

**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. 685 of 2015

Binod Majhi @ Kulin

-Vs-

The State of West Bengal

For the Appellant : Mr. Partha Sarathi Bhattacharyya, Adv,
Ms. Swarnali Saha, Adv.
... for the Appellant.

Mr. Neguive Ahmed, Id. A.P.P..
Ms. Zareen N. Khan, Adv.
Ms. Trina Mitra, Adv.
... for the State.

Heard on : 13.07.2023 & 14.07.2023

Judgment on : 14.07.2023

Joymalya Bagchi, J. :-

1. Appellant has assailed judgment and order dated 30.09.2015 and 01.10.2015 passed by learned Additional Sessions Judge, 3rd Court, Suri, Birbhum in Sessions Trial No. 08(07)/2002 arising out of Sessions Case No. 85 of 1996 convicting the appellant for commission of offence punishable under Sections 302/326 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life and to pay fine of Rs. 5,000/- each, in default, to suffer simple imprisonment for a period of six months for the

offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for five years and to pay fine of Rs. 1,000/- for the offence punishable under Section 326 of the Indian Penal Code.

2. Prosecution case levelled against the appellant is as follows:-

3. On 23.07.1995 around 11.30 A.M. Madhusudan Dutta Roy, the deceased was taking out his bicycle in front of his house to go to the market. At that time, appellant came from behind and attacked him with a spade on the head. He suffered serious bleeding injuries. When his wife intervened to stop the appellant, she was also severely injured. Victim and his wife, Dipali Dutta Roy (PW 15) were shifted to Bolpur S. D. Hospital. On the same day victim died. His wife was admitted to the hospital for 10 days.

4. Sadhana Dutta Roy (PW1), daughter of the victim lodged written complaint against the appellant resulting in registration of Bolpur Police Station Case No.156 of 1995 dated 23.07.1995 under Section 326 of the Indian Penal Code. Upon death of the victim, Section 304 of the Indian Penal Code was added. In course of investigation, appellant was arrested. An iron spade was seized from his residence.

5. Charge sheet was filed and charge was framed under Sections 302/307 of the Indian Penal Code against the appellant. During trial, prosecution examined 24 witnesses and exhibited a number of documents. Defence of the appellant was one of innocence and false implication. Appellant pleaded not guilty and claimed to be tried.

6. In conclusion of trial, trial Judge by the impugned judgment and order dated 30.09.2015 and 01.10.2015 convicted and sentenced the appellant, as aforesaid.

7. Mr. Bhattacharyya, learned Advocate for the appellant submits eyewitnesses are unreliable. Aparna Dutta Roy and Sumanta Dutta Roy (PWs. 2 & 4), daughters of the victim claimed to have seen the incident from the house of one Kartick Khan but the sketch map does not indicate the house. It is unlikely the de-facto complainant (PW1) could have seen the incident. Sanjit Pal (PW5) is a chance witness and relation of the deceased. His presence is unlikely at the spot. PW15 was lifting water from the well. She could not have seen the assault. Recovery of the iron spade is also doubtful. Motive to commit the crime has not been proved. He may be acquitted. Alternatively, it is argued appellant had no intention to commit the murder and the conviction may be converted from Section 302 of the Indian Penal Code to Section 304 of the Indian Penal Code.

8. Mr. Ahmed, learned Additional Public Prosecutor submits wife of the deceased (PW15) is an injured eyewitness. She has graphically narrated the incident. Her deposition is corroborated by her daughters viz., Sadhana Dutta Roy, Aparna Dutta Roy and Sumana Dutta Roy (PWs1, 2 & 4). PW5 also saw the incident. Medical evidence corroborates their ocular version. Hence, the prosecution case is proved beyond doubt.

9. P.W15 is the star witness. She is the wife of the deceased and an injured witness. At the time of occurrence, she was lifting water from the well. She heard alarm and saw the appellant assaulting her husband on the

head with a spade. As a result, he suffered severe injuries and fell down. She tried to save her husband and was also assaulted on the head. She fell down on the ground senseless. She was admitted to Bolpur S. D. Hospital for 10/11 days. Thereafter, she was treated at Santiniketan Pearsan Memorial Hospital.

10. Her deposition is corroborated by one of her daughters, Sadhana Dutta Roy (PW1), de-facto complainant herein. She was present in the house at the time of occurrence. From the window, she saw her father and mother being assaulted by the appellant with a spade. Her father suffered serious bleeding injuries on the head. Her mother also suffered injuries. They were shifted to hospital. She lodged written complaint. Appellant was arrested and in her presence, the spade was seized.

11. Sanjit Pal (PW 5) is a neighbour. He had good relation with the family. In fact, after the incident he had married one of the daughters of the deceased. He deposed victim had requested him to purchase medicine from the market. After purchasing medicine, he was proceeding towards the residence of the victim. When he was 100 meters away, he saw the appellant assault the victim and his wife on the head with a spade. Thereafter, appellant fled to his house.

12. The aforesaid witnesses have been corroborated by PW 2 (Aparna Dutta Roy) and PW4 (Sumana Dutta Roy), other daughters of the deceased. They deposed they were in the house of one Kartick Khan situated to the north of their house. Hearing alarm, they returned to their house and saw their parents lying with severe injuries on the head.

13. Neighbours viz., Subir Banerjee (PW10), Arun Maity (PW11) and Nibir Kumar Bandyopadhyay (PW14) also came to the spot. They corroborated the prosecution case and stated that the injured persons were shifted to hospital.

14. Radha Raman Dutta Roy (PW9), elder brother of the deceased and Anjana Mondal (PW16) married daughter of the deceased were intimated about the incident. PW10 went to the hospital.

15. The aforesaid witnesses have corroborated the version of the eyewitnesses particularly the injured witness PW15. That apart, medical evidence on record also corroborates the eyewitnesses.

16. Dr. Siddheswar Pradhan (PW 23), was attached to Visva Bharati Pearsan Memorial Hospital. He deposed on 23.07.1995 at 11.50 hours Madhusudan Dutta Roy was brought to the hospital with the following injuries:-

- “1. The patient was unconscious and bleeding profusely from head and left ear.*
- 2. Injury lacerated and deep cut over vertex of the scalp measuring 2½” length x 2” breadth x 1½” deep.*
- 3. Lacerated deep cut injury over left temporal region measuring 3” x 2½” x 1½” (deep).”*

He found the condition of the patient serious and he referred him to Bolpur S. D. Hospital for treatment. He proved the injury report, Ext.15.

17. Dr. Asis Kr. Saha (PW 21) was attached to Bolpur S. D. Hospital as a surgeon at the material of time. He deposed on 23.07.1995 he examined Madhusudan Dutta Roy. Patient was deeply unconscious. Blood was oozing

from scalp wound. He was moved to O.T. He opened the scalp and found bleeding from venus sinuses at fractured situs. He proved the bed head ticket, (Ext.12.) Madhusudan Dutta Roy died in the hospital at 4.00 PM. He also examined Dipali Dutta Roy (PW15). He noted the following injuries on Dipali;

- “1. Three scalp wounds 9 cm x 1 cm, 8 cm x 1 cm x 1 cm, 6 cm x 1 cm x 1 cm respectively.*
- 2. Chin injury about 3 cm long.*
- 3. One fracture on left angle of mandible which was detected on x-ray.”*

He proved the bed head ticket, (Ext.13).

18. Dr. Debasish Roy (PW22) was attached to Santiniketan Pearsan Hospital. He deposed on 03.08.1995, one Dipali Dutta Roy was admitted to the hospital and was finally discharged on 18.08.1995. He proved the discharge certificate.

19. Dr. Tarun Kumar Mukherjee (PW3) who was posted as Deputy C.M.O.H.-I, Burdwan. He conducted post mortem over the body of Madhusudan Dutta Roy. He found the following injuries;

- “I found two incise wounds 2”X ¼” x 2” almost parallely situated on the frontal region with fracture of the bone. ii) One incised injury 1” and ½” X ¼” x ½” involving skin only lying on the scalp in midline.”*

He opined death was due to concussion of brain arising out of trauma and shock as a result of haemorrhage. Injuries are ante mortem and homicidal in nature. He opined that such injuries could be caused by iron made heavy spade.

20. The aforesaid medical evidence shows the victim had suffered severe injuries on the head resulting in fracture and internal damage of brain matter. Doctor opined that such injury could be caused by iron made spade. Injuries on PW 15 have also been proved. Hence, the medical evidence is in consonance with the ocular evidence with regard to the manner and circumstances in which Madhusudan Dutta Roy and his wife Dipali Dutta Roy were assaulted. Due to assault, Madhusudan died.

21. Hence, prosecution has been able to prove that the appellant had mercilessly assaulted Madhusudan and his wife with spade resulting in death of the former and grievous injuries and hospitalization of the latter.

22. Mr. Bhattacharyya argued that the appellant did not have intention to kill. Appellant had repeatedly assaulted Madhusudan with an iron spade on his head. As a result, he suffered number of incised wounds on the head. His skull was fractured and membrane and brain matter were found in torn condition. Appellant had assaulted without any provocation whatsoever. Weapon used for assault, situs of the injury and the manner and circumstance in which the appellant assaulted leaves no doubt that he intended to kill.

23. Mr. Bhattacharya has relied on ***Surajit Sarkar vs. State of West Bengal***¹ in support of his plea that the conviction be converted to section 304 IPC. In the cited case appellant had assaulted with an iron rod on the head resulting in head injury. But the manner and circumstances in which

¹(2013) 2 SCC 146

the appellant perpetrated the brutal assault on the victim and his wife makes the present case factually distinguishable. Appellant repeatedly assaulted Madhusudan with an iron spade on the head. Madhusudan suffered severe bleeding injuries. When his wife intervened appellant did not stop but assaulted her on the head. This conduct of the appellant and the brutal manner of assault not only on the deceased but on his wife too when she tried to save her husband clearly shows that the appellant had intended to kill Madhusudan. Hence, I am not inclined to convert the conviction to Section 304 of the Indian Penal Code.

24. Conviction and sentence of the appellant are upheld. Appeal is dismissed.

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

26. Though the evidence on record as discussed above shows the appellant had intention to kill Madhusudan, this court notes that the appellant is an aged person having strong roots in society. He has no criminal antecedents. Hence, upon completion of 14 years of actual imprisonment if the appellant makes a prayer for remission of his sentence, appropriate authority may consider such prayer bearing in mind the aforesaid observations, his age and conduct in the correctional home.

27. Let a copy of this judgment along with the lower court records be forthwith sent down to the trial court at once.

25. Photostat certified copy of this judgment, if applied for, shall be made available to the appellants upon completion of all formalities.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)