

**Form No. J(1)**

**IN THE HIGH COURT AT CALCUTTA**  
**CRIMINAL APPELLATE JURISDICTION**  
**APPELLATE SIDE**

Present:

**The Hon'ble Justice Joymalya Bagchi**  
**&**  
**The Hon'ble Justice Ajay Kumar Gupta**

**C.R.A. 82 of 2019**  
**CRAN 2 of 2020**

**Manu Roy**  
**-vs-**  
**The State of West Bengal**

For the Appellant(s) : Mr. Arindam Jana, Adv.  
Mr. Jakir Hossain, Adv.  
Mr. Shahan Shah, Adv.  
Mr. Soumen Barman, Adv.

For the State : Mr. Sanjay Bardhan, Adv.  
Ms. Baishakhi Chatterjee, Adv.

Heard on : 08.05.2023

Judgment on : 08.05.2023

**Joymalya Bagchi, J.:-**

1. Learned lawyer for the appellant places informal paper books on record. Lower court records are also before us.

2. In view of the aforesaid preparation of formal paper books is dispensed with and with consent of the parties, appeal is taken up for hearing.

3. Appellant has assailed judgment and order dated 31.01.2018 passed by the learned Additional Sessions Judge, Fast Track 2<sup>nd</sup> Court, Jalpaiguri in Sessions Trial no. 13 of 2012 arising out of Sessions Case no. 61 of 2010 convicting the appellant for commission of offence punishable under section 302 IPC and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs.2,00,000/- in default to undergo rigorous imprisonment for a further period of six months.

4. Prosecution case as alleged against the appellant is to the effect that on 03.10.2009 one Mati Roy had gone to catch fishes. While he was returning after catching fish, a quarrel broke out between the said Mati Roy on the one hand and appellant and one Biren Roy on the other hand over the issue of catching fish. In the course of quarrel Biren supplied a spade to the appellant who hit Mati on the head. As a result Mati fell down on the ground and died. Bharati Roy (PW1) wife of Mati lodged written complaint resulting in registration of Dhupguri P.S case no. 228 of 2009 dated 3.10.2009 under sections 302/34 IPC against the appellant and the said Biren Roy. In the course of investigation the spade was recovered from the spot.

5. Charge sheet was filed and charge was framed under section 302/34 IPC against the appellant and the said Biren Roy. They pleaded not guilty and claimed to be tried.

6. In the course of trial, prosecution examined 11 witnesses to establish its case and exhibited a number of documents. Post mortem report was exhibited on admission under section 294 Cr.P.C.

7. The defence of the appellant was one of innocence and false implication.

8. In conclusion of trial, the trial Judge by the impugned judgment and order dated 31.01.2018 convicted and sentenced the appellant as aforesaid. Biren Roy was acquitted of the charge levelled against him.

9. Mr. Jana, learned counsel for the appellant argues recovery of the weapon of offence i.e. spade is not marked in the sketch map. Pond where Mati Roy had gone to catch fish is not indicated by the sketch map. Hence, place of occurrence has not been proved beyond reasonable doubt. Without prejudice to the aforesaid, he contends incident occurred in the course of a quarrel over catching of fish. Appellant was unarmed and had been supplied weapon by Biren who has been acquitted. He had dealt a single blow and had no intention to commit murder. Hence, the offence may be scaled down to section 304 Part I IPC.

10. On the other hand, Mr. Bardhan, learned counsel for the State submits that PWs 1 to 5 and 7 are eye-witnesses. They saw appellant struck a blow on the head of Mati with a spade. As a result, victim died.

Post mortem report shows sharp penetrating cut injury over the left temporal region of scalp which corroborates the ocular evidence. Appellant had hit on a vital part of the body with a spade. Hence, ingredients of offence punishable under section 302 IPC are satisfied.

11. I have considered the evidence on record.

12. PW1 Bharati Roy is the wife of the victim. She deposed that her husband had gone to catch fish in the pond. While he was returning home, he had a quarrel with Manu. In the course of quarrel Biren supplied a spade to Manu and the latter hit her husband on the head. As a result, her husband fell down at the spot. He was taken to Jalpaiguri hospital where he was declared dead. She proved the written complaint which was scribed by her brother Monteshwar Roy (PW8). In cross examination, she admitted her husband was addicted to liquor.

13. PW 2 Umesh Chandra Roy is the younger brother of Manu. He has corroborated her sister-in-law PW1. He further stated police seized a spade with blood stains and blood stained earth under a seizure list. He proved his signature on the seizure list and identified the spade.

14. PWs 3, 4, 5 and 7 are the neighbours. They stated they heard a hue and cry. A dispute had cropped up between Manu and the deceased Mati over catching of fishes. Manu threw away the basket of fishes. At that time Biren supplied a spade and Manu hit Mati on the head. As a result, he died.

15. PW 6 Jiban Sarkar corroborated the other neighbours.

16. Post mortem doctor was not examined but on admission the post mortem report was exhibited as Ext 7. In the post mortem report sharp penetrating cut injury over the left temporal region of scalp was noted. On dissection fracture of underlying temporal bone with collection of blood on the box was also detected. The doctor opined death was due to shock and haemorrhage owing to injuries which were ante mortem in nature.

17. There is no dispute that on the fateful day while the victim Mati was returning after catching fish a quarrel ensued between him on the one hand and the appellant and Biren on the other hand. In the course of quarrel Manu had thrown away the basket of fishes. At that juncture Biren supplied a spade to Manu. Manu struck Mati on the head. As a result, Mati died. Aforesaid facts are established through the consistence evidence of the relations i.e PWs 1 and 2 as well as neighbours PWs 3, 4, 5 and 7.

18. In this backdrop failure on the part of the investigating officer to note the water-body in the rough sketch map or record the place where the spade was recovered would not erode the inherent truthfulness of the eye-witnesses. I am persuaded to come to such conclusion as the manner of injury as deposed by the eye-witnesses finds corroboration from the post mortem report (Ext 7).

19. It is true that the appellant had assaulted Mati on the head, a vital part of the body. He had used a sharp cutting weapon i.e. spade.

However, the trial judge did not advert to the fact that the incident occurred without premeditation. Mati had gone to catch fish. Over this issue, a quarrel ensued. In the course of quarrel Biren (the acquitted accused) supplied a spade to the appellant who hit the victim on the head. Though the strike was on a vital part of the body and by a sharp cutting weapon, it must be borne in mind that the incident occurred all of a sudden and the appellant was unarmed. He was supplied spade by co-accused who has been acquitted. No appeal has been preferred against his acquittal. These circumstances persuade me to hold that the act of the appellant would fall within the 4<sup>th</sup> Exception of section 300 IPC.

20. Exception 4 reads as follows:-

*“300. Murder.- \*\*\* \*\*\* \*\*\**

*Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”*

21. Incident occurred in the course of sudden quarrel and in a fit of passion. Appellant was initially unarmed and weapon of offence was supplied by the acquitted accused. He struck a single blow and had not acted in a cruel or unusual manner.

22. In light of the 4<sup>th</sup> Exception of section 300 IPC, I am of the opinion appellant has made out a case to scale down his culpability to

culpable homicide not amounting to murder. In this regard reference may be made to ***Stalin vs. State represented by the Inspector of Police***<sup>1</sup>.

23. Hence, the conviction of the appellant is altered from Section 302 to one under Section 304 Part I of the Indian Penal Code.

24. Coming to the issue of sentence, I note that the appellant does not have criminal antecedent. Incident occurred in the course of quarrel and the appellant had struck a single blow. But the blow was struck on a vital part of the body with a sharp cutting weapon.

25. Balancing the aggravating and mitigating circumstances I modify the sentence imposed on the appellant and direct he shall suffer rigorous imprisonment for ten years along with a fine of Rs.50,000/-, in default, to suffer imprisonment for six months more for the offence under Section 304 of the Indian Penal Code.

26. The appeal is allowed to the aforesaid extent.

27. Period of detention, if any, undergone by the appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon him in terms of Section 428 of the Code of Criminal Procedure.

28. In view of disposal of the appeal connected application if any, also stands disposed of.

29. Copy of the judgment along with LCR be sent down to the trial Court at once for necessary compliance.

---

<sup>1</sup> (2020) 9 SCC 524

30. Urgent Photostat Certified copy of this judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree.

**(Ajay Kumar Gupta, J.)**

**(Joymalya Bagchi, J.)**

tkm/PA