also raided the residences of the accused persons but they were not found. Upon primary verification of the statement of P.W. 1 on 13.11.2011 police made a prayer for recording his statement under section 164 of the Cr.P.C. During this period P.W. 1 remained at the police station. From the conduct of P.W. 1 as well as the investigating officer (P.W. 25), it appears the said witness had voluntarily remained in the police station and co-operated with the investigation relating to the verification of his statement which had been recorded immediately after the incident. In the course of investigation, independent evidence was collected corroborating the F.I.R. lodged by P.W. 1. These circumstances show P.W. 1 willingly corroborated with the investigating agency to verify the contents of his F.I.R. and remained at the police station. There was no coercion or undue influence upon him to concoct the first information report. Reliance on ***Bolum Bhaskara Rao and Another Vs. State of A.P.***⁷ is wholly misplaced. In the said report the witness belonged to a different political party and was inimical to the appellant. He had been forcibly detained in the police station and his wife had lodged complaints with regard to his wrongful

⁷ 1958 Cri LJ 32

detention. Hence, his evidence was not believed. The instant case is factually distinguishable from the authority relied upon by the appellant.

Identification of Jiarul:-

With regard to the involvement of Jiarul, learned Counsel strenuously argued P.W. 1 did not disclose his name in the first information report. On the other hand, the witness had described the associate of Monirul through his physical features. However, in his subsequent statement under section 164 Cr.P.C. as well as in Court the witness stated that he came to know the name of Jiarul in the course of his conversation with Monirul. This is clearly an afterthought and identification of Jiarul by P.W. 1 for the first time in Court, is not worthy of credence. Jiarul was arrested from his residence which rules out any possibility of his abscondence. It is true P.W. 1 did not name Jiarul in his first information report. Reading the contents of the F.I.R., it would give an impression that he had described the associate of Monirul not by name but by his physical features. However, in his statement under section 164 Cr.P.C. before Magistrate which was recorded two days later, he stated he came to know the name of the accused in the course of their conversation. No doubt this fact is absent in the first information report and gives rise to some doubt whether P.W. 1 had known Jiarul by name. Nonetheless, the witness had described the physical features of Jiarul in first information report. He had ample opportunity to see Jiarul when they were travelling together in the same vehicle. The said accused had sat beside him

and put a gun to his head. This left a lasting impression about the physical features of the accused in his mind. Accordingly, he identified the appellant in Court also. It is contended no test identification parade was held. Identification by a witness in Court is substantive evidence. T.I. Parade conducted in the course of investigation gives assurance and lends corroboration to the substantive identification in Court. If the identification of the accused in Court appears to be convincing and failure to hold test identification parade is explained by prosecution, it would not affect the credibility of such identification. In the present case, Jiarul had absconded and could not be arrested. Warrant, proclamation and attachment had been issued against him. Charge-sheet was filed showing him an absconder. He was finally apprehended after two years. Due to his abscondence, the investigating agency was unable to put him up for test identification parade. On the other hand, it appears from the evidence on record P.W. 1 had ample opportunity to see the accused while they were travelling in the same car and had described his physical features in the F.I.R. Hence, identification of Jiarul in Court by P.W. 1, in the aforesaid facts and circumstances, cannot be doubted in the absence of T.I. parade. The fact that Jiarul accompanied Monirul and the victim lady in the vehicle on the fateful day, is also corroborated by P.W. 9, brother of the victim. P.W. 9 deposed on the fateful day his sister left their residence stating she is going to the house of Monirul to meet his ailing mother. She was accompanied by Monirul and his

associate Jiarul. P.W. 9's evidence lends support to P.W. 1 and establishes beyond doubt that the other person accompanying Monirul was none other than Jiarul. After the incident, both the appellants were not found at their residence and the investigating agency filed charge-sheet showing Jiarul as an absconder. In spite of issuance of warrant of arrest, proclamation and attachment, Jiarul could not be apprehended. He was finally apprehended on 07.08.2013 (two years after the incident) and put on trial. I am aware abscondence per se cannot establish guilt of an accused. However, in the present case abscondence of Jiarul after the incident is an additional circumstance which adds credibility to the prosecution case against him.

Motive of crime:-

It is also argued that the motive of crime has not been proved. Evidence have come on record particularly from the relations of the deceased, namely, P.Ws. 9 to 14 there was an illicit relationship between Monirul and the deceased. From the conversation overheard by P.W. 1, it appears Monirul suspected the deceased was involved with others too. Hence, he committed the murder with the assistance of Jiarul. It is contended that such fact was stated by P.W. 1 for the first time in Court. Even if such contention is accepted the presence of P.W. 1 who is an injured eye-witness at the place of occurrence cannot be doubted. His version with regard to the incident finds corroboration from other evidence on record. When prosecution case is proved through reliable and convincing evidence particularly that of an

injured eye-witness, absence of motive would not affect the credibility of the prosecution case.⁸

Defects in the investigation – whether fatal:-

It is also contended F.S.L. report of articles seized from the vehicle have not been produced. No fingerprints were collected from the spot. There are defects in investigation. Evidence of P.W. 1 alongwith other corroborative evidence unequivocally establish the presence of the appellants in the vehicle. Medical evidence proves beyond doubt acid burn injuries suffered by P.W. 1 and the deceased. In this backdrop, the aforesaid defects in investigation do not create an inherent wedge in the prosecution case.

Authorities distinguished:-

Authorities relied on behalf of the appellants are apposite. In ***Kuna Alias Sanjay Behera Vs. State of Odisha***⁹ the Apex Court discarded the evidence of solitary eye-witness on the ground he was untrustworthy. It was noted there was no source of light at the place of occurrence and the witness inspite of being a near relation did not raise alarm or seek assistance from co-villagers.

In the present case, the presence of P.W. 1 as an injured eye-witness at the place of occurrence is beyond doubt. He suffered injuries in the course of

⁸ See (1996) 9 SCC 233

⁹ (2018) 1 SCC 296

the incident which is corroborated by medical evidence. Thus, the ratio of the aforesaid report is clearly distinguishable. In ***Jaikam Khan Vs. State of U.P.***¹⁰ the Apex Court reiterated the principles laid down in appreciating evidence of a sole eye-witness. It stated as follows:

“46. ...11.....Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.....”

Applying the aforesaid principle laid down by the Apex Court to the facts of the present case, I find P.W. 1 is a reliable injured eye-witness. His evidence is supported by other witnesses as well as medical evidence. Thus, he may be safely relied upon to prove the prosecution case. Other unreported authorities¹¹ relied on by the prosecution relate to appreciation of evidence in the facts of those cases. Whether a witness is a truthful and reliable one would depend on the facts of each case. No precedential value may be

¹⁰ 2021 SCC OnLine SC 1256

¹¹ Sk. Shanawaz Vs. State of West Bengal, 2018 SCC OnLine Cal 16830

Dulara Mondal Vs. State of West Bengal in CRA 501 of 2010 dated 31.07.2019

attached to decisions in cases in the matter of appreciation of evidence. In this regard one may refer to the sagacious observation of the Apex Court with regard to the role of precedents in the appreciation of evidence in criminal cases¹²:-

“The fate of every criminal case depends upon its own facts and the intrinsic worth of the evidence adduced in the case rather than what was said about the evidence of witnesses in other decided cases in the context of facts of those cases. The question of credibility of a witness has primarily to be decided by referring to his evidence and finding out as to how the witness has fared in cross-examination and what impression is created by his evidence taken in the context of the other facts of the case. Criminal cases cannot be put in a strait jacket. Though there may be similarity between the facts of some cases, there would always be shades of difference and quite often that difference may prove to be crucial. The same can also be said about the evidence adduced in one case and that produced in another. Decided cases can be of help if there be a question of law like the admissibility of evidence. Likewise, decided cases can be of help if the question be about the applicability of some general rule of evidence, e.g., the weight to be attached to the evidence of an accomplice. This apart, reference to decided cases hardly seems apposite when the question before the court is whether the evidence of a particular witness should or should not be accepted.”

Conclusion:-

Prosecution case has unfolded through the eyes of P.W.1 who is a reliable and truthful witness. His version is corroborated by other witnesses. Medical evidence on record, that is, P.W. 16 (who treated P.W. 1) and post mortem doctor, P.W. 20, unequivocally show that both P.W. 1 and victim had

¹² (1975) 3 SCC 39

suffered acid burn injuries in the vehicle. Manner of assault on the deceased as narrated by P.W. 1 is also supported by the medical evidence.

Evidence of P.W. 1 also shows Jiarul threatened him with a gun which was recovered from the vehicle itself. In the course of investigation report of arms expert was collected by I.O. P.W. 25 (Exhibit 14). From the aforesaid evidence charges under section 25(1-A)/ 25(1-B) are also proved. Thus, the prosecution case against the appellants is proved beyond doubt.

In the light of the aforesaid discussion, I uphold the conviction of the appellants.

Sentence of Jiarul is upheld and the appeal being C.R.A. 626 of 2014 is dismissed.

I note that the trial Court has imposed a sentence of life imprisonment till death upon Monirul for the offence 302/34 I.P.C. Life imprisonment under section 53 read with section 45 of the I.P.C. means imprisonment till end of life (see **Gopal Vinayak Godse Vs. State of Maharashtra**¹³). However, the trial Court has emphasized it proposes to impose a heavier sentence on Monirul than Jiarul by imposing life imprisonment till death, that is to mean sentence of life imprisonment shall not be remitted or commuted till the death of the appellant. Imposition of such a sentence, that is, life imprisonment without remission under section 433A of the Cr.P.C. cannot be

¹³ (1961) 1 Cri Lj 736

imposed by the trial Court for the offence punishable under section 302/34 of the I.P.C. In ***Union of India Vs. V. Sriharan Alias Murugan And Others***¹⁴ a Constitution Bench clarified such a sentence can be imposed only by the Supreme Court or by the High Court while converting a death sentence to one of life imprisonment. Even then, the Court's discretion does not encroach on the constitutional powers of the President of India or the Governor under Article 72/161 of the Constitution of India respectively. In ***Gauri Shankar***¹⁵ the Apex Court held such powers cannot be exercised by the trial Courts. Trial Court, therefore, fell in error in directing that Monirul shall suffer life imprisonment till his death, that is, life imprisonment without remission. Hence, this Court modifies the sentence imposed upon Monirul and directs he shall suffer life imprisonment as prescribed under section 53 read with section 45 of the Indian Penal Code and interpreted by the Apex Court in ***Godse*** (supra).

With the aforesaid modification as to sentence imposed on Monirul the appeal being C.R.A. 604 of 2014 is disposed of.

The period of detention suffered by appellants during investigation, enquiry or trial shall be set off under Section 428 of the Code of Criminal Procedure.

¹⁴ (2016) 7 SCC 1

¹⁵ Gauri Shankar Vs. State of Punjab, (2021) 3 SCC 380

Practice Direction:-

This Court has, in a number of cases,¹⁶ noted a propensity amongst the trial Court judges to impose a sentence of life imprisonment with qualifications like the present one. This Court, therefore, feels it necessary to issue a practice direction to all the judicial officers in the State so that in similar cases they do not fall in error and impose sentence of life imprisonment without remission.

Accordingly, it is directed as follows:-

“Except in cases where the law provides for a sentence of imprisonment for life which shall mean imprisonment for the remainder of the person’s natural life (e.g., sections 376A, 376AB, 376D, 376DA, 376DB and 376E of I.P.C.), trial Courts while imposing a sentence of life imprisonment as provided under section 53 of I.P.C. shall not qualify the said sentence by directing that the sentence shall continue till the death of the convict or without remission as prescribed in law.”

¹⁶ Motiyar Rahaman & Anr. Vs. The State of West Bengal in CRA 531 of 2015 dated 02.03.2022
Sk. Azaharuddin vs. State of West Bengal in CRA 45 of 2021 dated 24.03.2022

Registrar General shall circulate this practice direction to all the judicial officers in the State for intimation and due adherence in future.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)

PA (Sohel)