

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**CRA (DB) 75 of 2022
With
IA No.:CRAN 1 of 2022**

**Manasha Mal & Anr.
Vs.
The State of West Bengal & Anr.**

For the Appellants

:Mr. Ayan Bhattacharjee
Mr. Kunal Ganguly
Mr. Tirupati Mukherjee
Ms. Jenifar Alam
Ms. Sanchari Chakraborty

For the State

: Mr. Saibal Bapuli, Ld. APP
Mr. Bibaswan Bhattacharya

Heard on : April 12, 2023

Judgment on : April 12, 2023

DEBANGSU BASAK, J.:-

1. The appeal is directed against the judgment of conviction dated March 31, 2022 and the order of sentence dated April 1, 2022 passed by the learned Additional Sessions Judge, Fast

Track Court, Suri, Birbhum in Sessions Trial No.02/January/2017 arising out of Sessions Case No.86 of 2016.

2. By the impugned judgment of conviction, the learned Judge found the appellants guilty of offence punishable under Sections 302/148/149 of the Indian Penal Code, 1860. By the impugned order of sentence, the learned Judge sentenced the appellants to life imprisonment for the offence punishable under Sections 302/149 of the Indian Penal Code, 1860 and to pay a fine of Rs.50,000/- each and in default to undergo further imprisonment for six months. The learned Judge awarded simple imprisonment for one year to the appellants for the offence punishable under Section 148 of the Indian Penal Code, 1860. Both the sentences were directed to run concurrently.

3. Police received a written complaint from prosecution witness (P.W.) 1 on April 13, 2014 regarding murder of her husband. On the basis of such written complaint, police registered Sainthia Police Station FIR No.94/14 dated April 13,

2014 under Sections 147/148/149/302 of the Indian Penal Code, 1860.

4. Police submitted charge sheet against the appellants and three other persons on November 14, 2014. Two of the accused were found to be juvenile and sent to the Juvenile Justice Board. Court framed charges as against the two appellants and one person on January 24, 2017. The appellants and the third person pleaded not guilty and claimed to be tried. During trial one accused expired on July 31, 2020.

5. At the trial, the case of the prosecution was that, the appellants along with three others murdered the victim, who was the husband of P.W.1, on April 12, 2014 at about 10 p.m. in front of the house of the victim. The appellants along with three others were members of an unlawful assembly, committed an offence of rioting with deadly weapons, acted in prosecution of common object of murdering the victim.

6. At the trial, prosecution examined seventeen witnesses and relied upon various documentary and material evidences to bring home the charges as against the appellants. On

conclusion of the evidences of the prosecution, the appellants were examined under Section 313 of the Code of Criminal Procedure, 1973 where the appellants pleaded not guilty and falsely implicated.

7. Learned Advocate appearing for the appellants submits that, the prosecution was unable to prove the charges beyond reasonable doubt. He submits that, the so-called eye-witnesses are relatives of the victim. He refers to the oral testimonies of the prosecution witnesses. He contends that, there were embellishment in the oral testimonies of the prosecution witnesses.

8. Learned Advocate appearing for the appellants draws the attention of the Court to the contents of the written complaint and the deposition of the maker of such written complaint being P.W.1. According to him, P.W.1 claimed to be an eye-witness for the first time in Court. Such claim did not appear in the written complaint.

9. Learned Advocate appearing for the appellants submits that, the P.W.6 who claimed himself to be another eye-witness

is a chance witness. According to him, testimony of a chance witness should not be readily accepted.

10. Referring to the versions of the incident given by P.W.1, P.W.3 and P.W.6, learned Advocate appearing for the appellants submits that, there were major discrepancies in their statements. According to him, the versions of the incident are different.

11. Learned Advocate appearing for the appellants submits that, the weapons of assault were not recovered. No opinion was obtained from the post-mortem doctor as to the cause of death through the alleged weapons of assault.

12. Learned Advocate appearing for the appellants submits that, the post-mortem doctor in his testimony never opined that the injuries were sufficient to cause death in the ordinary course of nature. Consequently, according to him, the prosecution was unable to prove the charges as against the appellants beyond reasonable doubt.

13. Learned Advocate appearing for the State submits that, all the charges as against the appellants stood conclusively proved by the prosecution. He refers to the evidence of the

prosecution witnesses. He submits that, three eye-witnesses saw the incident of murder. There were no discrepancies in the versions given by such eye-witnesses, namely, P.W.1, P.W.3 and P.W.6. He refers to the oral testimony of post-occurrence eye-witnesses, namely, P.W.4 and P.W.8. He submits that, the oral testimonies of such prosecution witnesses taken together would conclusively establish the charges as against the appellants beyond reasonable doubt.

14. The wife of the victim deposed as P.W.1. She stated that, the victim was murdered on April 12, 2014 at about 10 p.m. in the night. She was present in her house. At that time, the victim was returning home from work. The victim used to return home every day by that time. On April 12, 2014 at about 10 p.m. when the victim was returning home, the appellants along with three others attacked the victim in front of her house and assaulted him. She identified the two appellants along with the deceased accused in Court. She stated that, the two other assailants were not present in Court. She stated that, five persons assaulted the victim with bamboo, lathi and sharp-cutting weapon. The victim tried to

escape from the hands of the assailants. The assailants chased the victim and assaulted him in front of the house of Kanai Mal where the victim fell down after sustaining bleeding injuries. She described the injuries suffered by the victim. She stated that, she raised a hue and cry and called the local people. When the local people came to the spot, the assailants fled away from the spot. The victim died on the spot.

15. P.W.1 stated that, she informed the incident to the Sainthia Police Station at about 12 midnight on the date of the incident. After receiving information of the incident, police came to the spot and held inquest over the dead body of the victim at the place of occurrence. Police prepared an inquest report in her presence which she signed as a witness. She identified her signature on the inquest report. The inquest report was tendered in evidence and marked as Exhibit-1/1.

16. P.W.1 stated that, police seized various articles at the spot. She identified her signature on the seizure list dated April 13, 2014 which was tendered in evidence and marked as Exhibit-2/1. She lodged the written complaint with the police.

She stated that, the complaint was written by P.W.2 under her instruction and statement. She signed the complaint after the contents were read over to her by P.W.2. She identified her signature on the written complaint which was tendered in evidence and marked as Exhibit-3/1. She signed the labels of the various articles seized by the police which was tendered in evidence and marked as Exhibit-4/1 and Exhibit-5/1. She recorded her statement under Section 164 of the Code of Criminal Procedure which was tendered in evidence and marked as Exhibit-6.

17. A co-villager deposed as P.W. 2. He stated that, he wrote the written complaint as per the instruction and statement of P.W. 1. After writing the complaint, he read over the contents to P.W. 1 and then P.W. 1 signed the complaint. Thereafter, she signed the complaint as a scribe there of. The written complaint was tendered in evidence and marked as exhibit 3. P.W. 2 also witnessed the seizures made on April 13, 2014. He identified his signature on such seizure list, which was marked as exhibit 2/2. He was also one of the witnesses to

the inquest. He identified his signature on the inquest report, which was marked as exhibit 1/ 2.

18. The son of the victim deposed as P.W. 3. He stated that, the incident took place at about 10 p.m. in the night in front of their house. At that time, he was in his house. At the time of the incident, the victim was returning from the mill where, he was working. After hearing a hue and cry from outside of their house, he and P.W. 1 came out of the house and saw five assailants assaulting the victim by sharp cutting weapon, rods and wooden sticks. He identified the three adults including the two appellants herein, who were being proceeded against before the trial Court. He stated that, after seeing the assault on the victim, they raised alarm for help when local people rushed to the spot. The assailants fled away from the spot. Then they went in front of the house of Kanai Mal and saw profuse bleeding was taking place from the head, neck and different parts of the body of the victim and he was lying dead thereat. Thereafter, P.W. 1 informed the incident to the police over phone.

19. A resident of the village deposed as P.W. 4. He stated that, on April 12, 2014 at about 10.30/11 p.m. in the night he was sleeping in his house after returning from work. He heard a hue and cry and also heard the screams of P.W. 1. P.W. 1 was screaming 'murder murder'. After hearing such screams of P.W. 1, he and other neighbours rushed to the spot where, the victim was lying dead. In the vicinity of the place, there were houses of other villagers. After reaching the spot, he saw the bleeding injuries on the neck, left jaw and cheek of the victim. He also saw the accused persons were fleeing from the spot. During investigation, he recorded his statement before the Magistrate. Such statement was tendered in evidence and marked as exhibit 7. He is the witness of the seizure made by the police on April 15, 2014. The signature on such seizure list was tendered in evidence and marked as exhibit 8/1. He stated that, he noticed one sharp cutting weapon, one wooden stick and one sickle in the banana groves and informed the same to the police and the police seize such articles. He signed the labels of such seized articles, which he identified in

Court. His signature thereon was tendered in evidence and marked as exhibits 9/1, 9A/1 and 9B/2.

20. A post occurrence witness deposed as P.W. 5. He stated that, on April 12, 2014, he was returning home at about 11/11.30 p.m. and at that time he saw that the police lifting the dead body of the victim. He is the seizure list witness of the seizures made on April 14, 2014. He identified such signatures on the seizure list, which was marked as exhibit 8/2. He identified the signature on the labels of the articles seized.

21. P.W. 6 is a resident of the village. He stated that, the incident took place on April 12, 2014 at about 10.30 to 11 p.m. in night. At that time, he was in his house. He heard a hue and cry from outside and came out of his house and saw in the light of lamp post that appellant no. 2 struck the victim on his head with a piercing instrument (Gujpata) and due to such assault, the victim fell down on the ground. Then the local people, he and other neighbours rushed to the spot. They saw the assailants to be fleeing away. He saw Netai Mal was wielding a sickle in his hand and other assailants namely,

Manasha Mal, Hari Mal and Gour Mal were wielding wooden sticks in their hands. He identified Haricharan, Manasha and Santosh Mal in Court.

22. P.W. 6 stated that, after reaching the spot, he saw the victim to sustain the bleeding injuries on his right side of neck, head and left side of jaw. He stated that, after 20-25 days, police came to the village along with appellant no. 2 and recovered one sharp cutting weapon, one bamboo stick from the bamboo groves near the bank of the tank. Police seized such articles and prepared the seizure list which he signed. He identified his signature dated May 5, 2014, which was marked as exhibit 10/1. He identified his signature on the label of the articles seized. He recorded her statement under Section 164 of the Code of Criminal Procedure, which was tendered in evidence and marked as exhibit 12.

23. The father of the victim deposed as P.W. 7. He stated that, at the time of the incident, his daughter-in-law came to him and informed him that the victim was murdered. He went to the spot and saw the dead body of his son. He signed the seizure list. He identified his signature on the seizure list

dated May 5, 2014 as well as the labels of the articles seized on that date.

24. The younger brother of the victim deposed as P.W. 8. He stated that, the victim was murdered on April 12, 2014 at about 10/10.30 p.m. in night. At that time, he was in the house. P.W. 1 was rushing and crying that her husband was being murdered. After hearing the cries of P.W. 1, he rushed to the place of occurrence and saw the appellants and three others being armed with sharp cutting weapon, piercing weapon, rod and wooden stick to be standing thereat and the victim lying at a distance of 20-25 cubits from them. When the accused persons saw them, the accused persons fled away from the spot. After reaching the place of occurrence, he saw the victim lying dead on the ground. Thereafter, P.W. 1 lodged the complaint with the police. He identified the two appellants in Court. He identified his signature in the inquest report as also on the seizure list dated April 13, 2014.

25. A resident of the village deposed as P.W. 9. He did not see the incident of murder. He rushed to the place of occurrence after hearing the hue and cry. He saw the victim

lying dead on the ground. He identified his signature in the inquest report as also on the seizure list.

26. A seizure list witness of the seizure made on April 15, 2014 deposed as P.W. 10. He did not add any value to the case of the prosecution excepting identifying his signature on the seizure list. Cross-examination was declined.

27. A co-villager deposed as P.W. 11. He identified the appellants in Court. However, he went on to say that he heard about the murder.

28. The doctor, who conducted the post mortem on the dead body of the victim deposed as P.W. 12. He tendered the post mortem report, which was marked as exhibit 13. He described the injuries he found on the dead body of the victim during post mortem.

29. The photographer, who was requisitioned by the police on April 13, 2014 deposed as P.W. 13. He took photographs of the dead body. The photographs taken by P.W. 13 were marked as material exhibits I to V. His signature in the seizure list was marked as exhibit 14.

30. A Sub-Inspector of Police, who witnessed the seizure made on May 18, 2014 deposed as P.W. 14. His signature on such seizure list was tendered in evidence and marked as exhibit 14/1.

31. The police constable, who brought the dead of the victim along with all relevant papers to the morgue for post mortem deposed as P.W. 15.

32. The police personnel, who witnessed the seizure on April 13, 2014 deposed as P.W 16. His signature was marked as exhibit 15.

33. The Investigating Officer deposed as P.W. 17. He narrated about the course of investigations. He stated about the arrest made by him. He also stated that various articles were seized on the accused pointing out the same. He submitted charge-sheet.

34. As noted above, on conclusion of the evidence of the prosecution, the appellants were examined under Section 313 of the Code of Criminal Procedure where they claimed to be innocent and falsely implicated. They declined to adduce any evidence in defence.

35. Dead body of the victim was found on April 12, 2014. P.Ws. 1, 3 and 6 witnessed the assault on the victim by five persons. All five persons were named by P.Ws. 1, 3 and 6. According to P.Ws. 1, 3 and 6, the victim was assaulted by a piercing instrument, sharp cutting weapon, rod and wooden stick. Exhibit 13 is the post mortem report of the victim which notes the injuries on the dead body of the victim. The injuries noted in exhibit 13 corroborates the nature of assault spoken of by P.Ws. 1, 3 and 6 in their oral testimonies.

36. It is contended on behalf of the appellants that, the version of the incident given by P.Ws. 1, 3 and 6 are different. With respect, we are unable to accept such contention. The oral depositions of P.Ws. 1, 3 and 6 speaks of assault on the victim by five persons by using the instruments of assault as noted above. The injuries on the dead body of the victim is commensurate with the nature of assault spoken of by P.Ws. 1, 3 and 6. P.Ws. 1, 3 and 6 used different words to describe the same incident of assault. Therefore, we are not in a position to accept the contention of the appellants that, there are embellishments in the testimonies of such witnesses.

37. P.W. 1 lodged the written complaint being exhibit 1. It is trite law that the written complaint need not be an encyclopaedia of evidence. Exhibit 1 discloses the incident of assault resulting in the murder of the victim. The assailants are named in exhibit 1. In her oral testimony, P.W. 1 stated that she is an eye witness of the incident. The fact that the P.W. 1 is an eye witness of the incident stands corroborated by the evidence of P.Ws. 3 and 6. In fact, post occurrence eye witnesses being P.Ws. 4 and 8 corroborate the presence of P.W. 1 at the time of the incident.

38. Inquest of the dead body of the victim was held at the place of occurrence itself. Post mortem of the dead body of the victim was conducted by P.W. 12. Eye witnesses saw the assault on the victim. Victim died on the spot.

39. Therefore, in our view, absence of any statement of P.W. 12 that, the injuries were the cause of the death is not fatal to the case of the prosecution. The fact that, the offending weapons were not shown to P.W. 12 and his opinion not sought for with regard thereto was not fatal to the case of the prosecution.

40. When the police case was started, five persons were named as the assailants. Factum of five persons assaulting the victim was established at the trial. Two were found to be juvenile and sent to the Juvenile Justice Board. One died during the trial. Two were convicted. Therefore, ingredients of Section 149 of the Indian Penal Code, 1860 stood satisfied.

41. Prosecution was able to, therefore, establish all the ingredients of Sections 302/148/149 of the Indian Penal Code, 1860 as against the appellants before us.

42. We, therefore, find no ground to interfere with the impugned judgement of conviction and order of sentence. The impugned judgement of conviction and order of sentence are affirmed.

43. CRA (DB) 75 of 2022 is dismissed.

44. In view of the dismissal of the appeal, nothing survives in the interim application. CRAN 1 of 2022 is also dismissed.

45. Period of detention suffered by the appellants pre-trial, during the trial and post trial be set off against the sentences awarded. The sentences shall run concurrently.

46. A copy of this judgement and order along with trial Court records be transmitted to the appropriate Court forthwith for necessary action.

47. Urgent photostat certified copy of this judgment be given to the parties expeditiously, if applied for.

(Debangsu Basak,J.)

48. I Agree.

(Md. Shabbar Rashidi, J.)