

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.A. No. – 147 of 1990****IN THE MATTER OF****Abdul Gani Sk. @ Abdul Gani Sk.& Anr.****Vs.****State of West Bengal.**

**For the Appellants : Mr. Achin Jana, Adv.,
Mr. Suman Chakraborty, Adv.,
Mr. Prosenjit Ghosh, Adv.**

**For the State : Mr. Narayan Prasad Agarwala, Adv.,
Mr. Pratick Bose, Adv.**

Judgment on : 14.06.2023

Subhendu Samanta, J.

The instant appeal is directed against the judgment and order of conviction and sentence dated 21.03.1990 passed by the Learned sessions Court Nadia in sessions trial no. 1 (iv) 89 corresponding to Sessions Case no 7(7) 89 finding the present appellants guilty u/s 304 part II of IPC and convicting and sentencing the appellants to suffer rigorous imprisonment for 5 years each and to pay a fine of Rs. 100 each i/d to further RI for 15 days.

The brief fact of the prosecution case is that one Sahel Ali Mandal (PW 1) lodged a written complaint with IC Katwali Police station, Krishnanagar, Nadia contending inter alia that present appellants along with three others on 10.05.1987 in the morning had an altercation between father of the complainant Janab Ali Mandal and at the intervention of the other villagers the matter was set at rest. The appellant/accused persons threatened that they would murdered Janab. Thereafter, at 8: 30 P.M. on that date, while the complainant and his brother Babar Ali Mandol were engaged in stacking straw in the Khamar, their father Janab Ali was proceeding though that place towards the Mosque to offer namaj, at the time the appellants/accused persons jumped upon him and assaulted indiscriminately. The appellant/accused persons were armed with Lathi shabal etc. The appellants failed the victim on the ground and throttled him and assaulted with a brick on his chest and pressed his testicles and caused his death. While complainant tried to resist the appellants/accused persons, they assaulted him on his head with Shabal and caused bleeding injuries, his younger brother Babar Ali raised alarm and people assembled there at the time appellants/accused persons fled away.

Police case was ended in charge sheet.

The present appellants including other three accused persons were sent up for trial. Charge was framed against all the accused persons u/s 148/149/325/307/302 of IPC. all the accused/ appellants pleaded not guilty and claimed to be tried. During the trial prosecution has examined 14 witnesses to prove its case but the defence examined none.

It is the case of the defence that while the deceased was going to Mosque through khamar he fell down and received injury and expired.

After conclusion of the trial and hearing of the prosecution and the defence Learned sessions Judge though found not guilty of charges made against all 05 accused persons but found guilty the present appellants for the offence punishable u/s 304 part II IPC.

Being aggrieved by and dissatisfied with the impugned judgment and sentencing the instant appeal has been preferred.

Learned advocate for the appellants submitted before this court that the impugned order of conviction and sentenced passed by the Learned Sessions Judge is palpably illegal in the eye of law. The prosecution has failed to bring home the charge against the accused persons thus they need be acquitted from the case. The Learned sessions Judge has committed error in

convicting the present appellants u/s 304 part II of the IPC, though no charge has been framed. The witnesses of the prosecution are not supported the case of the prosecution at all, most of them are declared hostile and some of them though did not support the prosecution case are not declared hostile by the prosecution; thus the Learned Sessions Judge has committed an error by passed the impugned order of conviction and sentence against the present appellants.

Learned Advocate for the appellant further argued that the PW 1 who is the complainant sustained injury but only to falsely implicate the appellants he stated that appellants assaulted him on P.O. PW 3 is the family member of deceased, subsequently reached to the spot so his evidence cannot be believed. PW 1 though stated before the court that he sustained injury by the assault of the accused persons but no medical document was adduced or produced by the prosecution to prove the fact. PW 4 and PW 5 were declared hostile, PW 6 is the doctor and the injury located by the doctor are head injuries not sufficient to cause the death of the deceased by the hit of a brick, more over the offending brick also not seized by the prosecution. It is the argument of the Learned advocate for the appellant that the Sessions Judge has passed the order of conviction only on the basis of the evidence

of PW 2 who is a child witness. There are several discrepancies in the evidences of prosecution so at this juncture the order of conviction passed by the Learned sessions Judge need be set aside.

The Learned Advocate appearing on behalf of the state submitted before this court that the Learned sessions Judge has passed the order after assessing and scanning the evidences on record. The evidence of PW 2 cannot be discarded as he is an eye witness. The presence of PW 2 in the place of occurrence was mentioned in the FIR as well as by the PW 1. The PW 2 has specifically stated before the Learned Court that present appellants have actually assaulted the deceased. The evidence of PW2 did not altered during the cross examination. There is no illegality in the judgment of the Learned Sessions on the strength of the evidence of PW 2. So he prayed for dismissal of the appeal.

Heard the Learned Advocates, perused the LCR, and statement of PWs. Though there are 14 PWs, the Learned sessions Judge has only believed the evidence of PW 2 as eye witness corroborated by the evidence of Dr. PW 6. The appellant argued that the judgment and conviction passed by the Learned sessions on the basis of sole testimony of PW 2 is

illegal the appellant also pointed out several discrepancies in the evidence of other witnesses.

This is a case of murder of a 60years old person. It has been alleged by the prosecution that the present appellant along with some other accused persons assaulted the deceased by brick, throttled him and after he fall down pressed her testicles and caused death. The statement of PW 1, who is one of the eye witnesses, stated that he was assaulted by the other accused persons but the fact was not at all proved categorically thus his testimony was not believed. The defence case is that the 60 years old man fell down on the Khamar and sustained injury over his head and died. The statement of PW 6, that is the doctor, indicated several injuries over the entire area of the head of the deceased. If a person fell down he will suffer only a single injury may be over head but in this case the PW 6 is of opinion that the death was due to subdual hematoma and extensive cerebral laceration and traumatic cerebral haemorrhage from head injury. This type of injury cannot be caused to any person if he fell down over khamar.

Let me consider whether the statement of PW 2, who is one of the son of the deceased, is at all believable in the attending facts and circumstances of this case. It is also to be

looked into that whether the statement of single witness PW 2 is sufficient to justify the impugned judgment and sentence.

The PW 2 stated the name of the present appellant who caught hold his father and assaulted him with the brick. He also stated the overtact committed by the appellants such as throttling and put pressure at testicles. During the cross-examination the credibility of PW 2 was tried to be shaken by the defence but it appears that the PW 2 was successful in his statement uttered at the time of examination in chief.

A fact need be proved before this court, the value and weigh of evidence need be looked into in every criminal trial. It is not necessary that a fact has to be proved by more than one witnesses. If it appears that a single witness is telling the truth truthful to the other circumstances of this case which is otherwise corroborating the attending scenario of commission of offence, such single witness is trustworthy and the order of conviction on the basis of this single witness is sustainable. To consider the given fact to be true, the court has to looked into the oral and documentary evidences including circumstances thereon.

In this particular case the PW 2 being the son of the deceased was present at the PO at the time of alleged commission of offence. His presence in the PO was never

denied by the defence by putting any question or denial during his cross- examination. The PW 2 stated the presence of accused persons including the appellant on the place of occurrence however, he stated correctly that though the accused persons/ appellants were armed with Lathi, Iron rod (Shabal) etc. but assaulted the deceased only by the brick. The assault as inflicted upon by the deceased was proved by evidence PW 6 (Dr.). Thus it appears to me that the Learned Sessions Judge has rightfully believed the statement of PW 2 to be an eye witness. The credibility of PW 2 being an eye witnesses was challenged by the defence but PW 2 was successful. Considering the same I think the Learned sessions Judge has rightfully come to the conclusion that the evidence of PW 2 can be believed to pass an order of conviction against the present appellants. I find no infirmity in the impugned order of conviction and sentence. In result thereof the instant appeal being merit less is hereby dismissed.

The impugned order of conviction and sentence passed by the Learned Sessions Judge against the present appellants is sustained and affirmed.

The present appellants are on bail. The present appellants are directed to appear before the Learned sessions Judge on or before 30th June 2023 to serve out the remaining

part of sentence, failing which, the Learned Sessions Judge to issue warrant of arrest against the appellants/convicts for compliance of this order.

Criminal appeal is disposed of.

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

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.)