

IN THE HIGH COURT AT CALCUTTA
(Criminal Appellate Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.A. (SB) 10 of 2023

With

IA No. CRAN 5 of 2024

Sanatan Haldar

Vs.

The State of West Bengal & Anr.

For the Appellant

:Mr. Ayan Basu, Adv.

Mr. Biswajit Tewari, Adv.

Mr. Sourab Bera, Adv.

Mr. Sumit Routh, Adv.

For the State

:Mr. Rudradipta Nandy, Adv.

Mr. Subrato Roy, Adv.

Heard on

:17.10.2023, 22.12.2023,

17.01.2024, 09.02.2024,

28.02.2024, 05.03.2024,

15.03.2024

Judgment on

:19th March, 2024

Bibhas Ranjan De, J.

1. Appellant/convict was found guilty of committing offence under Section 394 of the Indian Penal Code (for short IPC) read with Section 25(1)(B) (a) of the Arms Act and was sentenced to suffer rigorous imprisonment for 7 (seven) years with fine of Rs. 10,000/- in default to suffer further imprisonment for another 6 (six) months and also was sentenced to suffer rigorous imprisonment for 1 (one) year with fine of Rs. 5,000/- in default to suffer further imprisonment for another 3(three) months for the offence punishable under Section 25(1)(B) (a) of the Arms Act, in connection with Sessions Case no.04 of 2020 (Sessions Trial no. 05 of 2020) passed by Ld. Additional Sessions Judge, 5th Court, Malda.

2. Being aggrieved by and dissatisfied with the order the instant appeal has been preferred.

Facts in brief:-

3. The genesis of the whole proceedings in connection with the instant appeal is a written complaint made on 30.08.2019 by one Bhabatosh Biswas (PW1) to the Inspector-in-Charge of

Malda Police Station alleging *inter alia* that the complainant along with his wife and two sons went to house of a relative on occasion of Kali Puja at about 8 p.m. on 29.08.2019. His younger son namely Susbhasish (PW7) after having Prasad returned to his house riding on the motor cycle of his uncle. Upon reaching, his uncle proceeded to his own house. Subhasish entered into his house at about 11 p.m. At about 11.30 p.m. someone rang the door bell. Subhasish upon hearing the bell opened the door, guessing that his elder brother Bhaskar (PW5) has returned. But, soon after opening the door he met with an unknown person having the face covered with a red cloth. At gun point the accused threatened Subhasish and proceeded further inside the house to open the almirah. In the meantime, Bhaskar returned and when he entered the house he saw his younger brother was at gun point. When he proceeded ahead the accused fired and the bullet **piecered through the jaw of Bhaskar**. Upon hearing the sound of the shot three friends (PW2, PW9 & PW13) of Bhaskar who were waiting outside his house along with some villagers rushed inside the house and caught hold of the miscreants. When the face of the miscreant was uncovered he was recognized and identified as Sanatan Halder/ Convict.

- 4.** Getting information about the whole incident personnel of Malda Police Station rushed there and seized the fire arm along with bullets from the possession of miscreant.
- 5.** Upon receipt of the written complaint case was registered as Malda Police Station Case no. 560/19 dated 30.08.2019 under Section 394 & 397 of the IPC read with Section 25(1) (a) & 27 of the Arms Act and investigation was started. Upon completion of investigation charge sheet was submitted against the accused person under Section 394 & 397 of the IPC read with Section 25(1) (a) & 27 of the Arms Act where after cognizance was taken by the jurisdictional Magistrate and thereafter the case was committed to the Court of Sessions. Charges were framed under Section 394/397 of the IPC read with Section 25(1) (a) & 27 of the Arms Act against the appellant to which appellant not guilty and claim to be trial.
- 6.** During trial altogether 16 witnesses were examined namely:-

 - PW01- Bhabathosh Biswas, (Complainant)
 - PW02- Neak Mohammad (Friend of PW05)
 - PW03 - Paritosh Biswas (Younger brother of complainant)
 - PW04 – Dulal Pal (Neighbour)
 - PW05 – Bhaskar Biswas (Elder son of the complainant)

PW06 – Sudipta Biswas (Nephew of the complainant)

PW07 – Subhasish Biswas (Younger brother of the complainant)

PW08 – Dr. Ashim Kumar Sharma (Doctor attached with Moulpur Rural Hospital)

PW09 – Dipankar Sarkar (Friend of PW05)

PW10 – Dr. Rabin Mondal (was then attached to Malda Medical College and Hospital)

PW11 – S.I. Dilip Kumar Sen (was then attached to Malda Police Station)

PW12 – A.S.I. Sagar Sen (attached to Malda Police Station)

PW13 – Biswanath Saha (Friend of PW 05)

PW14 – Sunirmal Singha (then attached to Malda Police Station)

PW15 – Biswanath Pal (Neighbour)

&

PW16 – S.I. Shyam Sundar Saha (who investigated the case)

7. In course of evidence a good number of documents viz. written complaint, seizure lists with signatures therein, statement recorded under Section 164 of Code of Criminal Procedure (for short Cr.P.C.), injury reports, formal FIR, rough sketch map with index were admitted as exhibit 1 to 10/1. Fire arms,

ammunition & wearing apparels were admitted as Mat Exhibit I to IV.

8. After recording of evidence appellant was examined under Section 313 of Cr.P.C. and he did not adduce any evidence on his behalf. After conclusion of trial appellant was found guilty and convicted and sentenced, in the manner indicated in paragraph 1.

Argument Advanced:-

9. Ld. Counsel, Mr. Ayan Basu for the appellant submitted that the judgment and order of conviction suffers from a lot of infirmities which were not taken into account by the Ld. Trial Court. Mr. Basu has further submitted that prosecution could not prove the causative link between the accused and offence alleged in this case. It is submitted that there are material contradictions among the witnesses qua seizure of fire arm.
10. Mr. Basu has drawn my attention to the injury report and submitted that there is no causative link between the injury alleged and the injury reports together with the evidence of doctors.
11. Before parting with, Mr. Basu contends that there is absence of sufficient material to sustain the order of conviction against the appellants infested with bereft of legal reasoning.

12. Ld. Counsel, Mr. Rudradipta Nandy, appearing on behalf of the State, on the other hand, has contended that judgment and order of conviction needs no interference as prosecution has succeeded to prove the charge beyond all reasonable doubt. It is contended that minor discrepancies in the evidence cannot be a ground for throwing prosecution case out of Court. Mr. Nandy has further relied on the evidence of injured (PW5) whose presence at the scene of occurrence cannot be disbelieved.

Analysis:-

13. After hearing argument advanced by the Ld. Counsel appearing for the parties and upon examination of entire material available on record, the following issue arises for consideration:- Whether there is any causative link between the accused and the incident alleged in this case.

14. In terms of fact alleged in the written complaint together with the evidence it appears that the accused entered into the house of complainant while younger son (PW7) was in the house. Accused aimed a fire arm at him for handing over the keys of almirah. Immediately after handing over of the keys, the elder son (PW5) of the complainant entered inside the house as door was open. Accused then fired at him (PW5)

causing injury on his jaw. On hearing sound of shot 3 (three) friends (PW2, PW9 & PW13) standing outside, rushed to the room and found PW5 lying on the ground in bleeding condition. All the 3 (three) friends caught hold of the accused and snatched the fire arm. Thereafter, all villagers were called in.

- 15.** Younger Son (PW7) has testified that one of the friends of his brother snatched pistol from the miscreant. He also deposed that the miscreant shot at his brother (PW5) who sustained injury at his cheek. PW9 has deposed that all of them entered into the house after hearing sound of blasting and noticed one person aimed one pistol at head of PW7. Then they caught hold of that person and keeping that pistol they made hue and cry. Another friend (PW2) has testified that after sound of firing they entered into the house and found the miscreant caught hold of PW7 in one hand and carried fire arm in another hand. They took care of injured (PW5) and the rest two went out to call the neighbouring people. PW3 entered into the scene of occurrence and found PW5 lying with gunshot injury at his right jaw and blood was oozing out and accused was also found lying on the ground. PW6 has stated in his examination in-chief that after entering into the house, he

noticed PW5 in bleeding condition and he also noticed that local neighbouring people along with friends of PW5 apprehended the accused. Complainant/PW1 informant of this case came to know about the incident alleged in this case from his younger son (PW7).

Apprehension of accused:-

- 16.** Therefore, there is a material contradiction among the witnesses regarding apprehension of accused at the scene of occurrence. According to evidence of PW2 & PW13 accused was apprehended by the neighbouring people whereas PW5, PW9 & PW15 have stated in their respective evidence that the friends of PW5 only apprehended the accused. On the other hand, PW6 has testified that the friends of PW5 together with the neighbours apprehended the accused.

Seizure of arms:-

- 17.** PW2, in his evidence, has stated that neighbouring people apprehended the person who carried gun. On being informed, police came there and seized the said gun from the accused. PW3 has stated that police seized fire arm from the accused and also seized ammunitions from the place of occurrence. PW6 deposed that one pistol along with ammunitions were seized. PW7 (brother who came across the

accused for the first time after opening the door) has stated that **one of the friend of his brother (PW5) snatched the pistol from the miscreant.**

18. From the evidence discussed hereinabove regarding fire arm it is found that there is contradiction among the witnesses about snatching of fire arm from the accused. The PW7 himself has stated that one of the friends of his brother (PW5) snatched the fire arm from the hand of the accused. Whereas PW2 in his cross examination has stated as follows:-
“ The village people after collecting said gun from that person, kept it on chair. ” PW2 has further added that one person from the locality handed over the arms to Police. From the seizure list (exhibit 3/2) it is found that fire arm was recovered from the exclusive possession of the accused.

19. In the light of the discussion made above, this Court finds that there are sufficient doubts as to the credibility of the factum seizure of fire arm and the same does not inspire confidence of this Court.

Injury:-

20. According to prosecution PW5, Bhaskar Biswas sustained gunshot injury at his jaw. Informant (PW1) lodged complaint stating inter alia that bullet **pierced through jaw of**

his son (PW5). PW5 has stated in his evidence that he sustained bullet injury at his jaw and got the injured portion stitched by the doctor.

21. PW8, Doctor Ashim Kumar Sharma attached to Moulpur Rural Hospital came across injured Bhaskar Biswas (PW5) for the first time on 30.08.2019 at about 12.55 hours brought and identified by his father (PW1). Albeit it is stated before the doctor that dacoit fired at him but on examination doctor found one lacerated cut injury through lower right jaw. Doctor prepared the injury report (exhibit 6). In cross-examination, doctor has deposed that he did not give any opinion regarding the weapon by which this type of injury was caused.

22. Another doctor Rabin Mondal examined PW5 at Malda Medical College and Hospital. According to doctor injury was not severe. After primary treatment PW5 was discharged on that day at afternoon. In cross-examination, PW10 has stated that apart from dressing nothing was done whereas PW5 stated that he got injury stitched.

23. Though according to prosecution, PW5 sustained gunshot injury and stitches but none of the doctors (PW8 & PW10) ratified the same whereby another doubt is created in the mind of the Court.

Alleged fire arm:-

24. According to prosecution fire arm was seized from the possession of the accused/appellant. I.O. (PW16) has stated that he recovered 7 mm pistol from the possession of the accused. PW9 has stated as follows:-

“... we caught hand of that person. After keeping that pistol we made hue and cry...”

Again PW2, claiming himself to be an eye-witness, in his cross-examination has deposed as under:-

“... it is fact that I did not state to Ld. Magistrate that police came there and seized gun from said person. It is fact that I stated to ld. Magistrate that village people after collecting the said gun from that person kept it on chair.one person from our locality handed over said arms to police but I cannot say the name of that person...”

25. Such glaring contradiction among the witnesses has further created a reasonable doubt as to seizure of arms **from the possession of the accused.**

26. Arms expert report and sanctioned order of District Magistrate was admitted as exhibits 11 & 12 respectively by the order dated 20.09.2022. On careful scrutiny of the arms expert report, it is found that the arms alleged to have been

recovered was sent to the Director, Forensic Science Laboratory Government of West Bengal for examination. After examination the said arms (exhibit A) was found not in working order though previously used. The arms expert report shows that ammunitions i.e exhibit 'C' & 'D' were fired from 'A'.

27. Arms expert has not been examined in this case to prove that the pistol was in working order on the alleged date of incident to prove the causative link between pistol and alleged injury sustained by PW5.

28. Considering the nature of injury sustained by Bhaskar Biswas (PW5), corroborated by PW13 and also other witnesses, it is reasonable to come to the conclusion that PW5 would have bled profusely. But, that evidence has not been corroborated by the investigating officer (PW16) by saying, at least, that he collected blood stained wearing apparels of PW5 from the alleged place of occurrence. Hence, such non finding of blood at the alleged place of occurrence raises suspicion regarding bullet injury.

29. It is trite law that, onus of the prosecution is to prove allegation by cogent and reliable evidence. The degree of onus in criminal proceeding is not only to the extent of

preponderance of probabilities, rather, degree of standards required to be made is that of 'beyond all reasonable doubts'.

30. In the light of the above discussion, I am of the considered opinion that the conviction of the appellant is not sustainable in the eye of law and the prosecution has failed to prove its case beyond all reasonable doubts.

31. The appeal being no. CRA (SB)10 of 2023 stands allowed.

32. Judgment of conviction dated 06.12.2022 and order of sentence dated 07.12.2022 passed by Ld. Additional Sessions Judge, 5th Court, Malda in connection with Sessions Case no. 04 of 2020 (Sessions Trial no. 05 of 2020) are hereby set aside. Appellant/convict accordingly is acquitted and be set at liberty.

33. Pursuant to the provision of Section 437A of the Cr.P.C. bond already submitted by the appellant shall remain in force for 6 (six) months from date.

34. Trial Court record along with copy of the order be transmitted back immediately.

35. Case diary, if there be any, be returned.

36. All parties to this application shall act on the server copy of this order downloaded from the official website of this Court.

- 37.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]