

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. 636 of 2019

Pradip Kumar Mondal @ Kala
-Vs-
State of West Bengal

For the Appellant : Mr. Navanil De (Legal Aid)
Ms. Monami Mukherjee

For the State : Mr. Joydeep Roy
Ms. Sujata Das

Heard on : 31.08.2023

Judgment on: 31.08.2023

Joymalya Bagchi, J.:-

1. The appellant has assailed the judgment and order dated 23.09.2019 and 24.09.2019 passed by the learned Additional Sessions Judge, Fast Track, 2nd Court, Purba Bardhaman, in connection with Sessions Case No. 25 of 2018 corresponding to Sessions Trial Case No. 02(02) of 2018 convicting the appellant for commission of offence punishable under Section 304(1) of the Indian Penal Code and sentencing

him to suffer rigorous imprisonment for ten years and to pay a fine of Rs.3000/- only, in default to suffer rigorous imprisonment for one year more on his conviction to the charge under Section 304(1) of the Indian Penal Code.

Prosecution case:-

2. The prosecution case as alleged against the appellant is as follows:-

3. Pradip Mondal, the appellant herein, had illicit relationship with a married lady. Gadai Giri, the deceased protested. On 14.09.2017 there was an altercation between Pradip Mondal and Gadai Giri over this issue. On 15.09.2017 between 10-11 P.M. Jharna Giri, wife of Gadai Giri, heard loud noises from outside. From the room she could make out that there was an altercation between Pradip Mondal and her husband. Both were intoxicated. Pradip started assaulting her husband. When she and her daughter ran to the spot Pradip fled away. She saw her husband lying on the ground. She brought her husband to the house. The condition of her husband deteriorated and she took her to Memari Hospital for treatment where he was declared dead.

4. She lodged written complaint being Memari Police Station Case No. 464 of 2017 under Section 304 of the Indian Penal Code. In the course of investigation appellant was arrested. A torch was recovered from his residence.

5. Charge-sheet was filed and charge was framed under Section 302 of the Indian Penal Code. In the course of trial prosecution examined 13 witnesses and exhibited a number of documents to prove its case.

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

Evidence on record:-

7. PW 1 (Jharna Giri) is the de facto complainant and the wife of the deceased. She claimed to be an eye-witness. PWs 2 and 3 are her minor daughter and son respectively. They accompanied their mother, PW 1 to the spot and also claimed to have seen the incident.

8. PW 6, Rajesh Giri, is another minor son of PW 1. He heard the incident from her mother and others.

9. PW 7, (Sayed Bulbul) is the scribe to the FIR.

10. PWs 8, 10 and 12, Biju Murmu, Somerandranath Mondal and Bimal Besra respectively are the neighbours. They came to the spot after the occurrence.

11. PWs. 4 and 5, Somen Rakshit and Tarimemdu Mondal respectively are the witnesses to the recovery of torch from the residence of the appellant.

12. PW 11 (Dr. Aniruddha Das) is the post-mortem doctor and PW 13 (Uttal Samanta) is the investigating officer.

Arguments at the Bar:-

13. Mr. Dey, learned Counsel for the appellant argues PWs. 1, 2 and 3 who claim to be the eye-witnesses were not at the spot. PW 1 admitted she was at her residence. It was at a five minutes' walking distance from the place of occurrence. PW 2 also stated the distance of their house from the village Dihipalashan is about 500 meters and it took 15 to 20 minutes to

reach the said village. Presence of the said witnesses at the place of occurrence is highly doubtful. In the absence of support from the eyewitnesses, mere recovery of torch from the residence of the appellant would not establish his culpability. Hence, the appeal is liable to be dismissed.

14. Per contra, Ms. Das appearing for the State submits PWs 1, 2 and 3 are the most natural witnesses. Hearing hue and cry, PW 1 and her two minor children PWs. 2 and 3 rushed to the spot and found the victim lying in an injured condition and the appellant was standing there with a torch and fled away. The said torch was also recovered from the residence of the appellant. Conviction was rightly recorded and the appeal is liable to be dismissed.

Are PWs 1, 2 and 3 reliable:-

15. In the FIR PW 1 claimed on 15.09.2017 around 10.00 to 11.00 PM while she was inside the house, she heard a quarrel between her husband Gadai and the appellant. Appellant started assaulting her husband. When she reached the spot appellant ran away. During deposition the said witness altered her stance. She claimed the place of occurrence was at a little distance away from her house. Hearing hue and cry she went to the spot and found her husband lying on the ground with injuries. Appellant was standing there with a torch and fled away.

16. In cross examination she stated they were residing at their house at Dihipalashan. It takes about five minutes to reach the farmhouse of Somerandranath Mondal i.e. the place of occurrence. It is improbable if not

impossible that witness heard hue and cry from a place which is at a five minuets' walking distance from her house. The version of PW 1 is clearly improbable and does not inspire confidence.

17. It has come out in FIR that there was prior enmity between the appellant and the deceased. On 14.09.2017 there was an altercation between them. Owing to such prior enmity it is likely PW 1 had implicated the appellant in the murder out of suspicion though she had not witnessed the incident herself.

18. Version of PWs. 2 and 3 suffer from similar infirmity. PW 2 is the minor daughter and PW 3 minor son of the couple. They deposed on similar lines as PW 1; they claimed hearing hue and cry PW 1 came out and saw the appellant hitting the victim with a torch. They had also accompanied PW 1. As the residence of the said witnesses is at a considerable distance from the place of occurrence it is most unlikely that they could have heard hue and cry and come to the spot and witnessed the incident. For this reason, I am unable to accept the version of PWs 1, 2 and 3 that hearing hue and cry they came to the spot and had witnessed the murder or had seen the appellant standing there with a torch light.

Does recovery of torch implicate the appellant:-

19. Substratum of the prosecution case primarily lies on the shoulder of the aforesaid eye-witnesses. If they are disbelieved the only circumstance which the prosecution would rely is the recovery of a torch from the appellant. It is common knowledge that torches are available in every household. Recovery of a torch from the house of the appellant by

itself would not irresistibly lead to the inference that the said torch was used as a weapon of offence. The seized article had not been sent for forensic analysis and no report showing presence of blood on the torch is also produced.

Conclusion:-

20. For the aforesaid reasons, I am of the opinion eye-witnesses PWs 1, 2 and 3 do not inspire confidence and the prosecution case has not been proved beyond doubt. Appellant is accordingly acquitted. Appeal is allowed.

21. Appellant shall be forthwith released from custody, if not wanted in any other case, upon execution of a bond to the satisfaction of the learned trial court which shall remain in force for a period of six months in terms of Section 437A of the Code of Criminal Procedure.

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

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

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)