Sl. No. 229

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

C.R.A. 570 of 2018
With
CRAN 1 of 2023

Atul Barman @ Atul Chandra Barman
-Vs-
State of West Bengal

For the Appellant	**:**	Ms. Ujjaini Chatterjee, Adv.
For the State	**:**	Mr. Ranabir Roy Chowdhury, Adv.
Heard on	**:**	28.08.2023
Judgment on	**:**	28.08.2023

Joymalya Bagchi, J. :-

1. The appellant has assailed the judgment and order dated 21.08.2018 and 23.08.2018 passed by the learned Additional Sessions Judge, Dinhata, Cooch Behar, in connection with Sessions Case No. 29 of 2017 corresponding to Sessions Trial No. 04(04) of 2017 convicting the appellant for commission of offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and

to pay fine of Rs.10,000/-, in default, to suffer simple imprisonment for one year more.

2. The prosecution case as alleged against the appellant is to the effect that on 19th April, 2016 there was an altercation between him and Naresh Barman (PW 1) over demarcation of land. Subsequently Naresh accused the appellant that electric poll embedded by the appellant had fallen on his land. While he was measuring his land with a rope it is alleged that the appellant hit him with a bambo stump. At that juncture his son, Tapan Barman intervened and the appellant hit him with the stump on his head, shoulder and ribs. Tapan fell down on the ground started vomiting and became senseless. He was taken to Dinhata SD Hospital and subsequently referred to Cooch Behar Mission Hospital, Chakchaka. When his condition was very critical he was shifted to MJN Hospital, Cooch Behar where he succumbed to his injuries.

3. Written complaint was lodged by Naresh Barman resulting in registration of Dinhata Police Station Case No. 395 of 2016 dated 23.04.2016 under Section 302 of the Indian Penal Code. In the course of investigation appellant was arrested and a bamboo stump was seized from the northern side of his house.

4. Charge-sheet was filed and charge was framed against him under Section 302 of the Indian Penal Code.

5. Prosecution examined fifteen witnesses and exhibited a number of documents to prove its case. Defence of the appellant was one of innocence and false implication.

5. Ms. Chatterjee, learned Counsel for the appellant argues that the prosecution case is not proved beyond doubt. Apart from relations no independent witness has supported the prosecution case. Version of PWs 1 and 9, parents of the deceased, with regard to the genesis of the incident is at variance to PW 5, sister of the deceased. Even if the post mortem doctor did not opine that head injury was sufficient in the ordinary course of nature to cause death. No injury was found on the ribs. Assault on PW 1 has not been proved by adducing the medical evidence. Incident occurred in the course of a sudden quarrel over demarcation of land. There is nothing on record to show that the appellant had carried the bamboo stump to the place of occurrence. Assault was in a fit of passion during a sudden quarrel and was not a pre-meditated one. Hence, conviction of the appellant may be altered from Section 302 of the Indian Penal Code to Section 304 Part II of the Indian Penal Code.

6. Mr. Roy Chowdhury, learned Counsel for the State submits PWs 1,5 and 9 have proved the assault on the deceased Tapan Barman. Appellant hit him with a bamboo stump on the head, ribs and back. Apart from head injury lacerated injury on shoulder was also noted by the post mortem doctor. Weapon of offence was recovered from the house of the

appellant. Intention to murder the victim is established. Accordingly, appeal is liable to be dismissed.

7. PWs 1, 5 and 9 claimed to be eye-witnesses.

8. PW 1 (Naresh Barman) is the father of the deceased. He stated that on the day of incident at around 11A.M. to 12 Noon there was a dispute between him and the appellant over demarcation of their land. He accused the appellant that electric poll embedded by him had fallen on his land. He started measuring his land. In the course of quarrel appellant hit him with a bamboo stump. His son intervened and was also assaulted on the head, ribs and shoulder. His son fell down on the ground and was shifted to the hospital where he died. He lodged written complaint. He also signed on the inquest report.

9. PW 9 (Swapna Rani Barman) is his wife. She stated that there was a land dispute between her husband and the appellant. Appellant was accused that the electric poll embedded by him had fallen on their land, while her husband was measuring his land in presence of the accused, the accused struck him with a bamboo stump. It caused swelling on his head. His son Tapan was present at the spot. He was also assaulted and died.

10. PW 5 (Beauty Barman), sister of the deceased. She claimed on the fateful day at 12 noon she was playing outside the house and her brother was also present there. At that time the appellant came and struck her brother on his head. Her brother suffered head injury and died.

11. Analysis of the aforesaid evidence would show that as per PWs 1 and 9 the incident occurred in the course of a sudden quarrel arising out of a land dispute. There was dispute over demarcation of land between the appellant and PW 1. PW 1 alleged electric poll embedded by the appellant had fallen on his land. He started measuring the land with a rope. In the course of altercation appellant had hit PW 1 with a bamboo stump. Tapan Barman, son of the PW 1, was also assaulted by him. He suffered head injuries and died. It would not be out of place to note that no injury report of PW 1 has been placed on record. This improbabilises the assault on the said witness by the appellant. But witnesses are consistent with regard to the assault on Tapan, son of PW 1, which is also supported by medical evidence.

12. Post mortem doctor, PW 12 (Dr. Nabhonil Chakraborty) found the following injuries:-

> *"i) 1 ½"x 1 ½" lacerated injury with ragged margin above left ear with underlying fracture of the temporal bone with hematoma 3" x 4" size at left temporal region extending upto left parietal region. Intracranial hematoma with liquid blood below the bones;*
>
> *ii) laceration at back at left scapular region with bruise 3" x 4" size. The other findings on dissection were normal."*

13. He opined death was due to hit by a heavy blunt object which is ante mortem and homicidal in nature. Hence, death of Tapan due to injury on his head caused by the appellant is proved. However, evidence of PWs 1 and 9 leads to the irresistible conclusion that the incident occurred in the

course of a quarrel over demarcation of land. PW 5 who tried to give the case a more sinister hue by claiming that the appellant had suddenly come and hit his brother Tapan is not corroborated by other witnesses. Thus, it may be safely concluded that the assault on Tapan was in the course of a quarrel while parties were demarcating land in connection with a land dispute.

14. Evidence on record shows that the appellant was present in the field with PW 1 while the latter was measuring the land. Nothing has transpired from the evidence on record to show the appellant had carried the bamboo stump to the place of occurrence. Presence of bamboo stump at the time of demarcation of land is highly likely. Hence, assault by the appellant by a bamboo stamp cannot be said to be a pre-meditated one. Nature of assault also appears to have been exaggerated. Assault on PW 1 has not been supported by medical evidence. Assault on the ribs of the deceased is also not supported by the post mortem doctor, PW 12. Post mortem doctor noted head injury and opined that death was due to such injury. Hence, it appears in the course of a sudden quarrel the appellant had suddenly picked up a bamboo stump from the spot and struck a blow on his head. We are conscious that a single strike on a vital part of the body may be in appropriate cases sufficient to amount to murder provided the act does not fall within the exceptions engrafted under Section 300 of the Indian Penal Code. Exception 4 to section 300 reads as follows:-

> *"Exception 4. —Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of*

passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner."

15. Genesis of the case as narrated by PWs 1 and 9 shows the incident occurred without pre-meditation while the parties were demarcating the land. Appellant does not appear to have carried the weapon of offence i.e. bamboo stamp which in all probability was lying at the spot for the purposes of demarcation. Assault on the ribs has not been proved and the injuries on the scapular region may be due to fall after the victim was hit on the head.

16. In this backdrop, one can safely conclude that the appellant had acted in a fit of passion in the course of a sudden quarrel. He did not act in a cruel or unusual manner so as to disentitle him from the ameliorative ambit of the aforesaid exception. Hence, I am of the opinion conviction of the appellant may be scaled down to Section 304 Part I of the Indian Penal Code.

17. Sentence imposed on the appellant is accordingly modified.

18. The appellant is directed to sufferer rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- in default, to suffer simple imprisonment for one year more.

19. 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 section 428 of the Code of Criminal Procedure.

20. Appeal is accordingly disposed of. In view of disposal of the appeal connected application being CRAN 1 of 2023 is also disposed of.

21. Copy of the judgment along with Lower Court Records be sent down to the trial Court at once for necessary compliance.

22. Urgent Photostat Certified copy of this judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree.

(Gaurang Kanth, J.) **(Joymalya Bagchi, J.)**

sdas/tkm/PA