

Form No. J(1)

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

C.R.A. 544 of 2013

CRAN 2 of 2014 (Old CRAN 1209 of 2014)

Padda Singh

-vs-

The State of West Bengal

For the Appellant(s) : Mr. Sujoy Sarkar, Adv.
Mr. Mushraf Alam Sk, Adv.
Ms. Sushmita Ghorai, Adv.
Mr. Rahul Chachan, Adv.

For the State : Mr. Bibaswan Bhattacharya, Adv.

Heard on : 07.06.2023

Judgment on : 07.06.2023

Joymalya Bagchi, J.:-

1. Appellant has assailed judgment and order dated 21.03.2013 and 22.03.2013 passed by the learned Additional Sessions Judge, 6th Fast Track Court, Malda in Sessions Trial no. 36 of 2012 arising out of Sessions Case no. 166 of 2012 convicting the appellant for commission of offence punishable under section 302 IPC and sentencing him to

suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one year more.

2. Prosecution case as alleged against the appellant is to the effect that on 07.03.2012 at 8.30 p.m. the appellant came in a drunken condition to a tea stall owned by one Tiren Singh. Basu Singh, the victim was standing near the tea stall. An altercation ensued between the appellant and the victim over a mobile phone. Appellant threw down the mobile phone on the road. When Basu Singh objected, he stabbed him repeatedly with a knife. As a result victim suffered injuries and died at the spot. Basant Singh (PW6) lodged FIR resulting in registration of Harishchandrapur P.S case no. 103 of 2012 dated 8.3.2012 under section 302 IPC against the appellant. In the course of investigation, appellant was arrested. On 8.3.2012 weapon of offence i.e blood stained knife was recovered.

3. Charge sheet was filed against the appellant and charge was framed under section 302 IPC. Appellant pleaded not guilty and claimed to be tried.

4. In the course of trial, prosecution examined 13 witnesses to establish its case and exhibited a number of documents. The 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. Sakar, learned counsel for the appellant argues that the eye-witnesses are not credible. Presence of PW6, the de-facto complainant is

contradicted by PW8, tea seller. Presence of PW1 at the place of occurrence is also doubtful. FSL report of the seized knife is inconclusive. Alternatively, he argues incident occurred in the course of a sudden quarrel and the appellant did not have intention to murder the victim. Hence, conviction may be converted from section 302 IPC to section 304 IPC.

7. On the other hand, Mr. Bhattacharya, learned counsel for the State submits that PW 6, the de facto complainant is an eye-witness. His evidence is corroborated by PW1 (wife of the deceased) who rushed to the spot and saw the appellant assaulting the victim with a knife. Soon after his arrest, the knife was seized from the residence of the appellant. Prosecution case is proved beyond doubt.

8. PW6 Basant Singh is the de facto complainant. He is an eye-witness. He deposed that on the fateful day at 8.30 p.m an altercation took place between the appellant and the victim in front of the tea stall of Tiren Singh. He tried to intervene. Appellant threw down the mobile phone on the ground. A scuffle ensued. At that time appellant struck the victim with a knife on his abdomen, back and leg. He could not rescue the victim out of fear. Family members of the accused took him to his residence. He lodged FIR. He proved his signature on the report.

9. PW1 Lalita Singh is the wife of the deceased. She deposed she heard cry of her husband and rushed to the tea stall of Tiren. She saw the appellant stabbing her husband a number of times. She was pregnant and fled away from the spot out of fear. Thereafter her in-laws

informed the matter to the police. Her husband had handed over the mobile phone to the appellant. He asked the appellant to return the phone. Thereupon the appellant threw the phone on the ground and broke it. An altercation ensued and her husband was assaulted repeatedly with a knife. She made statement before the Magistrate.

10. PWs 2, 4, 5 and 7 are post occurrence witnesses. They stated hearing hue and cry they came to the spot and saw the victim lying dead on the ground. Appellant was standing there with a knife.

11. PW8 Tiren Singh is the owner of the tea stall. He stated that he was sleeping at the tea stall. Hearing hue and cry he came to the spot and found the appellant was standing with knife and the victim was lying dead. In cross examination he stated that he was sleeping at his residence.

12. PW9 Dr. Bablu Saren is the post mortem doctor. He found the following injuries on the victim:-

*External Injuries : 1) one sharp cut injury present over the left lateral arm measuring 1 inch x ½ inch x ms. Depth;
2) one sharp cut injury present over the right upper abdomen ½ inch x ½ inch x diaphragm and liver;
3) one sharp cut injury present over the right upper abdomen ½ inch x ½ inch x cavity;
4) one sharp cut injury present over the right lumbar region ½ inch x ½ inch x muscle depth;
5) one sharp cut injury present over the right iliofossa 1 inch x ½ inch x intestine;
6) one sharp cut injury present over the right inguinal area 1.25 inches x ½ inch x fatty tissue;
7) one sharp cut injury over the back of left chest ¼ inch x ¼ inch x muscle depth."*

He opined death was due to immediate effect of haemorrhage and shock, homicidal and ante mortem in nature.

13. PW 11 Bipul Banerjee was posted at Harischandrapur PS as IC. He received one written complaint from PW6 Basant Singh. He prepared formal FIR. On the prayer of the State, the witness was re-examined as PW 12. He stated he submitted supplementary charge-sheet after obtaining CFSL report.

14. PW 13 Joydeb Pathak is the first investigating officer. He stated that he came to the place of occurrence, prepared rough sketch map with index (Ext 7). He recorded statement of witnesses. On 8.3.2012 he seized blood stained knife under seizure list, Ext 8. He also seized blood stained vest, jangia of the deceased under seizure list in presence of Sumanta Misra, PW10. He conducted inquest over the dead body (Ext 11). He collected post mortem report. He submitted charge sheet.

15. Mr. Sarkar submits that PW6 is not a reliable witness. In cross he claimed he was sitting in the tea stall with the victim and tea seller at the time of incident. But the tea seller PW8 stated that he was sleeping at his residence. Hence, the said witness could not have been present at the spot.

16. I am unable to subscribe to such submission. Evidence of a witness is to be appreciated as a whole. An isolated statement in cross cannot be culled out of context to improbabilise him. Reading the evidence of PW6 as a whole it appears that the said witness was sitting at the tea stall. Victim was also present in the shop when the incident

occurred. This portion of the deposition of PW6 is corroborated by the wife of the deceased, PW1. Hearing hue and cry she rushed to the spot and saw the appellant striking her husband repeatedly. Under such circumstances, though presence of the tea seller at the place of occurrence may be doubtful the fact that the victim was present at the tea stall when the appellant had stuck him repeatedly with a knife is resonated not only through the version of PW6 but that of PW1 too.

17. Other post occurrence witnesses also corroborated the prosecution case. PWs 2, 4, 5 and 7 rushed to the spot and found the victim was lying dead. Appellant was standing with a knife in his hand. These circumstances clearly establish beyond doubt that on the fateful night the appellant had repeatedly struck the victim with a knife causing his death.

18. Alternative argument of lack of intention to commit murder is also improbabilised by the number of injuries found on the body of the victim. Six out of seven injuries noted by the post mortem doctor were on the chest and the abdomen of the victim. An individual causing repeated knife blows on vital parts of the body i.e. chest and abdomen cannot but intend to murder the victim.

19. Mr. Sarkar also contends that the appellant was in an inebriated condition and the incident occurred in the course of a scuffle. He was unaware of the consequences of his act and the case would fall within the 4th Exception of section 300 IPC. Self-intoxication is no ground to avail the general exception engrafted in section 85 of IPC. Evidence on

record shows a quarrel ensued between the appellant and the victim as the latter had demanded his mobile phone. Thereafter, the appellant threw the mobile phone on the ground and broke it. A scuffle ensued. Victim was unarmed but the appellant had a knife. He took advantage of the situation and acted in a cruel manner. These circumstances do not entitle him to avail the ameliorative scope of 4th Exception to section 300 IPC.

20. In ***Premchand vs. The State of Maharashtra***¹ the Apex Court had modified the conviction under section 302 IPC to section 304 IPC in the factual matrix of the cited case. In the said case there was a dispute over collection of rents. A scuffle ensued between the parties. Subsequently, the victim joined. In the course of scuffle both the parties including the accused had suffered injuries. Hence, the court came to a finding that the injuries inflicted on the victim were without pre-meditation and in the course of a free fight.

21. Present case portrays an entirely different situation. Appellant was armed with a knife while victim was unarmed. Appellant did not suffer any bodily injury. On the other hand he took advantage of the situation and repeatedly assaulted the victim on his chest and abdomen. Hence, it cannot be said that the attack was without pre-meditation or the appellant had lack of intention to kill.

22. Conviction and sentence of the appellant are upheld.

23. Accordingly, appeal and connected application are disposed of.

¹ AIR 2023 SC 1487

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

25. Copy of the judgment along with LCR be sent down to the trial Court at once for necessary compliance.

26. 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.)

tkm/PA