

IN THE HIGH COURT AT CALCUTTA

Criminal Appeal

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 238 of 2021

Radha Krishna Shaw

Versus

The State of West Bengal

For the appellant : Mr. Kallol Kumar Basu, Adv.

: Mr. Narayan Debnath, Adv.

: Md. Jannat ul Firdous, Adv.

: Mr. Saswata Chatterjee, Adv.

For the State : Mr. Rudradipta Nandy, Ld. App

: Ms. Sonali Das, Adv.

Hearing

concluded on : February 08, 2023

Judgment on : February 28, 2023

Md. Shabbar Rashidi, J.:

1. The appeal is directed against the judgment of conviction dated December 12, 2018 and order dated December 13, 2018 passed by learned Sessions Judge Hooghly in Sessions Trial No. 18 of 2016 arising out of Sessions Case No. 142 of 2016.
2. By the impugned judgment, the appellant was convicted for the offence punishable under section 302 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for life and a fine of ₹ 3000 and in default of payment of fine to undergo further rigorous imprisonment for six months.
3. The appellant has sought to assail the judgment of conviction and order of sentence, so passed by learned trial court. It is contended by learned advocate for the appellant that there are material contradictions in the testimony of witnesses which renders the evidence unreliable. It has been pointed out that there are contradictions with regard to the contents of the written complaint. It

is not clear at whose instructions it was drafted, was it police or the de-facto complainant. Learned advocate for the appellant further pointed to the inconsistency regarding presence of the witnesses i.e. PW 1, 2 and PW3 at the place of occurrence at the relevant time. It has also been indicated that there is no mention of street lights in the rough sketch map and as such, it is not safe to believe that the witnesses could identify the perpetrator in such light. Mention has been made that the appellant was not known to the witnesses by his name and as such his identification by such witnesses in court was not trustworthy.

- 4.** Learned advocate for the appellant submits that a conviction on the basis of testimony of such witnesses cannot be sustained.
- 5.** Learned advocate for the appellant further submits that the recovery of alleged offending weapon has not been proved with the help of independent witnesses and was not produced under proper seal and label. As such, cannot be relied upon.

6. On the other hand, learned advocate for the State has submitted that the prosecution has been able to sufficiently prove that the victim was assaulted with a knife and the appellant dealt the fatal blow to the victim resulting in his death. The doctor who conducted the post mortem has proved the injuries found on the person of the victim which were ante mortem and homicidal in nature and that it were caused by a weapon which is shown to have been seized as shown by the appellant. The injuries so found on the person of the victim were identified as the cause of his death. As such, it is contended, that the prosecution has been able to prove the charges leveled against the appellant beyond the shadow of all reasonable doubts. Therefore, the impugned judgment and order is liable to be upheld.

7. The facts giving rise to the instant appeal in an epitome is that on April 22, 2016, there was an altercation between Suraj Harijan and Mankeswar Shaw alias Barka. The dispute cropped up over the

meeting of Rabi. In course of such altercation father of Barka stabbed Suraj with a knife while Barka caught hold of Suraj. As a result of such assault, Suraj Harijan sustained bleeding injury over his neck. Alarms were raised over which local people assembled whereupon, both accused persons fade away. Suraj Harijan was taken to Chinsurah I. B. Hospital, where he was declared dead.

- 8.** A written complaint was lodged by the sister of the victim over the incident on April 23, 2016. On the basis of such written complaint, Mogra Police Station Case No. 127 dated April 23, 2016 under section 302/34 of the Indian Penal Code was started. The police took up investigation and on completion of investigation submitted chargesheet under the aforesaid sections against the two, First Information Report named accused persons.
- 9.** On the basis of materials in the case diary, charge under Section 302 read with section 34 of

the Indian penal code was framed against the two accused persons.

10. In order to bring home the charges levelled against the accused persons, prosecution examined as many as 10 witnesses. In addition, prosecution also relied upon certain documentary and material evidences.

11. The sister of the victim deposed as PW1. He stated that Suraj Harijan was his brother who expired on April 22, 2016. On the said date at about 9 PM there was an altercation between his brother and Amit and Rabi under Jhulania bridge, a place near the residence of PW1. She further stated that upon hearing hue and cry, he came out from her residence and found that Barka was holding his younger brother and his father assaulted the younger brother of PW1 with a knife on his neck. She identified both accused persons in court, though she was not in a position to identify the father of accused Barka by his name. PW1 also stated that being so assaulted, her

brother sustained bleeding injuries. She stated to have seen the entire incident in the streetlight and raised hue and cry upon which several persons assembled there. She has named the persons who assembled at his alarm as Pankaj Shaw, Dilip Dusad, Ram Babu Maji and Ragesh Ram. She narrated the incident to the aforesaid persons and also to her parents. PW1 also stated that, being so assaulted, her brother sustained severe bleeding injuries on his neck and he fell down.

- 12.** PW1 further stated that on April 23, 2016, she lodged a written complaint with Mogra police station scribed by one Surajit Nath under her instructions which was read over and explained to her and being satisfied she put her signature thereon. She proved the written complaint, which was marked as Exhibit 1. PW1 also stated in her deposition that prior to the incident there was a quarrel in between Amit and Rabi and his brother went to pacify the quarrel when accused Barka caught hold of him and his father assaulted the

brother of PW1 with a knife on his neck. Amit and Rabi also witnessed the entire incident of assault on her brother.

13. PW1 was cross-examined on behalf of the appellant and in such cross-examination she stated that the place of occurrence was situated at a distance of $\frac{1}{2}$ minutes walk from her residence and she could witness the entire incident in the light of $\frac{2}{3}$ streetlights available there. She also stated in her cross-examination that the place of occurrence was visible from her house.

14. An acquaintance of the victim was examined as PW 2. He has stated that he knew Suraj Harijan who died on April 22, 2016 at about 9 PM in an incident happened near Jhulania bridge. He further stated that at the time of incident he along with Rabi and Suraj were sitting at the place of occurrence and gossiping among themselves. Besides them, there were other persons consuming liquor, who, subsequently left the place after breaking their bottles. He has further stated that

the accused Barka came there and started abusing PW 2 and others over which an altercation started between Barka and PW 2 and others. Accused Barka caught hold of Suraj whereas his father came there and assaulted Suraj by a knife on his neck causing serious bleeding injuries. The wearing apparel of PW 2 were stained with blood. Thereafter PW 2, Rabi and Punam shifted to Chinsurah Hospital where doctors declared him dead. PW 2, also claimed that he himself, Rabi and Punam were at the spot when the murderous assault upon Suraj was inflicted. He also stated that the residential house of accused persons were adjacent to the place of occurrence. PW 2 further stated that he narrated the incident to the attending doctor at the hospital and also before the police and before learned Magistrate. His statement was recorded by the Magistrate and he signed on such a statement. He proved his signatures on such statement which were marked Exhibit 2 collectively. PW 2 also could not state the

name of the father of accused Barka, however, he identified both accused persons in court. He also stated that since the fighting was going on between Barka and PW2 and others, his father inflicted the murderous assault on Suraj.

- 15.** PW2 was also cross-examined on behalf of the appellants. In his cross examination, he stated that the place of occurrence Jhulania bridge was situated just in front of his house. He further stated to have stated before police that he along with Suraj and Rabi were sitting under Jhulania bridge and that besides them, some other persons were consuming wine and they left the place after breaking the bottles. He also stated to have stated before the magistrate that Barka came there and started hurling abusive language. He also admitted to have stated before the magistrate that Barka caught hold of Suraj while his father assaulted Suraj with a knife in his neck and wearing apparels of PW 2 were stained with blood.

16. Another acquaintance of the victim deposed as PW 3. He stated that the incident took place under Jhulania bridge. At that time PW3 along with Amit and others were gossiping under Jhulania bridge. Some 3/4 other people were consuming liquor there who ultimately left the place after breaking their bottles. Suddenly accused Barka came there and asked PW3 and others as to why they had broken the bottles. There was an altercation over that issue. Suddenly father of Barka assaulted Suraj by a knife over his neck. Barka was then holding Suraj when the blow was dealt. PW3 has also stated that he, along with Amit and Punam were present when the incident took place. They raised hue and cry whereupon Barka and his father fled away. PW 3 and others took Suraj to hospital where he was declared dead by the doctor. After returning from hospital he was taken by the police to local outpost. PW3 also stated that the house of the accused persons were at a distance of 1/2 minutes walk from the place

of occurrence. He also could not name the father of accused Barka, however, he identified both accused persons in court. PW3 has also stated that he recorded a statement before the Magistrate. He proved his signatures on such statement which were marked Exhibit 3 collectively.

17. In his cross examination, PW3 has stated that he along with Amit was present at the time of the assault he was standing behind Suraj. Both the accused persons fled away after the incident towards the rail line.

18. The mother of the victim deposed as PW4. He stated that Suraj Harijan was her son. He died on April 22, 2016 at 9 pm. The incident took place near Jhulania bridge. She was then in her house while her daughter Punam (PW1) was standing in the courtyard. Suddenly Punam raised alarm from under the Juhulania bridge. PW4 came out of her house hearing the alarm and could see Barka and his father Radha Krishna with a knife in his hand,

fleeing away. On her query, Punam stated that Barka caught hold of Suraj while his father assaulted him with a knife on his neck. Going to the spot, PW4 saw Suraj lying on the ground with severe bleeding injuries on his neck. Thereafter, Punam, Rabi and Amit took Suraj to Chinsurah Hospital. PW4 subsequently came to know that Suraj had already expired. She also identified the accused persons in court.

- 19.** Father of the victim was examined as PW5. He has stated that Suraj Harijan was his son who expired on April 22, 2016. On the same day Suraj was with his friend under Jhulania bridge while PW5 was in his house with his wife. Suddenly, he heard a hue and cry from his daughter Punam and immediately came out. Going under the Jhulania bridge, PW5 found Barka and his father fleeing away. The daughter of PW5 informed that Barka was holding Suraj while his father assaulted Suraj on his neck with a knife. Going there, he found Suraj lying on the ground having severe cut and

bleeding injuries on his neck. Rabi, Amit and his daughter Punam took Suraj to hospital followed by PW5 and others. The attending doctor upon examination declared Suraj dead. PW5 also stated that the dead body was examined by police at the hospital and prepared the report to which he signed. PW5 proved his signature on the carbon copy of the inquest report which was marked as Exhibit 4. He further stated that Suraj was with Amit Rabi under Jhulania Bridge immediately prior to the incident. He also identified the two accused persons in court.

20. The police officer who carried the body of Suraj Harijan from Imambara Sadar Hospital to the morgue under a dead body challan was examined as PW 6. He proved his signature on the carbon copy of Chalan which were marked as Exhibit 5. Upon completion of the post-mortem examination, PW6 handed over the viscera of the deceased along with other articles to the investigating officer who seized the same under a

seizure list signed by PW6. He identified his signatures on the seizure list which was marked Exhibit 6. The defence declined to cross examine the witness.

21. Another police officer was examined as PW 7.

He conducted inquest on the dead body of Suraj Harijan on April 23, 2016 in connection with Chinsurah Police Station U. D. Case No. 202 dated April 22, 2016. He proved the carbon copy of the inquest report prepared in his pen and signature which was marked as Exhibit 4/1. He also stated that he seized the viscera and other articles produced by Constable Sridhar Kumar under a seizure list. PW7 proved the seizure list which was marked as Exhibit 6/1.

22. In his cross examination, PW7 stated that none of the witnesses complained before him that Byomakesh Shaw caught hold of Suraj Harijan and Ramakrishna Shaw assaulted the deceased with a knife.

23. A police constable of Mogra police station deposed as PW8. In his deposition, PW8 stated that on April 27, 2016, he accompanied sub inspector Sundar Gopal Mukherjee to nearby bushes of Jhulania bridge accompanied by the accused Radhakrishnan Shaw. He has further stated that being shown by the accused Radhakrishna, sub- inspectors Sundar Gopal Mukherjee recovered a knife from the bushes and was seized under a seizure list. PW8 proved his signature on the seizure which was marked as Exhibit 7. He also proved the seized knife which was marked as Material Exhibit I.

24. The medical officer who conducted the post-mortem examination was examined as PW 9. He stated that on April 23, 2016, he conducted post-mortem examination on the dead body of Suraj Harijan in connection with Chinsurah P.S.U.D. Case No. 202 dated April 22, 2016. Upon such examination, he found the injuries that's to say: -

- i. **An incised wound directed left to right from above downwards 3.5”X1.5” a tissue in front of the neck with ragged and irregular margins lying more or less horizontally in front and both sides of the neck which was 1.5” on the right side of the neck and 2.0” from the left side of the neck from the said point of wound which is 3.5” above suprasternal notch, 5.5” above the MCL point on the right side and 5” above MCL on the left side of the neck with trashing on the right side of the neck. All the structures underneath the line of incision including skin, subart tissue, muscles, vessels and nerves, trachea, pharynx are cut at the corresponding level of wound, thyroid cartilage was found**

**fractured and its anterior surface,
hyoid bone dislocated.**

25. In the opinion of PW9, the death was caused due to the effects of cut throat injury which was ante mortem and homicidal in nature. The injuries were opined to be caused by sharp cutting weapon.

26. PW9 prepared a report in this regard under his seal and signature and proved the said post mortem report which was marked as Exhibit 8. Upon seeing the seized knife, PW9 had opined that the injuries found on the dead body of Suraj Harijan could be caused by such weapon.

27. The investigating officer of the case, deposed as **PW10**. He proved the endorsement of receipt of the written complaint and the formal First Information Report in the pen and signature of Sub-inspector Debanjan Bhattacharya. (Exhibit 1/1 and Exhibit 9 respectively). PW10 stated the manner and details of the investigation. He visited the place of occurrence and prepared rough sketch

map with index thereof, examined the available witnesses and arrested the accused persons. He also stated to have recovered the offending weapon at his instance and seized the same under proper seizure list. He also sent the viscera, seized weapon and other articles for chemical examination and collected the report thereof from the Forensic Science Laboratory. He identified the accused persons in court whom he had arrested. On completion of investigation, he submitted charge sheet under Section 302/34 of the Indian Penal Code. Upon receipt of the FSL report a supplementary charge sheet was submitted by PW10.

28. PW10 was cross examined on behalf of the appellant at length. In his cross examination, PW10, stated that the witness Amit Ram did not state before him that besides himself, Suraj and Rabi were sitting under Jhulania bridge and there were some other persons consuming liquor who left after breaking their bottles. He also did not

state in his statement that Barka arrived there and started hurling abusive language towards them. PW10 further stated that witness Amit Ram did not state before him that his apparels were soaked with blood or that he along with Punam and Rabi shifted Suraj to hospital. He also did not state that while murderous assault was inflicted upon Suraj, he along with Punam and Rabi were present there.

29. Upon completion of evidence on behalf of the prosecution, the accused persons were examined under Section 313 of the Code of Criminal Procedure. The appellant claimed innocence. He pleaded that he was falsely implicated in the case and the allegations were false. He however, declined to adduce any defense witness.

30. Upon consideration of the materials on record and examination of the appellant under Section 313 of the Criminal Procedure Code, by the impugned judgement, the appellant was convicted for the offence punishable under section 302 of the Indian Penal Code and was sentenced to suffer

rigorous imprisonment for life and a fine of ₹ 3000/- and in default of payment of fine to undergo rigorous imprisonment for a further period of six months. The other accused i.e. Mankeswar Shaw @ Barka, was however acquitted by the learned trial court.

31. The case as set out by the prosecution is that while the victim and others were sitting beneath Jhulania bridge, there was an altercation between the victim and accused Barka. In course of such altercation, father of accused Barka i.e. the appellant came there and assaulted him with a knife on his neck resulting in bleeding injuries. The victim was taken to hospital where he was declared dead.

32. An inquest was conducted on the dead body of the victim and thereafter post-mortem examination of the dead body was done. The police officer who conducted inquest over the dead body was examined as PW7. He has stated that on April 23, 2016 he conducted inquest over the dead body

of one Suraj Harijan at Chinsurah Imambara hospital. He also tendered the inquest report which was marked as Exhibit 4/1. PW6 took the dead body from Chinsurah Imambara Sadar hospital to the morgue. The testimony of the doctor, who conducted post mortem examination over the dead body of the victim, PW9, together with the post-mortem report, Exhibit 8 goes to show that he found the injuries over the dead body that is to say: –

An incised wound directed left to right from above downwards 3.5”X1.5” a tissue in front of the neck with ragged and irregular margins lying more or less horizontally in front and both sides of the neck which was 1.5” on the right side of the neck and 2.0” from the left side of the neck from the said point of wound which is 3.5” above suprasternal notch, 5.5” above the

MCL point on the right side and 5” above MCL on the left side of the neck with trashing on the right side of the neck. All the structures underneath the line of incision including skin, subart tissue, muscles, vessels and nerves, trachea, pharynx are cut at the corresponding level of wound, thyroid cartilage was found fractured and its anterior surface, hyoid bone dislocated.

33. As per the opinion of PW9, the death of the victim was caused due to the effects of cut throat injury which were ante mortem and homicidal in nature.

34. Therefore on the basis of the testimony of PW7, PW9 and Exhibit 8, we hold that the prosecution has been able to prove that the victim was murdered.

35. PW1, in the written complaint as well as in his deposition has set out a case that while the

victim had an altercation with accused Barka, his father intervened in the altercation and assaulted the victim with a knife on his neck. According to prosecution, it is this blow of knife inflicted by the appellant, due to which the victim died. PW1 stated that at the relevant point of time the victim was sitting under Jhulania bridge with PW 2 and PW3. Upon hearing hue and cry, PW1 came out of her house and that accused Barka was holding his victim brother while the appellant inflicted a knife blow causing bleeding injuries.

36. Such case of the prosecution of the presence of the victim, PW 2 and PW3 has been supported by the said witnesses. PW2 has stated that he along with PW3 and the victim were sitting under Jhulania bridge. At that time accused Barka came there and started abusing them. There was an altercation between them over the issue, in course of which, accused Barka caught hold of the victim and his father assaulted him with a knife. Likewise, PW3 also stated that he along with PW 2

and the victim were gossiping under Jhulania bridge. At that time accused Barka came there and they had an altercation with him. Suddenly the appellant appeared at this spot and assaulted the victim with a knife at his neck. He has also stated that he along with PW 1 and PW 2 were present on the day and the incident occurred. All the aforesaid witnesses have more monotonously given the account of the incident which is quite consistent with each other. They have also stated that three of them carried the victim to hospital after the incident where he was declared dead.

37. There appears no material deviation in the testimonies of PW 1, PW 2 and PW 3 so far as the account of the incident is concerned. All of them have consistently stated that de facto blow was dealt by the present appellant in their presence and sight. The aforesaid witnesses are ocular witnesses to the incident and the defense has not been able to shake the credibility of their testimony in the cross-examination. Nothing has

been brought on record to disbelieve the testimonies of the aforesaid witnesses. The evidence on record also establishes that there was sufficient light available at the scene of occurrence at the relevant point of time enabling the witnesses to witness the occurrence with sufficient clarity.

38. The parents of the victim PW 4 and PW 5, although did not claim to have witnessed the incident of stabbing by the appellant, they have said that they came out of their residence upon hearing hue and cry and found the appellant and his son fleeing away from the place of occurrence. They also stated to have been narrated about the incident by PW 1. Just after the occurrence, the parents of the victim arrived at the spot, saw the appellant and the other accused fleeing away from the scene of occurrence and found the victim lying with bleeding injuries.

39. The aforesaid witnesses i.e. PWs 1,2,3,4 and 5 had their residence in the locality within a distance of 2/3 minutes walks from the place of

occurrence and as such, they had every reason to remain present there. PWs 2 and 3 were accompanying the victim at the relevant point of time where as PW1 arrived just after the occurrence upon hearing the altercation. There is obviously nothing on record to shake the credibility of the testimonies of PWs 1,2 and 3. PW 2 and PW 3 rendered direct ocular evidence that in their presence, the incident was perpetrated by the appellant. There appears nothing to disbelieve the testimony of such eye witnesses. Their cross-examination on behalf of the appellant has not been able to erode their credibility by any stretch of imagination.

40. The alleged offending knife is said to have been recovered at the instance of the appellant, though no statement recorded under Section 161 of the Code of Criminal Procedure leading to such recovery by the appellant has been admitted in evidence. However, the aforesaid recovery was made in presence of PW8 who has stated that the

offending knife was recovered from the bushes near Jhulania Bridge as shown by the appellant. The aforesaid witness has given a brief description of the offending knife in his deposition, and proved his signature on the seizure list. He also identified the offending knife in Court. The appellant has assailed the testimony of PW8 and the recovery of offending weapon per se, on the ground that it was not made in presence of independent witnesses. It was also pointed out that the offending knife was never sent for examination to ascertain any finger print or origin of blood. It was also not proved by the prosecution that the victim was murdered by the said knife. True it is, the statements of the appellant recorded under Section 161 of the Code of Criminal Procedure was not introduced into the evidence under Section 27 of the Indian Evidence Act. It is also not deniable that the offending knife so recovered was not examined for the purpose of ascertaining the origin of blood or any finger print thereon. Nevertheless, there is overwhelming

evidence on record in the nature of eye witnesses who have seen the appellant assaulting the victim with a knife on his neck. It is well-established that the victim died out of cutthroat injuries caused by a sharp cutting weapon.

41. It is a trite law that minor discrepancies in the narration about the incident given by the witnesses cannot vitiate the veracity of the testimony of such witnesses. It is understandable that according to the human psychology, the evidence of related witness may have tendency of embellishment or exaggeration in order to secure the conviction of the offender. Such embellishment or exaggeration by related witnesses may not be considered to impair the testimonial exactitude of such witnesses if the same at any rate proves the involvement of the offender in the incident.

42. Therefore, on the basis of the aforementioned discussion, we are of the opinion that the impugned judgment of conviction and order of sentence are based on cogent and convincing

evidence and does not warrant any interference. Therefore, judgment of conviction dated December 12, 2018 and order dated December 13, 2018 passed by learned Sessions Judge Hooghly in Sessions Trial No. 18 of 2016 are hereby affirmed.

43. Accordingly, the instant appeal being **CRA 238 of 2021** stands dismissed.

44. Let the Trial Court records along with a copy of this judgment be sent down immediately to the appropriate Court for necessary action.

45. Urgent Photostat Certified copy of this judgment, if applied for, be supplied to the parties expeditiously upon compliance with all requisite formalities.

[MD. SHABBAR RASHIDI, J.]

46. I agree.

[DEBANGSU BASAK, J.]