

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

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Partha Sarathi Sen

**C.R.A. 304 of 2018
CRAN 1 of 2019 (Old No. CRAN 4107 of 2019)**

**Shovan Saha @ Santa
-Vs-
The State of West Bengal**

For the Appellant	:	Mr. Sabir Ahmed, Adv. Mr. Gouranga Kumar Das, Adv. Mr. Kanaylal Dutta, Adv. Mr. Abdur Rakib, Adv. Mr. Biswajit Sarkar, Adv. Ms. Suman Biswas, Adv. Mr. Dhiman Banerjee, Adv. Mr. Soham Chakraborty, Adv.
For the State [in CRA 304/2018]	:	Ms. Zareen N. Khan, Adv. Mr. Arup Sarkar, Adv.
For the State [in CRAN 1/2019]	:	Mr. Saibal Bapuli .. Id. A.P.P. Mr. Bibaswan Bhattacharya, Adv.
Heard on	:	03.04.2023, 05.04.2023 & 10.04.2023
Judgment on	:	10.04.2023

Joymalya Bagchi, J. :-

1. Appeal is directed against judgment and order dated 25.04.2018 and 26.04.2018 passed by learned Additional Sessions Judge, 4th Court,

Krishnagar, Nadia in Sessions Trial No. 01(01) of 2015 arising out of Sessions Case No.24(12) of 2014 convicting the appellant for commission of offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/-, in default, to suffer simple imprisonment for three months more.

2. Prosecution case as alleged against the appellant is as follows :-

Sumi Laha @ Puja (the deceased) was a 14-years old girl. She had a love affair with the appellant, a neighbour. In the evening of 13.09.2014 Sumi was alone at her residence. Her mother viz. Runu Laha (PW1) had gone to attend *puja* at a nearby house. Her father viz. Sujit Laha (PW9) was also outside. While Runu was at the *puja*, she was informed that her daughter had suffered burn injuries. She rushed to her residence. She found her daughter with burn injuries. Local people viz. Amit Kumar Dutta (PW6), Kartick Sutradhar (PW7) and Liton Pramanick (PW8) were present. They informed they had entered the room after unlocking the door. She asked her daughter why she had done this to herself. In response, her daughter stated appellant had set her on fire. Victim was taken to Debagram Health Centre. Due to lack of medical facility, she was referred to Krishnagar Hospital. Immediately after admission she expired. Written complaint was lodged by Runu at Debagram ROP resulting in registration of Kaliganj Police Station Case

No.545 of 2014 dated 14.09.2014 under Section 302 of the Indian Penal Code and Section 18 of the POCSO Act against the appellant.

3. In course of investigation, appellant was arrested. Charge was framed under Section 302 of the Indian Penal Code. Appellant pleaded not guilty and claimed to be tried.

4. During trial, prosecution examined 18 witnesses and exhibited a number of documents to prove its case. Defence of the appellant was one of innocence and false implication.

5. In conclusion of trial, learned trial Judge by the impugned judgment and order dated 25.04.2018 and 26.04.2018 convicted and sentenced the appellant, as aforesaid.

6. Mr. Sabir Ahmed, learned Advocate for the appellant submits there is no direct evidence implicating the appellant in the murder. None of the local witnesses viz. PWs. 6, 7 & 8 saw the appellant near the place of occurrence. Oral dying declaration relied by the prosecution has not been proved beyond doubt. PWs.7 & 8 were present when the victim is said to have made oral statement to her mother (PW1). They did not speak of any dying declaration to PW1. The fact that victim told her father (PW9) not to spare the appellant while she was being taken to hospital is absent in the FIR. PW8, who accompanied the victim to hospital, has also not supported the prosecution case in this regard. Hence, the prosecution case suffers from various lacunae and has not been proved beyond doubt. Appellant is entitled to the benefit of doubt.

7. In rebuttal, Ms. Zareen N. Khan, learned Advocate for the State submits PW1 deposed her daughter made dying declaration to her. This fact is stated in the FIR and corroborated by PW6. PWs. 6, 7 & 8 also stated the door of the room was bolted from outside. This improbabilises a case of suicide. Appellant had a love affair with the victim. He also had close relationship with other women including PW13. This gave motive to the appellant to commit the crime. Accordingly, prosecution case is proved beyond doubt.

8. PW1 (Runu Laha) is the mother of the victim and the de-facto complainant. She deposed she had gone to the house of a neighbour to take *prasad* of '*Graha Raj Thakur*'. Her 14-year old daughter Sumi Laha @ Puja was studying in the house. A person from the locality informed her that her daughter was burning. She came to the house. When she enquired of her daughter, the latter told her Santa had set her on fire. She was taken to Debagram Health Centre. The Health Centre did not admit her. Thereafter, with the assistance of Liton Pramanick (PW8) her daughter was taken to Shaktinagar hospital in a private car. Immediately after admission at Shaktinagar hospital, Sumi Laha @ Puja died. PW1 lodged written complaint. She proved her signature on the complaint. She made statement before Magistrate.

9. PW9 (Sujit Laha) is the father of the deceased. He deposed on the fateful day he was gossiping with one Santu Majumder. He heard from a passer-by that his daughter had been burnt. He rushed to his house. He

found his daughter lying with burn injuries. He took his daughter to Debagram Rural Hospital but there was no medical officer. Then they took her to Shaktinagar Hospital with the assistance of Liton Pramanick (PW8). On the way to the hospital, his daughter requested him and his wife to punish Santa. Immediately after admission, his daughter died.

10. PWs.6, 7 & 8 are neighbours.

11. PW6 (Amit Kumar Dutta) deposed he has a fast food centre opposite to the house of Sumi Laha @ Puja. He heard cries from her house. Rushing to the spot he found the door of the room bolted from outside. They opened the room and found Sumi Laha @ Puja lying with burn injuries. Her mother came to the spot. Sumi stated Santa had set her on fire. He made statement before Magistrate.

12. PW7 (Kartick Sutradhar) deposed he has a furniture shop in the locality. In the evening Sumi's mother came to the shop and was talking to him. At that time he heard shouting from their house. He went to the house along with Amit and Liton. The door was bolted from outside. As per direction of Amit, door was opened. Sumi was found in the room in burnt condition.

13. PW8 (Liton Pramanick) corroborated PW7. In addition, he stated he accompanied Sumi's mother to Shaktinagar Hospital in a Maruti van. After admission in hospital, Sumi died. PW8 was declared hostile. During cross-examination, he denied the suggestion that he told the

police that Sumi while being taken to hospital had stated something to her parents.

14. PW10 (Dr. Ajit Kr. Biswas) is the post-mortem doctor. He opined victim had died due to shock resulting from extensive ante mortem burn injuries. He stated cause of death depends on circumstantial evidence. He proved the post-mortem report.

15. PW13 (Runa Laila) deposed she knew the appellant who was the son of her mother's friend. 4-5 months ago she had made a phone call to Santa on his mobile phone. Santa did not receive the call. Thereafter, she received 3-4 missed calls from the said phone. She called back. Sumi received the call. PW13 had a talk with her. Thereafter, Sumi disconnected the phone. Sumi told her the cell phone did not belong to Santa but to her. During investigation, she handed over the mobile phone to police. She made statement before Magistrate.

16. PW16 (SI Suprabhat Roy Chattopadhyay) is the Investigating Officer. He deposed on 13.09.2014 in the evening he received information regarding burning in the house of Sujit Laha. He diarised the information (GDE No. 459 dated 13.09.2014) and proceeded to the spot. He received information Sumi Laha @ Puja, daughter of Sujit Laha had received burn injuries and had been admitted to Debagram BPHC. He seized burnt wearing apparel of Sumi Laha @ Puja, one bottle containing kerosene, one lighter and one black mobile phone under a seizure list. Raj Kumar Saha (PW2) is the witness to the seizure. He also

seized exercise book written by Sumi. From the aforesaid materials he suspected involvement of the appellant. Thereafter, PW1 lodged written complaint. He again proceeded to the place of occurrence. He arrested the appellant. He seized the mobile phone of the appellant. He recorded statements of witnesses under Section 161 of the Code of Criminal Procedure. He submitted charge sheet.

17. PW17 (ASI Arindam Sen) was posted as O/G, Special Operation Group at SP Headquarters, Nadia. He received requisition from PW16 with regard to the call details of the mobile phones. But Call Detail Records have not been proved.

18. PW14 (Krishna Kanta Agarwal) and PW15 (Sukanta Banerjee) deposed they carried on business as retailers/distributors of SIM cards of Aircel company. A SIM card bearing No. 7031235875 was distributed through them.

19. Analysis of the evidence on record would show there was a love affair between the appellant and Sumi Laha @ Puja. Exercise book written by the hand of Sumi Laha @ Puja was seized from the place of occurrence. She had expressed her love for the appellant in her own handwriting. Investigating Officer (PW16) deposed the call detail records showed telephonic conversations between the two. Unfortunately, call detail records though collected during investigation were not proved. As a result, prosecution has not been able to establish there was telephonic

conversation between the appellant and the victim on the date of occurrence.

20. There is also no evidence on record that the appellant was seen in and around the residence of Sumi Laha @ Puja in the evening of 13.09.2015. Appellant was a local boy. PWs.6, 7 & 8 had shops in the locality. All of them knew the appellant. None of them deposed that the appellant was seen in and around the residence.

21. Evidence has come on record that the room where the deceased was found with burn injuries was bolted from outside. But in the absence of ocular evidence that the appellant was seen in and around the place of occurrence, it would be incorrect to infer that it was the appellant who had entered the room and after committing the crime had bolted the room and left.

22. Only evidence on which the prosecution hinges its case is the oral dying declaration purportedly made to the parents viz. PWs.1 & 9. PW1 claimed she had gone to the residence of a neighbour to attend *puja*. Being informed by a local shop owner that her daughter was burning she rushed home. When she arrived local people viz. PWs.6, 7 & 8 had already assembled at the place of occurrence. She enquired from her daughter why she did this to herself. She stated appellant had set her on fire. PW6 has a shop in front of the house of the victim. He corroborated the oral dying declaration made by Sumi but the other two

witnesses viz. PWs.7 & 8 who as per PW1 were also present at the spot are silent with regard to the dying declaration.

23. PW7 deposed PW1 was talking with him in his shop when he heard cries '*save me, save me*' from the house. Thereafter, he rushed to the house and PW6 unbolted the door. Victim was found with burn injuries. The aforesaid evidence shows this witness was present at the spot when PW1 claims the dying declaration was made. He is silent with regard to the making of the so-called dying declaration. It may be pertinent to note this witness has not been declared hostile.

24. PW8 who was also present at the spot did not support the prosecution case that Sumi made dying declaration to her mother (PW1). Ms. Khan contended that the said witness was declared hostile. During his cross-examination by prosecution no question was put to the witness that he had stated to police about the oral dying declaration made at the place of occurrence to PW1. The witness was only confronted with regard to the incident which took place while the victim was being carried to the hospital and nothing more.

25. Evidence of PWs.7 & 8 is at variance to the evidence of PWs.1 & 6 with regard to the oral dying declaration to PW1 at the place of occurrence. When prosecution witnesses speak in different voices with regard to the most vital piece of evidence that is, the oral dying declaration and the prosecution is unable to explain such dichotomy,

one would be constrained to hold the said circumstance has not been proved beyond doubt.

26. Before relying on a dying declaration the prosecution must prove the declaration beyond doubt.

27. While PWs.1 & 6 deposed the victim made an oral dying declaration, PWs.7 & 8 are completely silent and have not supported the prosecution case on this score. Prosecution is a divided house on this vital issue and it cannot be said that the oral dying declaration has been proved beyond doubt.

28. Even her father (PW9) is silent with regard to the oral dying declaration made to her mother (PW1) at the place of occurrence. He states that his daughter while going to Shaktinagar Hospital had stated that the appellant be punished.

29. This fact is significantly absent in the FIR recorded by the mother soon after the incident. Admittedly, mother of the victim was also present in the car. Absence of this vital information in the FIR gives an impression that this circumstance was subsequently introduced to embellish the prosecution case. Hence, I am unwilling to rely on the aforesaid circumstance also to record a finding of guilt against the appellant.

30. On the other hand, materials seized at the place of occurrence include a bottle containing kerosene and a lighter. It is difficult to assume that the appellant after setting the victim on fire would keep the

lighter at the place of occurrence and leave particularly when it is alleged that the offender had taken care to bolt the door from outside. This state of affairs give rise to an ambivalent situation and the prosecution is unable to clear the cobwebs of doubt with regard to the nature and circumstances leading to the death of the victim.

31. Even the motive to commit crime is vague and has not been clearly established. PW13 did not support the prosecution case and merely stated that she had a conversation with the victim. Considering the totality of the circumstances even if it is assumed that the victim had a tiff with the appellant due to his association with other women, this cannot invariably lead to a case of homicide.

32. It is argued that the door of the room was bolted from outside. As discussed earlier none of the witnesses had seen the appellant in and around the place of occurrence. Oral dying declaration implicating the appellant is based on shaky foundation and is not corroborated by some of the prosecution witnesses viz. PWs. 7 & 8, one of whom had not been declared hostile.

33. In the light of the aforesaid evidence on record, it cannot be said that it was none but the appellant who had set the victim on fire and caused her death. Hence, the appellant is entitled to the benefit of doubt.

34. The appeal is accordingly, allowed.

35. In view of disposal of the appeal, the connected application being CRAN 1 of 2019 (*Old CRAN No. 4107 of 2019*) is also disposed of.

36. Appellant shall be forthwith released from custody, if not wanted in any other case, upon execution of a bond to the satisfaction of the trial Court which shall remain in force for a period of six months in terms of Section 437A of the Code of Criminal Procedure.

37. Lower court records along with a copy of this judgment be sent down at once to the learned trial Court for necessary action.

38. Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Partha Sarathi Sen, J.)

(Joymalya Bagchi, J.)