

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.A. No. – 65 of 1984****IN THE MATTER OF****Kaliram Hembram****Vs.****State of West Bengal.****For the Appellant : Mr. Bibaswan Bhattacharya, Adv.,
Ms. Bindia Paul, Adv.,****For the State : Mr. Binoy Kumar Panda, Adv.,
Mr. S. Bhakat, Adv.****Judgment on : 11.08.2023****Subhendu Samanta, J.**

The instant appeal is preferred against the judgment of conviction and sentence dated 06.02.1984 passed by the Additional Sessions Judge, Medinipur in Sessions trial No. XXVIII of November 1983 convicting the present appellant to sentence rigorous imprisonment for 07 years is being found guilty u/s 304(II) of IPC.

The brief fact of the prosecution case is that the deceased Raghunath was the father of the present appellant, the complainant (PW 1) is his step-mother and PW 4 is his step-

sister. On 25th Jaistha 1384 BS, corresponding to 12.05.1982 at about 6/7 p.m. In the evening the accused attacked Raghunath with Lathi, Mugur and Pirah and stuck him with those objects causing serious injuries on his present as Raghunath refuses to transfer his property to the accused as demanded by him. PW 1 tried to resist the accused but the accused also assaulted her. At the time PW 4 was present there, they raised alarm, some of the neighbours came there on hearing the said alarm but the appellant fled away with the Mugur in his hand. The neighbours came to the P.O, thereafter Raghunath was first taken to Debra Hospital and therefrom to Medinipur Sadar Hospital wherein Raghunath succumbed injuries on the next day. One UD case being no. 79 of 1982 dated on 13.05.1982 in connection with the death of the Raghunath was started. The de-facto complainant, due to pain upon all over her body could not go to the P.S immediately after the incident, on 15.05.1982 at 18:15 Hrs. she went to the P.S and lodged the FIR before the Debra P.S being case no. 8 dated 15.05.1982.

After investigation, police submitted charge-sheet u/s 304 Part 1 IPC against the present appellant. The appellant sent up for trial. The appellant pleaded not guilty and claimed to be tried.

During the trial the prosecution has produced 09 witnesses but the defence has examined none. On hearing the evidences and after perusing the materials on record the Learned Sessions judge, has passed the impugned order of conviction and sentence against the present appellant finding him guilty for commission of an offence punishable u/s 304 Part 2 of IPC.

Hence this appeal.

Learned Advocate for the appellant submitted before this court that the impugned judgment of conviction suffered material irregularities. The Learned Sessions Judge has failed to appreciate the facts and circumstances of this case and came to an erroneous finding. The PWs contained material contradictions between each other and the conviction on the basis of such contradictory depositions cannot be sustained. The doctor of the primary health centre was not examined where the deceased was first admitted after such alleged assault. There are inordinate delay in lodging the FIR and the prosecution has no sufficient explanation to that effect. Thus the case of prosecution cannot be said to be proved beyond reasonable doubt. The PW 1 has stated the wrong month in her deposition thus her deposition cannot be believed; the PW 1 has stated the names of the villagers and the neighbours who

was assembled at the time of alleged assault by the appellant but none of them was examined by the prosecution or no villagers or neighbours supported the prosecution case. At this juncture, the order of conviction passed by the Learned Sessions Judge is erroneous. The delay in lodging FIR has purposefully developed the case by the PW 1 herself. There is no indication of 'Mugur' in the FIR but subsequently during the evidence of PW 1 she stated that the accused /appellant has assaulted the deceased with the 'Mugur'. Such type of development had occurred purposefully only to falsely implicate the present appellant. It is the case of the prosecution that the appellant has assaulted PW 1 at the time of alleged incident, but there no medical certificate or prescription to justify the said case. The PW 1 has stated herself to be the sole eye witness of the incident but her statement was severally contadicted by other PWs. The conviction on the basis of evidence PW 1 in this case is not at all justified. The defect of the prosecution case was also noticed by the Learned Sessions Judge at the time of scanning the seizure list, but in- stead of which the illegal order of conviction was passed. The close neighbour, whose names was stated by the PW 1 did not supported the prosecution case.

Learned Advocate for the appellant further argued that it would be appeared from the entire facts of the case that the appellant brought his father to the hospital if the appellant is the assailant, he cannot accompany her father to the hospital. The material exhibit which were cited to be the weapon of the assault such as Lathi, Mugur, Pirha are the household articles which are available in all houses so it cannot be said that this specific articles were used by the appellant to cause assault upon the person of the deceased. He further argued that the case of the prosecution is full of contradictions so the instant case cannot be said to be proved beyond of reasonable doubt. So he prayed for acquittal.

Learned Advocate for the state submitted before this court that the material exhibits which were used in this case as a weapon is actually seized from the house of the deceased. The nature of the weapon may occur puncture wounds, the doctor who appeared before the Learned Sessions Judge PW 9 has noticed the puncture wounds over the vital part of the body of the deceased. The nature of injury suggests there are several blows of such blunt weapons upon the deceased. The intention of assault was very much there. As the appellant forces the deceased to transfer his entire property in the name of the appellant. The fact suggests there are other

brothers/legal heirs of the deceased. On demise of the deceased all legal heirs would be entitled to get the property; thus the appellant tried to transfer the entire property in his name. The case of the prosecution was sufficiently proved and the Learned Sessions Judge has considered the each and every pros and cons of the prosecution case and thereafter he came to opinion that the accused/ appellant has committed an offence punishable u/s 304 part II of IPC. there is no perversity in the said judgment.

Heard the Learned Advocate perused the materials on record also perused the evidences adduced before the Learned Sessions judge and the impugned judgment of conviction passed by the Learned Sessions Judge.

It appears to me that the charge has been framed against the appellant u/s 304 Part 1 of the IPC for commission of offence of culpable homicide not amounting to murder. The prosecution has adduced 09 witnesses amount them PW 1, de-facto complainant and PW 4 was cited as eye witness. I have specifically perused the evidence of PW 1 and PW 4. The PW 1 is the FIR maker who deposed that her husband was assaulted mercilessly by her step-son i.e. the appellant on the alleged date of incident. There may have some contradiction of the FIR and the deposition of PW 1 but the fact of witnessing the

alleged incident of assault could not be shaken during her cross-examination. PW 4 is the step sister of the appellant who also deposed that she witnessed the incident. The statement of PW 4 during her cross- examination is generally corroborated the prosecution case.

P.W. 9 is the doctor who conducted post mortem over the dead body of the deceased. The doctor has found several injuries at the vital area of the body of the deceased i.e. all in the head and face portion. The injuries are stated to be caused by used of blunt weapons. In the instant case actually the blunt weapons that is the Mugur, Lathi, and Pirah made of wood were material exhibits. The injury as reflected in the person by the deceased cannot be sustained by falling over some wooden log in drunken condition; as suggested by the defence.

In considering the delay for lodging the FIR the Learned Sessions Judge is of opinion that the explanation of the prosecution and considering the attending circumstances the delay is not fatal to the prosecution case. I find the observation of the Learned Sessions Judge on that score is justifiable.

Let me see whether the order of conviction passed by the Learned Sessions Judge is justifiable in the facts and

circumstances of this particular case. Section 304 of IPC is set out as follows---

304. Punishment for culpable homicide not amounting to murder – whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death/or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

The charge was framed u/s 304 part I IPC, i.e. the assailant must have an intention to cause death or to cause such bodily injury as is likely to cause death. The Part II of Section 304 indicates that the assailant may have the knowledge that such fatal injury may likely to cause death but he had not any intention to cause death.

In this particular case though the charge has been framed u/s 304 part I of IPC but considering the facts and circumstances of this case and particularly considering the fact

that the appellant has visited her father at hospital after such incident proves that the appellant had no intention to cause death to his father. Though the appellant has visited the hospital but at the time the offence u/s 304 part 2 has already been committed by him.

Under considering the entire materials it is to be considered whether the appellant had the requisite knowledge that such assault may cause death to his father. If it appears that the appellant had no requisite knowledge then the offence may not come under the purview of section 304 part II of IPC. The weapon used in this particular case are not the fatal weapons. But it appears for the deposition of Dr. (PW 9) there are several injuries in the vital part of the body of the deceased. One or two blow of blunt weapon upon the deceased may favour the appellant in this case, but the evidence of PW 9 proved the saviour multiple assault by the present appellant upon his father (deceased). Considering the same it is crystal clear that the appellant has requisite knowledge that the assault inflicted upon the deceased may cause death to the deceased.

Considering the entire aspect I find the Learned Sessions Judge has correctly passed the impugned Judgment. The impugned order of conviction and sentence passed by the

Learned Sessions Judge is hereby sustained. There is no chance to interference with this impugned order in this appeal. The appeal being meritless is hereby dismissed.

The appellant is on bail he is directed to appear before the Learned Sessions Judge, concern on 28th of August 2023 to serve out the sentence; failing which the Sessions Judge to issue warrant of arrest against the appellant/convict for compliance of this order.

The instant criminal appeal is disposed of.

Connected CRAN applications if pending are also disposed of.

Any order of stay /suspension of sentence passed by this court during the continuation of the appeal is hereby vacated.

LCR be returned at once.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)