

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. 613 of 2014

Sasanka Biswas @ Jordan

-Vs-

The State of West Bengal

With

G.A. 23 of 2007

State of West Bengal

-Vs-

Sashi Bhusan Biswas & Anr.

For the Appellant : Mr. Fazlur Rahman, Adv.
Mr. Ashraf Ali Mandal, Adv.
Md. Afzal Hussain, Adv.
Ms. Farnaz, Adv.

For the State : Mr. N. Ahmed, Id. APP
Mrs. Amita Gaur, Adv.

Heard on : 2nd January, 2023.

Judgment on : 2nd January, 2023.

Joymalya Bagchi, J. :-

1. Appellant Sasanka Biswas @ Jordan being convicted of murder has assailed his conviction and sentence in Criminal Appeal No. 613 of 2014. His parents viz. Sashi Bushan and Nanibala being

acquitted of the charge, State has preferred an appeal being G.A. 23 of 2007 against their acquittal.

2. Gist of the prosecution case alleged against the convict Sasanka Biswas @ Jordan and his parents viz. Sashi Bhusan and Nani Bala is as follows :-

3. On 26.06.1995 at 12.30/1 PM a quarrel broke out between Sashi Bhusan and his neighbour Haradhan Roy. Sashi Bhusan alleged Haradhan had lodged a false diary against him and threatened to teach him a lesson. His brother Gouranga (PW1) raised protest which enraged Sashi Bhusan. Sashi Bhusan attacked him. At that time his nephew Sudhanshu @ Kala, son of Haradhan came to his rescue. Sasanka Biswas @ Jordan, son of Sashi Bhusan brought out a *khur* (razor) and chased Gouranga. Kala embraced Jordan and both of them fell into a pond. A scuffle ensued and Jordan struck Kala with the *khur* on his neck and other parts of his body. It is alleged Sashi Bhusan and his wife Nanibala held the hands and legs of Kala. As a result of assault, Kala died at the spot.

4. Written complaint was lodged by Gouranga (PW1) against Sasanka Biswas @ Jordan and his parents viz., Sashi Bhusan and Nanibala. Charge sheet was filed and charges were framed under Sections 302/34 of the Indian Penal Code.

5. To prove its case, prosecution examined 14 witnesses and exhibited a number of documents. In conclusion of trial, the trial

Judge by the impugned judgment and order dated 28.06.2006 and 29.06.2006 convicted Sasanka Biswas @ Jordan for commission of offence punishable under Section 302 IPC and sentenced him to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/-, in default, to suffer to rigorous imprisonment for five months more. His parents viz., Sashi Bhusan and Nandibala were acquitted of the charges levelled against them.

6. Learned Advocate for the appellant viz. Sasanka Biswas @ Jordan in CRA 613 of 2014 argues that the prosecution case has not been proved. Incident occurred in course of a scuffle. Sasanka @ Jordan did not have the intention to commit the murder. Without prejudice to the aforesaid submission, he contends Sasanka @ Jordan was a juvenile at the time of occurrence. He was 17 years old and ought not to have been tried as an adult.

7. Mr. Neguive Ahmed, learned Additional Public Prosecutor with Mrs. Amita Gaur submits evidence on record particularly that of the eyewitnesses viz. PWs. 1, 3, 4, 6, 11 and 12 clearly establish the role of Sasanka Biswas @ Jordan in the murder. Sashi Bhusan and Nanibala had aided and abetted the murder. They held the hands and legs of the victim when he was stabbed.

8. With regard to the plea of juvenility, it is contended incident occurred in 1995 when the age of juvenility was 16 and not 18 years.

Sasanka Biswas @ Jordan being 17 years old at the time of occurrence cannot take advantage of such plea.

9. I have gone through the evidence on record.

10. PW1 (Gouranga Roy) is the uncle of the deceased. He is an eye witness and the de-facto complainant. He deposed on 26.06.1995 at 12.00/1.00 PM a dispute arose. Sashi Bhusan alleged his brother Haradhan had falsely accused him. When PW1 objected Sashi Bhusan attacked him. Kala came to his rescue. At that time Jordan attacked them with a *khur*. Kala embraced Jordan. They fell into a pond. A scuffle ensued. In course of scuffle, Jordan hit Kala on the neck and other parts of the body. As a result of assault, Kala died at the spot. Sashi Bhusan hit him with a bamboo on the head and Nanibala with broom sticks. He lodged written complaint.

11. The manner in which PW1 depicted the incident would show that the incident occurred in course of a sudden quarrel between two families. During the quarrel Jordan had come out with a *khur* in hand. Kala had embraced him and both fell into a pond. At that juncture Jordan assaulted Kala with a *khur* on his neck and other parts of the body. PW1 is completely silent with regard to the roles of Sashi Bhusan and Nanibala in the assault on Kala. Even his plea that they had assaulted him with lathi and broom sticks is not supported by medical evidence.

12. Other eye witnesses to the incident are PW3 (Puspa Rani Roy), PW4 (Sabitri Roy), PW6 (Guru Dasi Roy), PW11 (Paresh Chandra Acharya) and PW12 (Bimal Krishna Bala). These witnesses while corroborating PW1 with regard to the assault by Jordan on Kala with a *khur*, have embellished the prosecution case vis-a-vis the roles of Sashi Bhusan and Nanibala.

13. PWs. 3, 4 and 6 claimed Sashi Bhusan and Nanibala had held the hands and legs of Kala when their son Sasanka Biswas @ Jordan struck him with a *khur*.

14. PWs. 11 and 12 improved the prosecution case even further and claimed they even exhorted Jordan to kill Kala.

15. Prosecution case appears to have developed in layers in order to implicate not only Sasanka Biswas @ Jordan but his parents viz. Sashi Bhusan and Nanibala.

16. In view of the aforesaid variations in the depiction of the prosecution case particularly with regard to the roles of Sashi Bhusan and Nanibala in the assault on Kala, I am of the opinion the view taken by the trial court to acquit them of the charges under Sections 302/34 of the Indian Penal Code is a reasonable one and does not require interference. When the view of a trial court is reasonable and does not suffer from perversity, the appellate court would be loathe to alter the same and record conviction against acquitted accuseds.

17. However, the role of Sasanka Biswas @ Jordan in the murder has been established beyond doubt. In course of quarrel, he had taken out a razor and assaulted Kala repeatedly on vital parts of the body including neck and shoulder.

18. Ocular version of the eyewitnesses is supported by medical evidence on record. PW9 (Dr. Rathindra Nath Halder), post mortem doctor found the following injuries on the deceased:-

- “1. Sharp cut injury over the front of neck which was 5” x 2” x cervical vertebrae deep. Trachea and oesophagus were cut.*
- 2. Sharp cut injury over right shoulder joint which was 4” x 2” x bone deep.”*

The nature and situs of the injuries noted by the post mortem doctor corroborates the manner of assault as depicted by the eyewitnesses.

19. Be that as it may, I find much force in the submission of Mr. Fazlur Rahman that Sasanka Biswas @ Jordan ought to have been treated as a juvenile in conflict with law and not an adult. Materials on record show he was 17 years old at the time of occurrence.

20. Section 2(h) of Juvenile Justice Act 1986 which was in force at the time of occurrence i.e. 1995 fixed the age of juvenility at 16 years.

21. Section 2(h) of Juvenile Justice Act 1986 is as follows:-

“S.2(h) “Juvenile” means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.”

22. During the pendency of the trial the Juvenile Justice (Care and Protection of Children) Act, 2000 came into effect from 01.04.2001.

23. Section 2(k) of the Act of 2000 defined juvenile in conflict with law as a person who is below 18 years of age.

24. Explanation to Section 20 of the Act of 2000 reads as follows:-

“Section 20:- * ** ***

Explanation.- In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (l) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.”

25. The said explanation fell for interpretation in ***Dharambir Vs.***

State (NCT of Delhi)¹. The Apex Court held as follows:-

“11. It is plain from the language of the Explanation to Section 20 that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, etc., the determination of juvenility of a juvenile has to be in terms of clause (l) of section 2, even if the juvenile ceases to be a juvenile on or before 1-4-2001, when the Act of 2000 came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed.”

¹ (2010) 5 SCC 344

26. In the light of the aforesaid interpretation of *Explanation* to Section 20 of the Act of 2000 the appellant was entitled to the beneficial provisions of the Act of 2000 and ought to have been treated as a juvenile in conflict with law as he had not completed 18 years of age at the time of occurrence. Similar view has been taken in ***Satya Deo vs. State of Uttar Pradesh***².

27. Under such circumstances, though I am inclined to uphold the conviction of appellant, life sentence imposed upon him is liable to be set aside. Accordingly, I hold as follows:-

- (1) *GA 23 of 2007 preferred by the State against acquittal of Sashi Bhusan Biswas and Nanibala Biswas @ Nani Rani Biswas is dismissed.*
- (2) *CRA 613 of 2014 is disposed of upholding the conviction of appellant Sasanka Biswas @ Jordan but setting aside the substantive sentence of life imprisonment imposed upon him on the ground of juvenility. Fine imposed on the appellant remains unaltered.*

28. Appellant Sasanka Biswas @ Jordan has already suffered incarceration for more than 16 years. Hence, he shall be forthwith released from custody, if not wanted in any other case.

29. In view of disposal of the appeals, connected application(s) if any stands disposed of.

² (2020) 10 SCC 555

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

31. Photostat certified copy of this judgment, if applied for, shall be made available to the appellant within a week from the date of putting in the requisites.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

as/akd/tkm/PA