

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 359 of 2011

Biswanath Pahari @ Bishu Pahari @ Biswajit Pahari

-Vs.-

The State of West Bengal

For the Appellant	:	Mr. Arnab Chatterjee, Adv. Mr. Dhanasree Biswas, Adv. Ms. Poulami Pose, Adv.
For the State	:	Mr. Saibal Bapuli, Ld. A.P.P., Mr. Bibaswan Bhattacharya, Adv.
Heard on	:	27.03.2023 and 28.03.2023
Judgment on	:	28.03.2023

Joymalya Bagchi, J. :-

1. Appellant has assailed his conviction under section 302 of the Indian Penal Code and sentence of life imprisonment and a fine of Rs. 5,000/-, in default, to suffer rigorous imprisonment for six months more in the appeal.

2. Factual matrix giving rise to the prosecution case is as follows:-

Shyamal Pahari (the deceased) along with his wife Shefali (P.W. 1) and two minor children went to sleep in the verandah of their house. At 11:30 p.m. Shefali heard sound of footsteps and woke up. In the light of lamp, she saw the appellant running away from the spot. Her husband was writhing in pain. Local people came to the spot and shifted him to Saktinagar Hospital where he expired. It is further alleged one Anita Pahari (P.W. 7) (sister of P.W. 1) had an illicit affair with the appellant. She had separated from her husband Jugol Pahari (P.W. 4) and was residing with her mother. Shyamal had chastised Anita. This enraged the appellant who committed the murder.

3. On the next day, P.W. 1 lodged written complaint resulting in registration of Tehatta Police Station Case No. 55 of 2009 dated 20.05.2009 under section 302 I.P.C. against the appellant. Appellant was arrested and charge-sheet was filed. Charge was framed under section 302 I.P.C.

4. Prosecution examined 20 witnesses and exhibited a number of documents. Defence of the appellant was one of innocence and false implication.

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

6. Mr. Chatterjee for the appellant submits P.W. 1 and her minor daughter (P.W. 6) are not eye-witnesses. They improved their version in

Court. Mala Pahari (P.W. 6) was a ten year old child and not examined by police during investigation. Jugol Pahari (P.W. 4) and his wife Anita Pahari (P.W. 7) did not support the prosecution case including the illicit relation between the appellant and Anita. Local witnesses claimed P.W. 1 could not identify the miscreant. Name of the appellant is not noted in the injury report at Karimpur Rural Hospital. Hence, prosecution case has not been proved beyond doubt.

7. In rebuttal, Mr. Bhattacharya submitted P.W. 1 is the most natural witness. She had seen the appellant commit the murder and run away. Her deposition is corroborated by her daughter Mala (P.W. 6), Kajoli Pahari (P.W. 2), sister of the deceased and mother-in-law, Gopali Pahari (P.W. 12). F.I.R. was promptly lodged and motive to commit the crime is stated therein. Jugol Pahari (P.W. 4) is related to the appellant and was won over. On similar count his wife Anita also kept mum and did not come out with the truth. Trial Court rightly ignored the won over witnesses and recorded conviction on the strength of the most natural and probable witnesses. Hence, appeal is liable to be dismissed.

8. P.W. 1, Shefali Pahari is the wife of the deceased and the most vital witness. She deposed at 11:30 p.m. she was sleeping with her husband Shyamal Pahari and two children i.e. her daughter Mala (P.W. 6) and a minor son. At that time she heard a sound. She saw the appellant running away in the light of the lamp. Local people took her husband to Karimpur

Rural Hospital and thereafter to Saktinagar Hospital where he died. She lodged complaint which was scribed by Bablu Pal (P.W. 17). She stated her sister-in-law Anita was married to Jugol. She was residing with her mother. Her husband intervened and told Anita to return to her husband and slapped her. This enraged the appellant who committed the murder. She remained unshaken during cross-examination.

9. P.W. 2, Kajoli Pahari is a sister-in-law of Shefali (P.W. 1). She used to reside in the adjoining house. She corroborated P.W. 1. She stated hearing a noise she woke up. She saw the appellant running away in the light of a torch. Shyamal was lying with his throat slit. Local people arrived at the spot. Shyamal was taken to Karimpur Hospital and thereafter to Saktinagar Hospital. He expired at the hospital. She also deposed Anita was married to Jugol, son of her maternal uncle. Appellant developed illicit relationship with Anita. Shyamal protested which resulted in loss of his life. Within four days of the incident, he made statement before Magistrate.

10. P.W. 6, Mala Pahari is the minor daughter of the deceased. She stated she saw the appellant strike a blow at the throat of her father. She heard mother crying "*Bishu chaku mere palalo*" (Bishu is running away after striking with a knife). She saw the appellant fleeing from the spot.

11. P.W. 12, Gopali Pahari is the mother of the deceased. She deposed she heard P.W. 1 shouted "*Bishu chaku mere palalo*" (Bishu is running away

after striking with a knife). She went to the place of occurrence and saw the deceased lying there.

12. P.W. 4 (Jugol Pahari), P.W. 5 (Gour Pahari) were declared hostile. Anita was examined as P.W. 7.

13. P.W. 8 (Kalachand Pahari) and P.W. 9 (Shyamal Pahari) removed the victim to the hospital. In cross-examination, they stated P.W. 1 told them she could not identify the person who ran away.

14. P.W. 19 Dipika Bandyopadhyay is the medical officer who treated the patient at Karimpur Rural Hospital. She found one sharp cut injury on the throat of the patient. She referred him to Krishnagar Sadar Hospital. She proved the injury report (Exhibit – 6). At the time of examination she noted the patient was conscious but not in a position to speak.

15. P.W. 10, Dr. Ajit Kr. Biswas held post mortem examination over the deceased. He found the following injuries:-

- “1. Sharp cut penetrating injury on front of neck on mid line 2” above supra-sternal notch transversely measuring one and half” x half” x tracheal cavity deep and posterior wall of trachea was seen intact;*
- 2. Blood coming out from nose and mouth;*
- 3. Larynx and trachea contained blood clot.”*

He opined death of the deceased was due to shock and haemorrhage associated with asphyxia resulting from the above mentioned injuries which were ante mortem and homicidal in nature. He proved the post mortem report (Exhibit – 1).

16. P.W. 18, A.S.I. Gonesh Ch. Ghosh held inquest over the body of the deceased. He proved the inquest report (Exhibit – 2/2).

17. P.W. 14, Sri Subhro Bandyopahdyay, Additional Chief Judicial Magistrate, Tehatta recorded the statement of P.W. 2 (Kajoli Pahari) under section 164 Cr.P.C.

18. P.W. 20, S.I. Arup Kr. Pal is the first investigating officer. He went to the place of occurrence. He drew up rough sketch map with index (Exhibit – 8). He seized torch light from P.W. 2. He proved the seizure list (Exhibit – 9). He also seized a blue colour white check old cotton lungi having stains of dry blood as well as one kerosene lamp from the house of the deceased. He proved the seizure list (Exhibit – 10). He collected post mortem report. He examined witnesses.

19. P.W. 13, S.I. Biman Mridha concluded the investigation and submitted charge-sheet.

20. Shefali Pahari (P.W. 1) is the most natural witness. On the fateful night she was sleeping with her husband and minor children in the verandah. Around 11:30 p.m. hearing a noise she woke up. In the light of the lamp she saw the appellant running away and her husband writhing in pain. He had suffered a cut throat injury. Her deposition is corroborated by P.W. 2, sister of the deceased. She resided just beside the house of the deceased. Hearing hue and cry, she woke up. In the torch light, she also saw the appellant running away from the spot. F.I.R. was promptly lodged by

P.W. 1 on the next day. Depositions of P.Ws. 1 and 2 find corroboration from the deposition of P.W. 6, minor daughter of the deceased. She was ten years old at the time of incident. Trial Court examined her competence to depose and upon being satisfied, recorded her version.

21. It is contended P.W. 6 admitted she had not been examined by police and was not cited as a witness in the charge-sheet. P.W. 6 is the minor child of the deceased and P.W. 1. She was sleeping along with her parents in the verandah. Her presence at the place of occurrence is established. During cross-examination, investigating officer (P.W. 20) stated he had examined P.W. 6 but did not cite her as a witness in the charge-sheet. Even if it is assumed P.W. 6 was not interrogated during investigation, this would merely amount to remissness in investigation. It would not improbabilise her presence at the place of occurrence which is mentioned in the F.I.R. which was promptly lodged after the incident.

22. P.W. 12, Gopali Pahari, mother of the deceased corroborated the prosecution case and deposed she heard her daughter-in-law cry out "*Bishu chaku mere palalo*" (Bishu is running away after striking with a knife).

23. P.W. 17, medical officer at Karimpur Rural Hospital treated the victim and found injury on his throat. She deposed victim though conscious was not in a position to speak.

24. P.W. 10, post mortem doctor also noted sharp cutting penetrating injury on the throat of the victim and opined that death was due to such

injury, ante mortem and homicidal in nature. Thus, medical evidence corroborates the prosecution case coming out from the mouths of the aforesaid witnesses, namely, P.Ws. 1, 2, 6 and 12.

25. It is strenuously contended the relation witnesses ought not to be believed as other witnesses, namely, P.Ws. 5, 7, 8 and 9 stated P.W. 1 claimed she had not seen the person who had attacked her husband. It is also claimed name of the appellant had not transpired in the injury report (Exhibit – 6) at Karimpur Rural Hospital. I am unable to accept the aforesaid contention for the following reasons. Local people including P.Ws. 8 and 9 came to the spot after the incident. They removed the victim to hospital. During cross-examination, P.Ws. 8 and 9 deposed P.W. 1 told them she was unable to identify the miscreant. Their version is not corroborated by P.W. 1. No question was put to the said witnesses that she had a talk with P.Ws. 8 and 9. On the other hand, P.W. 1 categorically claimed she had lost her senses when her husband was removed to hospital. This improbabilises the version of P.Ws. 7 and 8 that they had conversation with P.W. 1. P.W. 5 (Gour Pahari) who deposed on similar lines is a brother of the appellant and naturally came out with a different story in Court. He was declared hostile and confronted with his earlier statement before police. In the said statement, P.W. 5 had not told the police that P.W. 1 informed him she could not identify the assailant. Similarly, P.W. 7 could not have had any conversation with P.W. 1 on the next morning. Her presence at the place of

occurrence is improbabilised by her husband Jugol (P.W. 4) who stated that his wife was pregnant and had not visited the place of occurrence. Thus, version of the aforesaid witnesses who claimed that P.W. 1 was unable to identify the assailant appears to be untruthful and rightly ignored by the trial Judge.

26. Local people including P.Ws. 8 and 9 who took the victim to Karimpur Rural Hospital do not appear to have had conversation with P.W. 1. Hence, they were unable to disclose the name of the miscreant in the injury report (Exhibit – 6).

27. It is contended neither Jugol (P.W. 4) nor his wife Anita (P.W. 7) support the prosecution case regarding motive. Both the witnesses were silent with regard to the illicit relationship between Anita and the appellant and the intervention of the deceased in the matter. It may not be out of place to bear in mind that the appellant is the cousin of P.W. 4. During trial, P.W. 4 turned hostile and denied the extra-marital affair between his wife and the appellant. He came out with a preposterous suggestion that appellant had killed a child on an earlier occasion and was falsely implicated. Anita (P.W. 7) in all probability had been persuaded by her husband (P.W. 4) to keep mum regarding the motive. But the motive to commit the crime i.e. intervention of the deceased with regard to the illicit relationship between appellant and Anita had come out at the earliest opportunity in the F.I.R. itself. Hence, it cannot be said to be an afterthought and washed away with

reference to the evasive stance of Jugol (P.W. 4) and his wife Anita (P.W. 7) owing to the former's fraternal relationship with the appellant.

28. In view of the aforesaid discussion, I hold the prosecution case has been proved beyond doubt.

29. Conviction and sentence of the appellant are upheld.

30. The appeal is accordingly, dismissed.

31. In view of dismissal of appeal, connected application(s), if any, stands disposed of.

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

33. Copy of the judgment along with L.C.R. be sent down to the trial Court at once.

34. 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.)