

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Mr. Justice Joymalya Bagchi

And

The Hon'ble Mr. Justice Bivas Pattanayak

CRA 632 of 2014

Kali Charan Biswas

Vs.

The State of West Bengal

For the Appellant : Mrs. Manasi Roy, Adv.

For the State : Mr. Partha Pratim Das, Adv.

Heard on : 07.03.2022

Judgment on : 07.03.2022

Joymalya Bagchi, J. :-

Appeal is directed against the impugned judgment and order dated 16.07.2014 and 17.07.2014 passed by learned Additional Sessions Judge, Fast Track Court - II, Krishnanagar, Nadia, in Sessions Trial No. IV of March, 2012 arising out of Sessions Case No. 22 of September, 2009, convicting the appellant for commission of offence punishable under Sections 302/34 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay a fine of Rs. 5,000/-, in default to suffer rigorous imprisonment for one year more.

Prosecution case, as alleged, is to the effect that in the night between 8/9th October, 2008 around 00:30 hours an altercation took place between the appellant and two of his companions on the one hand and one Samir Sil, an employee of the liquor shop of Gopal Chowdhury, on the other hand. In the course of a scuffle, appellant fell down on the ground and received injury on his face. Around 1:30 a.m. in the night, appellant along with two others armed with 'da' came to the spot and enquired about Samir Sil. Samir was absent and they started quarrelling with Gopal Chowdhury, owner of the liquor shop. Appellant and others dragged Gopal from the cycle garage, where he was sitting to the opposite side in front of Swapnapuri Abasan. Appellant took 'da' from one of his associates and chopped Gopal to death. Incident was witnessed by Gopal Das (P.W. 1) who lodged F.I.R. resulting in registration of Kotwali Police Station Case No. 529 of 2008 dated 09.10.2008 under Sections 304 of the Indian Penal Code against the appellant and two others. In the course of investigation, accused persons were arrested. Charge-sheet was filed against the appellant and two others namely Mana Das @ Kanamama and Pradip Sardar. Pradip Sardar expired and the case abated against him. Mana Das @ Kanamama absconded and was subsequently murdered. Case abated against him also. Thus, charge was framed against the appellant alone under Sections 302/34 of the Indian Penal Code. He pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined 16 witnesses and exhibited a number of documents. Defence of the appellant was one of innocence and false

implication. In conclusion of trial, learned trial Judge by the impugned judgment and order dated 16.07.2014 and 17.07.2014 convicted and sentenced the appellant, as aforesaid.

Mrs. Roy, learned Counsel appearing for the appellant argues charge in the instant case is defective. The appellant alone had been charged under Section 302 read with Section 34 of the Indian Penal Code. She submits that evidence of the eye-witnesses, P.Ws. 1 and 2 suffers from various inconsistencies and embellishments. They are unreliable witnesses. Incident occurred within Railway area but no officer of G.R.P. was examined. Hence, prosecution case has not been proved beyond doubt.

Mr. Das, learned Counsel appearing for the State argues P.W. 1 is an eye-witness. His deposition is corroborated by P.W. 2. Earlier incident has been proved by Samir Sil and his brother-in-law Shyamal Saha, P.W. 4 respectively. Post mortem doctor (P.W 8) deposed that the victim suffered a number of sharp cutting injuries on the head, neck and other vital parts of the body corroborating the ocular version of P.W. 1 and 2. Hence prosecution is proved beyond doubt.

P.W. 1, Gopal Das, claimed to be an eye-witness to the incident. He deposed Gopal Chowdhury had a liquor shop near Krishnanagar Railway Station. Incident occurred on the day of Maha Nabami of Shri Shri Durga Puja. Around 1:10/1:15 a.m., he got down from the train at Krishnanagar Railway Station after seeing Durga images at Badkulla. He was accompanied by Manik Mukherjee and another boy. When they came

in front of cycle garage at Krishnanagar Railway Station they met Gopal Chowdhury who was sitting in the cycle garage. They started talking with Gopal Chowdhury. While he was talking with Gopal Chowdhury, the latter informed there was a dispute between Kali Charan and Samir Sil as the former had not paid money for consuming liquor. Over this, there was scuffling and Kali Charan had suffered injury on his head. At that time appellant with two others came to the spot. The persons accompanying Kali Charan were armed with 'da'. They enquired from Gopal Chowdhury the whereabouts of Samir Sil. Gopal Chowdhury stated Samir was not present. Then the miscreants dragged Gopal Chowdhury to the other side of the cycle garage in front of Swapnapuri Abasan. Kali Charan took 'da' from hands of one of his associates and started chopping Gopal Chowdhury over head and shoulder. Gopal Chowdhury cried out for help. Out of fear P.W. 1 fled away. He informed the matter to the family members of Gopal Chowdhury. They returned to the place of occurrence and took Gopal Chowdhury to Saktinagar Hospital by a rickshaw where he was declared dead after some time. P.W. 1 (Gopal Das) lodged complaint to the police station. He was cross-examined initially on 11.06.2012 and thereafter on 02.02.2013.

P.W. 2 Manik Mukherjee deposed he heard from Samir there was a dispute between the latter and Kalicharan and his associates over the issue of price of selling liquor. Gopal Chowdhury called him over phone. On receipt of telephone call he went to cycle garage where he met Gopal Chowdhury, Gopal Das (P.W. 1) and one Pada. Gopal Chowdhury again

narrated the incident regarding dispute between Samir and the appellant. At that time, appellant along with three others came to the spot and called Gopal Chowdhury to a land beside Swapnapuri Abasan. Thereafter, he heard cries 'bacho bacho'. Hearing the cries, he rushed to the G.R.P. office and informed the G.R.P. staff about the incident. He along with G.R.P. staff went to the spot and found Gopal lying in bleeding condition. Gopal had sustained cut injuries on his head, leg and body. He was taken to hospital where he died within an hour.

In cross-examination, he stated he intended to lodge information at G.R.P. but G.R.P. did not receive such information stating that the incident is within the jurisdiction of Bengal Police.

It is argued by Mrs. Roy that P.W. 2 did not corroborate P.W. 1 that they had alighted together at Krishnagar Railway Station from a train and had come to the spot. It is also argued P.W. 2 was not present when the victim was assaulted. Hence, he had not witnessed the incident.

I have considered the aforesaid submissions in the light of the entire evidence on record. It is true that there are minor variations in the depositions of two witnesses with regard to the manner in which they arrived at the spot. While P.W. 1 claimed both of them alighted from a train and met Gopal Chowdhury at the cycle garage beside railway station, P.W. 2 stated he had received phone call from Gopal Chowdhury and came to the spot. There, he met Gopal Chowdhury and P.W.1 at the cycle garage. The aforesaid variation with regard to the manner in which the witnesses arrived at the place of occurrence, however, does not belie

their presence at the spot. Both of them unequivocally stated that they were present at the cycle garage with Gopal Chowdhury when the appellant along with his associates arrived there. Thereafter, the miscreants took Gopal Chowdhury in front of Swapnapuri Abasan. Gopal Chowdhury cried for help. Hearing this, P.W. 2 left the spot and went to G.R.P. office. P.W.1 remained at the spot and witnessed the assault on Gopal Chowdhury. Their versions substantially corroborate one and another the manner in which the incident occurred. Hence, I am of the opinion the versions of P.Ws. 1 and 2 clearly establish the prosecution case of assault by the appellant upon Gopal Chowdhury with a 'da' in front of Swapnapuri Abasan.

Prior incident relating to dispute with Samir Sil has been proved by the said witness and his brother-in-law.

P.W. 3, Samir Sil deposed at 12.30 a.m. at night Kalicharan and 2/3 others came to the shop and consumed liquor. When he demanded money from Kalicharan, he refused to pay and a scuffle ensued. As a result, Kalicharan fell down and he received injury on his left cheek and eye. Thereafter, Kalicharan and his associates left the spot. His brother-in-law Shyamal Saha (P.W. 4) was present at the spot and has corroborated P.W. 3. After the incident both of them returned home.

The evidence of the aforesaid witnesses, therefore, prove the prior dispute between Samir Sil on the one hand and the appellant and his associates on the other hand which prompted the appellant and his associates to return to the place of occurrence and search for Samir, who

was an employee of the deceased. As Samir was not found, they dragged Gopal away and the appellant struck him with a 'da' resulting in his death.

Ocular evidence of the witnesses is corroborated by P.W. 8 who held post mortem over the body of Gopal Chowdhury. He found the following injuries:

"1) Sharp cut deep injury over vault of head starting from hair line of middle of forehead extended onwards up to just above occipital protuberance on mid line measuring 7" x 2" x brain deep with cutting of skull bones is under the injury.

2) Sharp cut injury on left side of front of neck transversely measuring 1 ½ x 1/2" muscle deep.

3) Sharp cut deep injury transversely over nape of neck measuring 6"x2" cervical vertebra deep with cutting of first cervical vertebra.

4) Sharp cut injury on middle part of back of neck transversely measuring 1 ½" x ½" x bone deep.

5) Sharp cut injury on left scapular region on back measuring 1 ½" x ½" chest cavity deep.

6) Sharp cut injury on right scapular region on back of chest measuring 2" x 1" x bone deep.

7) Sharp cut injury on lateral aspect of upper 1/3 of left forearm obliquely measuring 2 ½" x ½" bone deep with cutting of both bones under injury.

8) Sharp cut injury on lower 1/3 of left forearm obliquely measuring 3" x 3" bone deep with cutting of radius under injury.

9) Sharp cut injury on left ring finger transversely with complete amputation of distal part which is missing.

10) Brain hemorrhage on all lobes.

11) Left lung punctured on upper lobe."

He deposed death was due to shock and hemorrhage resulting from aforesaid injuries ante mortem and homicidal in nature. He further stated when someone is chopped by a sharp cutting '*da*', such type of injuries might be found. He proved the post mortem report, Exhibit-2.

It is clear that ocular version of P.W. 1 with regard to manner of assault on Gopal Chowdhury by the appellant with a '*da*' is corroborated by medical evidence.

P.W. 16 is the investigating officer of the case. He came to the place of occurrence near Swapnapuri Abasan. He prepared rough sketch map with index. He took photographs of the place of occurrence. He collected blood-stained and controlled earth from the place of occurrence under seizure list, marked Exhibit-4/2 in the presence of witnesses P.Ws. 11 and 12. He arrested co-accused Pradip Sardar and Mana Das @ Kanamana. He collected wearing apparels of the deceased. After post mortem examination he submitted charge sheet showing the appellant as an absconder.

In cross-examination, he stated the place of occurrence was within the jurisdiction of Indian Railway. He did not contact G.R.P. at Krishnagar

Police Station. Subsequently, he changed his stance and denied suggestion that the place of occurrence was under the jurisdiction of railway police.

Relying on the aforesaid piece of cross-examination of P.W. 16, Mrs. Roy argues that the police officer did not have the jurisdiction to investigate the crime. I find there is some confusion in the evidence of the investigating officer with regard to his jurisdiction to investigate the crime. While in one portion of his cross-examination he stated that the place of occurrence was situated within the jurisdiction of Indian railway, later on he denied the suggestion that the place of occurrence was under the jurisdiction of Railway or he did not have jurisdiction to investigate the case. In this regard, deposition of P.W. 2 is relevant. He went to the G.R.P. office to lodge complaint but was informed by the said office that the case fell within the jurisdiction of Bengal Police. It would have been better if prosecution had examined an officer of G.R.P. to clarify the position. However, as it appears from the deposition of P.W. 2 that G.R.P. office refused to lodge complaint on the ground of lack of jurisdiction, the written complaint was lodged by P.W. 1 at the local police station, that is Krishnagar Kotwali P.S. and was investigated by P.W. 16. In the course of investigation, no objection with regard to the jurisdiction was raised by the accused. Thus, I am of the opinion that evidence on record does not give an impression that P.W. 16 lacked jurisdiction to investigate the crime or that such investigation had prejudiced the appellant in any manner whatsoever. Hence, I am of the opinion such issue with regard to

the lack of jurisdiction of investigating officer fails and conviction of the appellant on such score cannot be set aside.

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

The appeal is, accordingly, dismissed.

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 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.

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.)