

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**CRA 220 of 2020
With
IA No.:CRAN 2 of 2022**

**Biswajit Mudi
Vs.
The State of West Bengal**

For the Appellant : Mr. Aniket Mitra, Ld. Amicus Curiae

For the State : Mr. Sudip Ghosh, Ld. Sr. Government Advocate
Mr. Bitasok Banerjee, Ld. Advocate

Hearing concluded on : May 8, 2023

Judgment on : May 8, 2023

DEBANGSU BASAK, J.:-

1. Police received a complaint from prosecution witness (P.W.) 2 dated September 27, 2011 on the basis of which, Goaltore Police Station FIR No.89/11 dated September 27,

2011 under Section 302 of the Indian Penal Code, 1860 was initiated.

2. In the written complaint, P.W.2 stated that, on September 27, 2011 in the morning at about 9 am when she along with her mother-in-law, the victim, were going to pluck the “Sal” leaves, she was little ahead. She suddenly heard the sound of shoes, turned back and saw the appellant attacking the victim with a sharp cutting weapon, striking on the throat with the sharp cutting weapon holding fist of hairs. She tried to stop the appellant. The appellant also tried to kill her. She then fled towards the village using alternate path and informed at home. After getting the news, some villagers came and saw the beheaded body of the victim lying inside the jungle.

3. Police conducted the investigations with regard to such FIR and submitted a charge sheet. Charge under Section 302 of the Indian Penal Code, 1860 was framed as against the appellant on September 10, 2014. The appellant pleaded not guilty to such charge and claimed to be tried at the trial.

4. The case of the prosecution was that, the appellant at around 9 am at Hamargorah jungle under Goaltore police station, District- Paschim Medinipur attacked the victim with a sharp cutting weapon when she went there with her daughter-in-law to collect “Sal” leaves. The appellant chopped the head of the victim with the sharp cutting weapon and left the chopped off head by the side of a water body nearly 100 metres away from the place of attack. The appellant, therefore, committed murder of the victim.

5. In order to bring home the charge, the prosecution examined thirteen witnesses and relied upon various documentary and material evidences.

6. On conclusion of the evidence of the prosecution, the appellant was examined under Section 313 of the Code of Criminal Procedure, where he claimed to be innocent and falsely implicated. He wanted to adduce defence witness.

7. The defence examined D.W.1. D.W.1 is a neighbour of the appellant. In his evidence, he stated that, on the date of the incident, he was ploughing his land. The appellant was also ploughing his land at the material point of time. In cross-

examination, he, however, stated that, he did not tell the police that, he was ploughing his land at the relevant time and that, the appellant was also doing so. He made that statement for the first time in Court.

8. By the impugned judgment of conviction dated August 26, 2020, the learned Trial Judge found the appellant to be guilty under Section 302 of the Indian Penal Code, 1860. By the impugned order of sentence dated September 8, 2020, the appellant was sentenced to suffer rigorous imprisonment for life with a fine of Rs.20,000/- for the offence punishable under Section 302 of the Indian Penal Code, 1860 and in default to pay the fine, to undergo simple imprisonment for another six months.

9. Learned Amicus Curiae submits that, there is no eye-witness to the incident. According to him, although, P.W.2 claims herself to be an eye-witness, she did not see the entirety of the incident.

10. Learned Amicus Curiae submits that, P.W.1 and 7 were declared hostile by the prosecution. The evidence of P.W.1 and 7 did not implicate the appellant.

11. Learned Amicus Curiae submits that, other prosecution witnesses being P.W.4,5,6,8 and 9 gave evidence which are of hearsay in nature. No conviction can or should be based upon their testimonies.

12. Learned Amicus Curiae submits that, although the so-called murder weapon was seized, the same was not produced at the trial. Postmortem doctor was not shown the alleged murder weapon. He refers to the cross-examination of the first Investigating Officer in such respect. Therefore, according to him, the prosecution failed to establish the charge as against the appellant beyond reasonable doubt.

13. Learned advocate appearing for the State submits that, P.W. 2 is an eye-witness to the incident. He refers to the testimony of P.W. 2. He submits that the testimony of P.W. 2 gave a vivid description of the victim being murdered by the appellant.

14. Learned advocate appearing for the State refers to the deposition of P.W. 10 who is the postmortem doctor. He also refers to the postmortem report. He submits that the postmortem report and the testimony of the postmortem

doctor corroborate the eye-witness version given by P.W.2. He submits that the quality of the evidence of the prosecution is sufficient to sustain the charge as against the appellant.

15. Learned advocate for the State also refers to the deposition of P.W. 11 who witnessed the recovery of the offending weapon and by whom the offending weapon was marked as a material exhibit. He also refers to the testimony of the first Investigating Officer, being P.W.13.

16. Learned advocate for the State submits that the prosecution was able to establish the charge as against the appellant beyond reasonable doubt and, therefore, no interference is called for by the appeal Court.

17. P.W.1 was declared hostile by the prosecution. In cross-examination by the prosecution, P.W. 1 stated that, the police interrogated him on September 27, 2011. Thereafter, he denied every suggestion put to him by the prosecution. Cross-examination was declined. P.W.1 did not add any value to the case of the prosecution.

18. P.W.2 is the maker of the complaint. She is the daughter-in-law of the victim. She narrated that, she along

with the victim went to the Hamargora jungle for plucking “Sal” leaves. The victim was behind her. When she heard the sound of footwear, she looked behind and found the appellant coming and running towards the victim. The appellant caught hold of the victim by her hair. The appellant used a sharp cutting weapon for beheading the victim. P.W.1 left the place through other way and reached her residence. Thereafter, she informed the incident to her family members and villagers. Her husband was not in residence. When he returned home, he was informed about the incident. Thereafter, the matter was informed to the police station. Police visited the spot and found the body without head. After searching, the head was recovered from a bush at a distant place at a jungle. She identified the written complaint submitted with the police. She identified the scribe of the complaint. The written complaint was tendered in evidence and marked as Exhibit-1. She identified the appellant in Court. P.W.2 was cross-examined in detail by the defence. The defence could not extract anything favourable from such detailed cross-examination of P.W.2.

19. P.W.3 is the husband of the P.W.2 and son of the victim. P.W.3 is not an eye-witness to the incident. He is a post-occurrence witness. He said that, he went to the jungle and found the victim, his mother, lying on the earth without head. He described how they tried to trace out the head of the victim. He described the persons who came to the place of occurrence. P.W.3 witnessed the inquest. His signatures were marked as Exhibits-2/1 and 3-1. He identified the appellant in Court.

20. P.W.4 is also a post-occurrence witness. He stated that, P.W. 2 came back to the village and informed the villagers about the incident. He corroborated that, P.W. 2 stated that, the appellant used a sharp cutting weapon to murder the victim. He stated that, the villagers reached the place of occurrence and found the victim lying without the head. He described that they followed the blood mark of the dead body to the place where the head of the victim was recovered from the side of a water body within a bush. He identified the appellant in Court.

21. P.W.5 corroborated P.W.4 with regard to the conduct of P.W.2. He is a seizure list witness. He tendered his signatures in evidence which was marked as Exhibits-4/1 and 7/1. He identified the appellant in Court.

22. P.W.6 is the hearsay witness. He identified the appellant in Court. P.W.6 did not add any value to the case of the prosecution.

23. P.W.7 was declared hostile by the prosecution. She, however, identified the appellant in Court. On cross-examination by the prosecution after she being declared hostile, P.W.7 denied the suggestions put to her.

24. The another son of the victim deposed as P.W.8. He is the scribe of the written complaint. He stated that, he wrote the written complaint as per the instructions of P.W.2. He identified the signature in the written complaint which was marked as Exhibit-1/1. He is also a witness to the inquest.

25. Another son of the victim deposed as P.W.9. He identified the appellant in Court. He is a seizure list witness. His signatures in the seizure list were tendered in evidence and marked as Exhibits-4/2, 5/2, 6/2 and 7/2. He is also a

witness to the inquest report and his signatures thereon were tendered in evidence and marked as exhibits.

26. The doctor who conducted the post-mortem on the dead body of the victim deposed as P.W.10. He described the injuries he found on the dead body. Three post-mortem reports were tendered by him as the dead body was found in three parts. The post-mortem reports were marked as Exhibits-9, 10, 11 and he opined that the injuries noted were ante-mortem and homicidal in nature. He further opined that moderately heavy to heavy sharp cutting weapon was used in causing the murder of the victim. This opinion of the doctor was not dislodged by the defence in cross-examination.

27. P.W.11 is another witness to the seizure made and the inquest performed. He identified the sharp cutting weapon seized which was marked as Material Exhibit-1. He identified the appellant in Court.

28. The second Investigating Officer deposed as P.W.12. He submitted the charge sheet.

29. The first Investigating Officer deposed as P.W.13. He narrated about the course of investigations including seizure of the sharp cutting weapon from the side of the dead body of the victim. He was cross-examined at great length by the defence.

30. The victim was found dead on September 27, 2011 at a jungle in a dismembered condition with her head being found at a distance under a bush beside a waterbody.

31. Postmortem of the dead body and the body parts of the victim found at the place of occurrence were held. P.W.10, the Doctor who conducted the postmortem on the dead body of the victim opined in his testimony that, the injuries sustained were ante-mortem and homicidal in nature and such injuries were caused by a heavy or a heavy sharp cutting weapon. This opinion of the postmortem doctor was not dislodged by the appellant despite cross-examination of the postmortem doctor.

32. P.W. 2 stated in her testimony that, she and the victim were inside the jungle for the purpose of collecting sal leaves

and she was slightly ahead of the victim when she heard footsteps. She turned around and saw the appellant catching hold of the hair of the victim and dealing a blow on the throat of the victim by a sharp cutting weapon. In fact, she saw the beheading of the victim by the appellant. Victim was found beheaded from the jungle spoken of by P.W.2.

33. P.W. 2 also stated that, she ran away from the place of occurrence out of fear and informed her family members and the villagers. P.W. 4 and P.W. 5 corroborated P.W. 2 that she informed the villagers and her family members as to the incident of beheading of the victim by the appellant.

34. Police complaint was lodged by P.W. 2. The written complaint was tendered in evidence and marked as Exhibit-1. The scribe of Exhibit-1 being P.W. 8 identified the same in his testimony.

35. The evidence of P.W.2 is trustworthy and believable. Despite cross-examination of P.W.2, her testimony was not demolished by the prosecution. Her testimony stands corroborated by the medical evidence produced by the

prosecution at the trial as well as oral testimonies of post occurrence witness. We, therefore, do not find any substance in the contention of the Learned Amicus Curiae that P.W. 2 did not witness the beheading of the victim.

36. We are unable to agree with the contention of the Learned Amicus Curiae that the murder weapon was not produced at the trial. Murder weapon was seized by the police. Both the first Investigating Officer and the P.W. 11, who witnessed the seizure, stated that, murder weapon was seized. Murder weapon was marked as material Exhibit-1 on the testimony of P.W.11.

37. As noted above, P.W.-10, the postmortem doctor stated that, the injuries inflicted on the dead body were by a heavy weapon or by a heavy sharp cutting weapon. Material Exhibit-1 fits the description of murder weapon spoken of by P.W.10 in his deposition.

38. The testimony of D.W. 1, who claimed that he saw the appellant ploughing his field at the material point of time on the relevant date, is not trustworthy. He did not speak about

such incident to the police at any point of time. His deposition to such effect was admittedly for the first time in Court. Such conduct does not inspire confidence. Plea of alibi set up was rightly rejected by the learned Trial Judge.

39. In such circumstances, we are of the view that the prosecution was able to establish that the victim was murdered by the appellant beyond reasonable doubt.

40. In view of the discussions above, we find no ground to interfere with the conviction of the appellant and the sentence awarded in respect thereof. We affirm the impugned judgment of conviction and the order of sentence.

41. A copy of this judgment and order along with trial Court records be transmitted to the appropriate Court forthwith.

42. Period of detention suffered by the appellant will be set off from the sentence imposed.

43. CRA 220 of 2020 is, accordingly, **dismissed**.

44. In view of the dismissal of the appeal, nothing survives in the interim application being CRAN 2 of 2022 which is also dismissed.

45. Urgent photostat certified copy of this judgment and order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

46. I agree.

(Md. Shabbar Rashidi, J.)