

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 266 of 2021

Karzi Munda alias Srikanta Munda

Vs.

Sate of West Bengal

with

CRAN 1 of 2022

For the Appellant : Mr. Kallol Mondal, Adv.
Mr. Krishan Roy, Adv.
Mr. Sauvik Das, Adv.
Mr. Ayan Mondal, Adv.

For the State : Mr. Swapan Banerjee, Adv.
Mr. Suman De

Hearing Concluded on : February 13, 2023
Judgement on : February 13, 2023

DEBANGSU BASAK, J.:-

1. The appeal is directed against the judgement of conviction and the order of sentence dated January 8, 2021 passed by the learned additional District and Sessions Judge, Fourth Court, West Midnapore in Sessions Trial No.

39 (05) 2016.

2. By the impugned judgement of conviction and the order of sentence, the appellant was convicted under section 302 of the Indian Penal Code, 1860 and sentenced to suffer rigorous imprisonment for life with a fine of ₹ 20,000, in default to pay the fine to undergo simple imprisonment for another 6 months.
3. Learned advocate appearing for the appellant contends that, the prosecution was unable to prove the case beyond reasonable doubt. He submits that, the learned trial judge did not take into account the multitude of discrepancies in the deposition of the prosecution witnesses. He highlights the various discrepancies in the deposition of the prosecution witnesses. According to him, while the prosecution witness (PW) 1, PW 14 and PW 18 asserted that the victim expired after being attacked by an arrow but the deposition by PW 3 depicts that such offence was committed by another weapon. Such contradictory statements by a number of witnesses should be taken in favour of the appellant.
4. Learned advocate appearing for the appellant submits that, PW 4 during his cross-examination clarified that no bloodstain was present on the iron made portion of the murder weapon. He contends that lack of bloodstains on the alleged offending weapon cast shadow upon the version of the prosecution that the appellant supposedly used the offending weapon for commission of the alleged offence.
5. Learned advocate appearing for the appellant drawing the attention of the

court to the deposition of PW 1, PW 6, PW 7 and PW 10 submits that, PWs deposed that they were asked to sign various papers by the police/investigating agency which they duly signed. Therefore, their testimonies should not inspire any confidence in the court.

6. Learned advocate appearing for the appellant submits that, PW 14 during her deposition stated that on the fateful day, she was sleeping with her grandmother outside the room whereas, her parents were in the adjacent room. The prosecution negligently did not examine the grandmother who was such a vital witness to the offence.
7. Learned advocate appearing for the appellant submits that, the learned judge erred in not taking into consideration the intoxicated state in which the appellant was present at the time of the incident. He relies upon **2010 volume 13 Supreme Court Cases 651 (Sangharaj Bhagappe Kumble & Ors. -Vs.- state of Maharashtra)** and contends that, the case of the appellant should be considered in light of section 85 of the Indian Penal Code, 1860 and acquitted.
8. Learned advocate appearing for the state submits that the prosecution was able to establish the charge beyond reasonable doubt. He submits that, section 85 of the Indian Penal Code, 1860 is not attracted in the facts and circumstances of the present case. The victim and the appellant were married to each other. They consumed liquor/intoxicant voluntarily prior to the incident. He refers to the manner in which, the victim was put to death by the appellant. He submits that, initially, the victim was assaulted

with an offending weapon. Thereafter, she was attacked by an arrow which initially missed. Subsequently, the appellant inflicted blows with an arrow on the victim. He refers to the post-mortem report of the victim and the deposition of the post-mortem doctor. He submits that, taking the entire situation in the true perspective, the order of conviction and sentence should not be interfered with.

- 9.** The case of the prosecution at the trial was that, the appellant subjected the victim to cruelty, both physical and mental at the matrimonial house of the victim over a period of time. The appellant therefore committed an offence punishable under section 498A of the Indian Penal Code, 1860. The appellant and the victim came back to the matrimonial home of the victim, whereupon, the appellant and the victim entered into a quarrel. The appellant thereafter inflicted blows on the victim. The victim succumbed to the injuries inflicted by the appellant. On December 19, 2015, the appellant murdered the victim by an arrow.
- 10.** A written complaint was lodged with the police with regard to the incident on December 19, 2015. The police registered a First Information Report on the basis of such written complaint on the same date. The police on conclusion of the investigations submitted a charge-sheet. Charges as against the appellant were framed on August 18, 2016 under section 498A of the Indian Penal Code, 1860 and under section 302 thereof.
- 11.** The appellant pleaded not guilty to the charges and claimed to be tried. At the trial, the prosecution examined 18 witnesses and relied upon

various documentary and material evidences. The appellant was examined under section 313 of the Criminal Procedure Code. The appellant declined to adduce any defence witness at the trial.

- 12.** PW 1 signed the inquest report. He tendered the inquest report which was marked as Exhibit 1. He also witnessed the seizure made by the police. The seizure list was tendered and marked as exhibit 2. He stated that, he knew the appellant and the victim. He stated that, the appellant was in the habit of taking liquor regularly and to pick up a quarrel in drunken condition. Very often, the people at the locality were required to stop the appellant from quarrelling and assaulting. He identified the appellant in court.
- 13.** PW 2 is another neighbour of the appellant. He signed the inquest report. He also signed the seizure list. He corroborated the statement made by PW 1 with regard to the quarrel that the appellant and the victim frequently entered into.
- 14.** The brother of the appellant deposed as PW 3. His evidence is based on hearsay. He was not present at the time of the incident.
- 15.** An acquaintance of the appellant deposed as PW 4. He identified the appellant in court. He stated that, he found the appellant and the victim to pass through the village road in drunken condition. However, he never found them quarrelling with each other. He identified the articles which were seized by the police in his presence.
- 16.** Another acquaintance of the appellant deposed as PW 5. He stated

that, on the night when the victim was murdered, he went to consume liquor with the appellant. On the subsequent morning, he learnt about the murder.

17. An acquaintance of the appellant deposed as PW 6. He identified the appellant in court. He was a witness to the seizure list which was made on December 13, 2015. He identified various material exhibits.

18. A co-villager of the appellant deposed as PW 7. He stated that, on December 19, 2015 he returned to his home and in the morning he heard that the victim died. He went to the place of occurrence and found the dead body of the victim. He learnt that there was a quarrel between the appellant and the victim. He witnessed the seizure made by the police. He identified the appellant in court.

19. An acquaintance of the appellant deposed as PW 8. He identified the appellant in court. He stated that, the appellant and the victim were in the habit of picking quarrel on and off and were in the habit of taking liquor regularly.

20. A relative of the victim deposed as PW 9. He did not add much substance to either the case of the prosecution or of the defence.

21. Another relative of the victim deposed as PW 10. She stated that, the victim was not treated well by the appellant. The appellant used to inflict physical torture upon the victim in drunken condition. She stated that, she learnt about the incident from a panchayat member. She submitted the written complaint with the police. The written complaint was marked

as Exhibit 5 at the trial. She was also present at the time of the inquest. She identified her signature on the inquest report.

22. The police constable who escorted the dead body of the victim to the hospital for post-mortem examination deposed as PW 11. He identified his signature which was marked as Exhibit 6. He stated that he handed over the wearing apparels including ornaments to the investigating officer after completion of the post-mortem and that the investigating officer seized those articles by preparing a seizure list. Seizure list was tendered in evidence and marked as Exhibit 7.

23. A person who knew the appellant deposed as PW 12. His evidence is based on hearsay. He did not add much substance to the case of either the prosecution or the defence.

24. A co-villager of the appellant deposed as PW 13. He stated that, the appellant and the victim along with another person one day came to his house in a drunken condition. There was quarrel and altercation between the appellant and the victim. He could manage to stop them at that point of time. He heard that the victim was murdered.

25. A daughter of the appellant and the victim deposed as PW 14. She stated that her age was 14 years and that she read up to class V. She stated that, on the particular day at night, she was sleeping in the veranda along with her grandmother when her parents, the appellant and the victim, who went out of the house for consuming liquor. At around 1/2 a.m. in the night, both of them returned. Thereafter, they started

quarrelling between them as a result of which she woke up. Her grandmother was also sleeping as she was a bit deaf.

26. PW 14 stated that, her father, the appellant herein, closed the entrance door of the house. Thereafter, the appellant assaulted her mother, the victim with a bamboo stick. Her mother fell down. Thereafter, the appellant threw an arrow at the victim by using a bow-like instrument. The arrow however missed. The appellant again took the arrow in his hand and pierced the bottom of the chest of the victim. Thereafter, her mother the victim was groaning and slowly she was found not moving. Thereafter, the appellant opened the door and fled away from the house. She called her grandmother and her neighbours and threw water on the face of her mother who was found motionless. She states that, some of the neighbours came to the house. She also informed the incident over phone to her brother-in-law (elder sister's husband), her aunty and her maternal uncle. Police was informed through the member of the gram Panchayat. Police came around 9/10 a.m. on the next morning. She narrated the incident before the neighbours and the police. The appellant was arrested from the house. She identified the appellant in court. She stated that, after the incident, she recorded a statement under section 164 of the criminal procedure code which was tendered in evidence and marked as Exhibit 8.

27. The son-in-law of the appellant deposed as PW 15. He identified the appellant in court. He corroborated the evidence of PW 14.

28. The doctor who conducted the post-mortem on the dead body of the

victim deposed as PW 16. He described the injuries he found on the dead body of the victim. He stated that, in his opinion, the death was due to the effect of penetrating injury associated with other injuries as noted in the post-mortem report. The injuries were antemortem and homicidal in nature. Such type of injuries can be caused if the injuries were inflicted with an arrow thrown from a bow. He tendered the post-mortem report which was marked as Exhibit 9.

29. The police personnel who received the written complaint and started the police case deposed as PW 17. He tendered the formal First Information Report which was marked as Exhibit 10 in evidence.

30. The investigating officer deposed as PW 18. He narrated about the course of investigations. He tendered various documents at the trial as also the material exhibits.

31. On conclusion of the evidence of the prosecution, the appellant was examined under section 313 of the criminal procedure code. In such examination, he pleaded that he did not know about the incident, claimed to be innocent and falsely implicated. He declined to adduce any evidence at the trial.

32. The body of the victim bore several injuries. The body of the victim was examined by the post-mortem doctor being PW 16. The post-mortem report records the injuries that were found on the dead body of the victim. The post-mortem doctor being PW 16 stated that, the death of the victim was caused by the injuries noted in the post-mortem report being Exhibit

9. He stated that, the injuries were antemortem and homicidal in nature. The injuries could be because by an arrow.

33. In view of Exhibit 9 and the deposition of the post-mortem doctor being PW 16, the prosecution was able to establish at the trial that, the victim was murdered by inflicting injuries caused by an arrow.

34. PW 14 is the daughter of the appellant and the victim. She witnessed the incident. She deposed as to the occurrence of the incident vividly, at the trial. She stated that, the appellant and the victim came back home late night in a drunken condition. The appellant and the victim picked up a quarrel. The victim and the appellant entered a room, whereupon, the appellant closed the door of the room. Thereafter, the appellant inflicted blow on the victim with a bamboo stick. The victim fell down. The appellant shot an arrow at the victim which missed. Thereafter, the appellant pierced the victim with an arrow.

35. The injuries noted on the dead body of the victim as appearing from Exhibit 9 and the deposition of the post-mortem doctor being PW 16, corroborated the version of PW 14.

36. On the strength of the deposition of PW 14, it can be said that, the appellant murdered the victim.

37. The contention on behalf of the appellant that, the court should take into account section 85 of the Indian Penal Code, 1860, is without any substance. Several prosecution witnesses deposed that the appellant and the victim used to drink liquor and get intoxicated. On the fateful day, the

appellant and the victim went and drank liquor and came home in a drunken condition. PW 5 stated that, the appellant and the victim drank with him on the fateful night. PW 14 stated that, appellant and the victim came back home in a drunken condition and that they picked up a quarrel with each other.

38. The evidence on record establishes that, the appellant consumed liquor voluntarily and was intoxicated by the same. Therefore, in our view, provisions of section 85 of the Indian Penal Code, 1860 are not attracted.

39. In ***Sangharaj Bhogappa Kumble (supra)***, the Supreme Court found that, the accused and the victim were friends and were drinking companions as well. The incident happened because the accused felt that the deceased should not come in the way of a quarrel that he was having with his father. It was also found that there was effectively one stab injury on the person of the deceased and the others were abrasions. Therefore, it was found that, it cannot be said with certainty that the accused intended to cause the injury that he inflicted. In such view, the conviction of the accused for the offence under section 302 of the Indian Penal Code, 1860, was found not to be made out. He was accordingly acquitted thereof and convicted under section 304 part I of the Indian Penal Code, 1860.

40. The factual scenario in the present case are entirely different. The appellant struck repeated blows on the victim. The appellant initially struck the victim with a wooden stick. Thereafter, he shot an arrow at the victim which missed the victim. Then, he went on to inflict injuries on the

body of the victim by an arrow. Therefore, in the conspectus of the factual scenario presently available, it cannot be said that, the appellant did not intend to murder the victim.

41. The learned trial Judge acquitted the appellant from the charge under Section 498A of the Indian Penal Code, 1860. State did not prefer any appeal from such acquittal.

42. In view of the discussions above, we find no ground to interfere with the impugned judgement of conviction and the order of sentence. We affirm the same.

43. Period of detention of the appellant during investigation and trial be set off against the sentence imposed.

44. Trial court records along with a copy of this judgment and order be remitted as expeditiously as possible to the appropriate court for necessary action.

45. CRA 266 of 2021 is dismissed. In view of the dismissal of the appeal nothing remains in the interlocutory application. CRAN 1 of 2022 is dismissed.

46. Urgent photostat certified copy be made available to the applying parties on compliance of requisite formalities.

[DEBANGSU BASAK, J.]

47. I agree.

[MD. SHABBAR RASHIDI, J]