

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

CRA 68 of 2015

Khokon Biswas

-Vs-

State of West Bengal

For the Appellant : Mr. Anirban Sen, Adv.
Mr. Prakash Chandra Pal, Adv.
Mr. Sagnik Bhattacharya, Adv.
Mr. Rishav Gupta, Adv.

For the State : Mr. Bibaswan Bhattacharyya, Adv.

Heard on : 13th February, 2023.

Judgment on : 13th February, 2023.

Joymalya Bagchi, J.:-

1. Appeal is directed against the judgment and order dated 28.11.2014 and 29.11.2014 passed by the learned Additional Sessions Judge, 5th Court, Krishnagar, Nadia in Sessions Trial No.IV(III) 2014 arising out of Sessions Case No.18(7) 2013 convicting the appellant for commission of offence punishable under Section 302 of the Indian Penal Code and under Section 25(1)(a) and 27(1) of the Arms Act and sentencing the appellant to suffer imprisonment for life and pay fine of Rs.5,000/-, in default, to suffer simple imprisonment for six months for the offence punishable under

Section 302 of the Indian Penal Code and to suffer rigorous imprisonment for three years and to pay fine of Rs.2,000/-, in default, to suffer simple imprisonment for four months for commission of the offence punishable under Section 25(1)(a) of the Arms Act and to suffer rigorous imprisonment for five years and to pay fine of Rs.3,000/-, in default, to suffer simple imprisonment for five months for the offence punishable under Section 27(1) of the Arms Act. All the sentences to run concurrently.

2. Prosecution case as alleged against the appellant is to the effect that on 18th September, 2012 in the evening, one Anup Ghosh @ Babu, an agent of M/s. Ramel Group of Industries was gossiping with other commission agents including Gopal Saha (PW2). At that time appellant came to the spot and demanded a bucket to pour water on the head of his associate viz., Kola. Anup told the appellant he has only one bucket in the toilet. Thereupon, the appellant took out a revolver from his waist and fired at Anup on the chest. Anup fell down and appellant fled away. Anup was taken to hospital where he expired around 8.15 PM. Father of Anup viz., Satya Ranjan Ghosh (PW1) lodged written complaint resulting in registration of Kotwali Police Station Case No.926 of 2012 dated 18.09.2012 under Section 302 of the Indian Penal Code and under Sections 25/27 of the Arms Act against the appellant. In course of investigation appellant and his associate viz., Kola were arrested. On the showing of the appellant ammunitions were recovered from his residence.

3. In conclusion of investigation charge sheet was filed and charges were framed under Sections 302/34 of the Indian Penal Code and under

Sections 25(1)(a) and 27 of the Arms Act against the appellant and co-accused viz., Kola Biswas. They pleaded not guilty and claimed to be tried.

4. During trial, prosecution examined 19 witnesses and exhibited a number of documents. Defence of the accused persons was one of innocence and false implication.

5. In conclusion of trial, trial judge by the impugned judgment and order dated 28.11.2014 and 29.11.2014 convicted and sentenced the appellant, as aforesaid. Kola Biswas was, however, acquitted of the charges levelled against him.

6. Mr. Arindam Sen, learned Advocate for the appellant submits prosecution case is based on the sole eyewitness, PW2. Presence of PW2 at the place of occurrence is not established. He did not see the appellant fire at the victim. Accordingly, appellant may be acquitted.

7. Nobody appears for the State. Mr. Bibaswan Bhattacharya, learned Advocate is requested to appear on behalf of the State. He submits PW2 is a reliable witness. He was with his friend Anup Ghosh @ Babu at the time of occurrence. Appellant came to the spot and fired at Anup. At that time, he was scrolling through his mobile. He heard a sound and looked up. Babu fell down at the spot with gun shot injury. Appellant fled away from the spot. Medical evidence and other witnesses have corroborated PW2 and proved the prosecution case. Appeal is liable to be dismissed.

8. Gopal Saha (PW2) is the sole eyewitness. He deposed on 18.09.2012 around 7:10 to 7:15 PM he was talking with Anup. At that time appellant came to the spot and demanded a bucket to pour water on the head of Kola. Anup told the appellant he had only one bucket in the toilet.

Suddenly, appellant took a revolver and fired at Anup. Anup fell down at the spot. Hearing the alarm, local people including the parents of Anup came to the spot. Anup was taken to hospital in a rickshaw. He made statement before Magistrate. He was extensively cross-examined. He remained unshaken. He explained the circumstances in which he saw the incident.

9. His deposition is corroborated by Satya Ranjan Ghosh, father of Anup (PW1). He deposed he was preparing sweets. Hearing a sound he came out. He saw his wife. His son was lying with his head on the lap of his wife. He heard appellant had fired at Anup. His son was taken to Saktinagar Hospital. He expired at the hospital at 8.15 PM. He went to the police station and lodged FIR which was scribed by Abhijit Das (PW12). He made statement before Magistrate.

10. Sulekha Ghosh (PW3) is the mother of the deceased. She corroborated her husband and stated hearing a sound she rushed to the spot and found her son lying on the road. Khokan was running towards the verandah of the school. He had a fire arm in his hand. He handed over the fire arm to Kola. Anup was taken to hospital by local people.

11. Sushanta Halder (PW6), Swati Halder (PW8) and Surojit Ghosh (PW9) are the other relations of the deceased. They are post occurrence witnesses. They corroborated the prosecution case.

12. PW9 is also a witness to the seizure of a magazine and some earth from the place of occurrence.

13. Sujan Halder (PW11) is a neighbour. He took the deceased to hospital. He deposed on the way victim told him appellant had shot at him.

14. Dr. Sudeb Biswas (PW15) deposed on 18.09.2012 he examined one Anup Ghosh at District Hospital, Krishnagar, Nadia. He found the patient was conscious but restless. He referred the patient to NRS Medical College and Hospital but he succumbed to his injuries at 9.25 PM. He proved the bed-head ticket, Ext.13.

15. Asit Biswas (PW17) held post mortem over the body of the deceased. He found the following injuries:-

“ 1) Penetrating injury on left side of front of chest on upper part measuring 2”below & 1 ½ “left lateral to sternal notch, ½” in diameter x chest cavity deep-Skin around the injury is burn and blackened & margin is inverted-Wound of entry of fire-arm missile.

2) Antero-lateral wall of left ventricle is punctured and the fire-arm missile is seen to be impacted in posterior wall of left ventricle and it is removed and preserved.

3) The upper lobe of left lung is punctured.

Pleasure left-full of blood. Right- pale.

Membrane of brain, brain, peritoneum, mouth, pharynx, esophagus, liver, spleen, both kidneys- all are found pale.

Pericardium was found full of blood.

Heart-punctured and empty.

Vessels are found pale.

Post-mortem blood collected and preserved in sealed plastic jar.

Foreign body-one metallic bullet head is preserved in a sealed plastic jar.

Post-mortem blood and one metallic bullet head in separate jar with seal and signature along with wearing apparels as mentioned in the inquest report were handed over to the police escort.

Stomach contained partially digested rice weighing 5 ounces. No abnormal smell was present.”

He opined death was due to shock and haemorrhage resulting from bullet injuries, ante-mortem and homicidal in nature. He proved the post mortem report, Ext.14.

16. Nil Ratan Ghosh (PW18) is the Investigating Officer. He went to the place of occurrence. He seized one magazine, one round ammunition and controlled earth from the place of occurrence. He prepared seizure list, Ext.5/2. He prepared rough sketch map with index, Ext.15. He recorded statements of witnesses. He held inquest over the dead body of the deceased. He collected wearing apparels, bullet head from the hospital. He seized the identity card of the deceased. On 31.10.2012 he arrested the appellant. On 05.01.2013 on the statement of Khokan Biswas, Ext.20, he recovered two cartridges from back side of the television set kept inside his room, Ext.12/1. The recovery was witnessed by PWs12 and 13. He obtained sanction (Ext. 21) from District Magistrate which was proved by PW 19. He submitted charge sheet.

17. PW2 is the sole eyewitness. He is a commission agent of Ramel Group of Industries. Anup Ghosh was also an agent. In the evening on 18.09.2012, he was discussing the affairs of the company with Anup. This explains the presence of PW2 at the place of occurrence. At that time appellant came to the spot. He asked for a bucket to pour water on his associate Kola. Anup replied he had only one bucket in the toilet. This enraged the appellant. He took out a fire arm from his waist and fired at Anup.

18. It is contended PW2 had not seen the actual act of firing. As discussed, PW2 was present and talking with his friend Anup when the

appellant came to the spot. He heard the appellant demand a bucket of water which Anup was unable to give. At that time he was scrolling his mobile phone. Suddenly, he saw a flash of light and heard sound of firing. He raised his gaze and saw his friend fall on the ground with a gun shot injury. He saw the appellant running away from the spot. Nothing could be more graphic than the manner in which PW2 has described the incident. He has no enmity with the appellant. For this reason, I am inclined to consider him as a truthful and reliable witness.

19. Hearing the sound, mother of Anup (PW3) rushed to the spot. She found the appellant running towards the school with a fire arm in his hand. He handed over the fire arm to Kola. Her version is corroborated by PW6, brother-in-law of Anup. Other witnesses viz., PWs1, father of the deceased, PW8, sister-in-law of the deceased and PW9, cousin of the deceased came to the spot soon thereafter. Local people including PW11 took Anup to the hospital where he expired. PW15, Medical Officer treated Anup at the hospital. He found a penetrative injury on his chest at left infra clavicular region. PW17, post mortem doctor corroborated the aforesaid finding. He found gun shot injuries on the body of Anup. He opined that the death was due to shock and haemorrhage resulting from bullet injuries, ante-mortem and homicidal in nature.

20. Investigating Officer (PW18) seized a magazine with ammunitions from the place of occurrence. Subsequently, appellant was arrested. On his disclosure statement, two ammunitions were seized from behind the television set kept in his room. PW7, Ballistic expert opined that the

ammunitions seized from the house of the appellant were live and fitted inside the magazine which was recovered from the place of occurrence.

21. The aforesaid evidence on record including the medical evidence wholly corroborates the ocular version of PW2 and establishes the prosecution case beyond reasonable doubt.

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

23. Accordingly, the appeal is dismissed.

24. Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellants in terms of Section 428 of the Code of Criminal Procedure.

25. Let a copy of this judgment along with the lower court records be forthwith sent down to the trial court at once.

26. Photostat certified copy of this judgment, if applied for, shall be made available to the appellant within a week from the date of putting in the requisites.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)