

13.03.2023

Sl.No. 19

Ct. 12

Amalranjan

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

CRA 473 of 2009

With

CRAN 1 of 2009 (Old CRAN 2563 of 2009)

Somen Mandal

Vs.

State of West Bengal

Mr. Tapan Datta Gupta

Mr. Parvej Anam

...for the appellant

Mr. Saibal Bapuli

Mr. Arani Bhattacharya

....for the State

Partha Sarathi Sen ,J. :-

1. The present appeal is taken up for hearing. We have heard Mr. Tapan Datta Gupta, learned advocate duly assisted by Mr. Parvej Anam, learned advocate for the appellant at length and Mr. Arani Bhattacharya, learned advocate led by Mr. Saibal Bapuli, learned advocate for the State. We have also given our due consideration over the submissions as advanced by the learned advocates for the contending parties.

2. The present appeal is now taken up for disposal. For effective disposal of the instant appeal, the facts leading to initiation of Sessions Trial No. 5(9) of 2008 arising out of Sessions Case No. 201 of 2008 is required to be discussed in a nutshell.

3. One Minu Mandal wife of late Ramen Mandal of village – Balutola, Post Office – Ramnagar P.S. – Kaliachak, District – Malda lodged a written complaint dated 19.04.2006 with the Officer-in-Charge Kaliachak Police Station, District - Malda stating, inter alia, that on the self-same day at about 13.30 hours when her husband Ramen Mandal was busy with cutting goats for a marriage ceremony at her village along with one Taran Mandal and one Mithun Mondal at that time the assailant Somen Mandal being the elder brother of the victim arrived at the scene and soon thereafter he gave a blow with a 'Da' towards the neck of the victim Ramen Mandal, as a result whereof, the victim Ramen Mandal sustained a severe cut injury on his neck as well as on different parts of his bodies. It has also been stated that on account of such assaults, the victim succumbed to his injuries. On the basis of such written complaint, Kaliachak Police Station Case No. 142/2006 dated 19.04.2006 under Section 302 IPC was started. The investigation was taken up and on completion of the same, chargesheet was submitted under Section 302 IPC against the accused.

4. Trial court reveals that after commitment and transfer, the learned trial court considered the charge as against the said accused and on the basis of the materials as placed before him by his order dated 19th September, 2008 framed charge under Section

302 IPC as against the said accused. Trial court record reveals further that for bringing home the charge as against the accused, the prosecution has examined 13 witnesses in all and in support of them several documents have been exhibited before the learned trial court. It reveals further from the trial court record that though on behalf of the defence no evidence was adduced but from the trend of cross examination of the prosecution witnesses and the answers as given by the accused in course of his examination under Section 313 Cr.P.C, it appears to us that the defence case is based on clear denial and false implication.

5. As discussed above the learned trial court on perusal of the entire evidence of the prosecution witnesses, both oral and documentary, by the impugned judgment and order found that the accused Somen Mandal guilty of offence under Section 302 of the IPC and thus convicted him to suffer imprisonment for life and pay fine of Rs. 1000/-, in default to suffer further R.I. for six months. The convict felt aggrieved and thus preferred this appeal.

6. In course of his argument Mr. Datta Gupta, learned Advocate for the appellant duly assisted by his junior Mr. Pervej Anam, Learned Advocate at the very outset draws attention of this court to the charge

as framed by the learned trial court, the written complaint (Ext. 2) as well as the oral evidence of the prosecution witnesses vis-a-vis the rough sketch map as has drawn by the I.O. being Ext. 11. Attention of this Court is also drawn to the impugned judgment. It is submitted by Mr. Datta Gupta, learned advocate for the appellant that the learned trial court while passing the impugned judgement practically relied upon the oral testimony of PW 1 vis-à-vis evidence of the autopsy surgeon i.e., PW 6. It is further submitted that while passing the impugned judgment, the learned trial court has, however, failed to appreciate that mere corroboration by the oral evidence of P.W. 6 in respect of oral testimony of PW 1 is not sufficient to come to a finding that the present appellant is guilty of the offence under Section 302 IPC. Drawing attention to the rough sketch map (Ext. 11), it is submitted further that on conjoint perusal of the said Ext. 11 that is the rough sketch map of the P.O and oral testimony of P.W. 1, it has not become clear as to how P.W. 1 become an eyewitness to the alleged incident of the murder of the victim. It is further submitted that learned trial court while passing the impugned judgment ought to have come to a finding that in absence of any cogent evidence with regard to the presence of P.W. 1 at the P.O. or in absence of any positive evidence as to how P.W. 1 had witnessed the alleged incident of murder

of the victim, the charge as against the accused has not been proved. It is thus argued by Mr. Datta Gupta that the learned trial court while passing the impugned judgment has not appropriately assessed the evidentiary value of the testimony of P.W. 1 and thus misdirected himself in passing the impugned judgment. Mr. Datta Gupta learned advocate for the appellant thus submits that this is a fit case for allowing the instant appeal after setting aside the impugned judgment of conviction and order of sentence.

7. Per contra, Mr. Bapuli, learned advocate duly assisted by Mr. Bhattacharya, learned advocate for the State, however, submits that learned trial court is very much justified in passing the impugned judgment, in view of the fact that the evidence of P.W. 1 is very much trustworthy and in her cross-examination too, she could not be shaken. It is further argued on behalf of the State that while passing the impugned judgment, the learned trial court had rightly placed his reliance upon the evidence of PW 1 which gets due corroboration from the evidence of P.W. 6 being the autopsy surgeon. It thus argued that it is a fit case for dismissal of the instant appeal.

8. We have given our due consideration over the submissions of the learned advocates for both sides.

We have meticulously perused the materials as placed before us namely; the charge as framed by the learned trial court, the evidence of the prosecution witnesses, both oral and documentary and the impugned judgment. As rightly argued by Mr. Datta Gupta, learned advocate for the appellant that in the impugned judgment, the learned trial court practically believed the testimony of P.W. 1 being the defacto-complainant and he has also come to a finding that since the evidence of P.W. 1 gets due corroboration from the autopsy surgeon i.e, P.W. 6, learned trial court found it fit to rely upon the oral testimony of the P.W. 1 and passed the impugned judgment.

9. Since in this appeal both the learned advocates for the contending parties placed their reliance upon the evidence of P.W. 1 and P.W. 6., we consider it necessary to discuss the evidence of those two witnesses only as well as related exhibits since in our considered view, the discussion of the other prosecution witnesses except the evidence of the I.O. are not very much relevant for the effective adjudication of the instant appeal. On perusal of the evidence of P.W. 6, i.e., the autopsy surgeon of the deceased, it would reveal to us that in his examination-in-chief, he stated thus:

“External Injuries

Sharp Cut wounds:

- 1. Five inches x 5 inches back of neck at the level of 1st cervical vertebra cutting muscles, only skin in front of neck intact vessels, food pipe and wind pipe, bone, spinal cord,**
- 2. Right side of face measuring 3 inches one and half inches bone deep,**
- 3. Right shoulder measuring 3 inches x one inch x forth bone deep,**
- 4. Back of right side of chest measuring two and half/one fourth,**
- 5. Over right wrist dorsally 2 in nos. measuring 2 and half x 3/one and half by bone deep one/half/one sixth,**
- 6. Over right lower fore arm, dorsally measuring one by half by one sixth,**
- 7. Over left lower forearm, ventral 2 in numbers (i) 4/three fourth / 1 inch, (ii) half / one sixth / one fourth,**
- 8. Left palm at base of left thumb measuring half / one sixth / one sixth.**

On Dissection

All organs were pale, stomach content semi digested food,

Probable time since death within 36 hours from P.M. examination.

Cause of death: death was due to the effect of ante mortem injuries,

homicidal in nature, all injuries were ante mortem in nature caused by hard, heavy and sharp cutting object. The injuries were sufficient in ordinary course to cause death. Wearing apparel and P.M. blood handed over to the escort party. This is the P.M. report prepared and signed by me and marked as Ext. -6 and 6/1.

The injury no. 1 was sufficient individually to cause death.”

10. It is pertinent to mention herein that in course of his cross-examination P.W. 6 had stated nothing from which an adverse inference could be drawn with regard to the evidence as adduced by him in his examination-in-chief. In view of the aforementioned clinching evidence as adduced by P.W. 6, we have also no doubt in our mind to hold that the death of the victim was homicidal in nature. In order to come to a logical conclusion as to whether P.W. 1 being the defacto-complainant of this case has testified correctly or not, it is necessary to discuss the evidence of P.W. 1 in a nutshell.

11. In course of her examination-in-chief, P.W. 1 stated before the Court that the alleged incident took place three years back at around 1.00 p.m. when his husband Ramen Mandal (deceased) along with Taran Mandal (P.W. 10), Ashit Mandal (P.W. 8) and Mithun Mandal (P.W. 5) went to a marriage ceremony to cut

the goats for the feast of the said marriage reception. She further testified that when her husband and his said companions were cutting goats under a mango tree belonging to one Kulesh Mondal, all of a sudden, the present appellant, Somen Mandal arrived at the scene and gave a blow of 'Da' on the neck of the victim and as a result of which her husband Ramen Mandal died. She further testified that the convict/appellant herein also gave several blows of 'Da' on the person of the victim. It is her further version that one Panchu Gopal Mandal, one Ratan Mandal and one Haren Mandal caught hold of the assailant while he attempted to run away therefrom and in their presence the present appellant confessed his guilt. She testified further that she witnessed the entire incident of murder of her husband. It is her further version that Ashit Mandal (PW 8), Mithun Mandal (PW 5), and Taran Mandal (PW 10), also witnessed the said incident on the relevant day and hour.

12. It is pertinent to mention herein that for the reason best known to them the said companions of the victim, however, became hostile and nothing could be elucidated from their mouth in course of their examination by the prosecution that they had actually witnessed the alleged incident of murder by the present appellant. As rightly pointed out by Mr. Datta Gupta, learned advocate for the appellant that

within the four corners of her evidence, P.W. 1 did not disclose from where she witnessed the entire incident of murder of her husband and as to how she came to the scene of alleged crime. At this juncture, if we look to the rough sketch map i.e., Exhibit 11 as drawn by the Investigating Officer (PW 12), of this case, it would reveal that on the northern side of the P.O. house of one Kulesh Mondal is situated while on its southern side one garden belonging to one Kalachand Mondal is there. On the East of the P.O. there is a open space and thereafter, house of Biren Mondal is situated while on the West of the P.O. there was a Bamboo-Jhar belonging to Taran Mandal (PW 10). On comparative study of the oral evidence of P.W. 12, vis-à-vis the rough sketch map as drawn by the I.O (Ext. 11) it has not become clear as to where the house of P.W. 1 is situated or in other words, the house of P.W. 1 is at all situated in the vicinity of the P.O. wherefrom there may be a probability to visualize the incident of the alleged murder by P.W. 1 though no such case was at all made out by P.W. 1 in course of her examination-in-chief.

13. It is equally pertinent to mention herein that in the written complaint (Ext. 2) it has not been stated by P.W. 1 that she witnessed the alleged incident of murder and thus lodged the written complaint and to that extent, she was duly cross-examined on behalf of defence.

14. In view of the discussion made hereinabove, we are, thus, constrained to hold that the learned trial court is not at all justified in passing the impugned judgment of conviction and order of sentence against the present appellant based on the testimony of P.W. 1 as sacrosanct.

15. We, thus, find sufficient merit in the instant appeal and, accordingly, the instant appeal is hereby allowed. As a result, the judgment of conviction dated 28.04.2009 and the order of sentence dated 29.04.2009 as passed by the learned Additional Sessions Judge, 3rd Fast Track Court, Malda in Sessions Trial No. 5(9)/2008 arising out of Sessions Case No. 201/2008 is hereby set aside.

16. The appellant, Somen Mandal, is thus found not guilty under Section 302 IPC, in Sessions Trial No. 5(9)/2008 arising out of Sessions Case No. 201/2008. He be released at once, if not wanted in connection with any other case.

17. It is reported that the present appellant is now in custody. In view of such, we direct the department to send down the trial court record along with a copy of this judgment forthwith. Department is further directed to forward a copy of this judgment to the Secretary, District Legal Services Authority, Malda at the earliest.

18. The Secretary, District Legal Services Authority, Malda is hereby directed to search out in which correctional home the present appellant is detained now and on making enquiry, he is directed to forward a copy of this judgment to the Superintendent of the Correctional Home so as to enable the Superintendent of the said Correctional Home to release the present appellant, Somen Mandal forthwith unless he is wanted in connection with any other case.

19. Accordingly, the appeal being **CRA 473 of 2009** and the connected application being **CRAN 1 of 2009 (Old No. CRAN 2563 of 2009)** are disposed of.

20. Judgment dictated in open Court.

21. Urgent certified photocopy of this order, if applied for, be given to learned advocates for the parties upon compliance of all requisite formalities.

(Chitta Ranjan Dash,J.)

(Partha Sarathi Sen, J.)