

19.12.2024  
Court No.13  
Item No.1  
sp/S.R.

**CRA 98 of 2009**

**Pintu Biswas  
Vs.  
The State of West Bengal**

Mr. Jayanta Narayan Chatterjee,  
Mr. Sirshendu Sinha Roy,  
Ms. Moumita Pandit,  
Mr. Supreem Naskar,  
Ms. Jayashree Patra,  
Ms. Ritushree Banerjee.

...for the Appellant.

Mr. Debashish Roy,  
Ms. Zareen N. Khan,  
Mr. Md. Kutubuddin.

...for the State.

1. The instant appeal is directed against a judgment and order of conviction dated 6<sup>th</sup> January, 2009 passed by the learned Additional Session Judge, 1<sup>st</sup> Court, Jalpaiguri, in Sessions Case No. 396 of 2000 and Sessions Trial No. 33/4/2001. The appellant was convicted under Section 302 of the IPC. He was sentenced to suffer rigorous imprisonment for life and pay a fine of Rs. 10,000/- in default whereof, suffer imprisonment for one year thereafter.

2. The brief facts relevant to the instant case are that on 7<sup>th</sup> September, 1998 at about 7.00 p.m., the convict is stated to have come to the garage of the victim. He is stated to have enquired about a fellow worker Bishu Sarkar. Victim stated the convict that Bishu went elsewhere, he stabbed the victim once with a knife in the abdomen of the victim.

3. The victim shouted "Pintu, you have stabbed me with a knife" which PW 1 claimed to have heard.

4. The knife was 12 inches long and ½ inches wide. It inflicted injury of 1"/½" inches in the abdomen the victim. The knife perforated the intestine and reached the liver of the victim. The postmortem report being Exhibit-10 was proved by Dr. Saibal Gupta, PW-10.

5. A Complaint was lodged by Dipika Saha, wife of the victim, PW-1, on the day after the incident. By that time, the Bhaktinagar Police Station, which was situated right opposite to the place of occurrence had already started investigation most likely under a UD case.

6. The appellant was the named accused in the FIR and charge sheet. Upon the charge sheet being put to committal, charges were framed, inter alia, under Section 302 of the IPC.

7. PW-1, Dipika Saha was the wife of the victim and the complainant. She claimed to have seen the incident from a food dispensing/selling place, which the parties referred to as a 'hotel', that was either behind or next to the garage in question where the incident occurred. The victim/Shankar Saha and the PW-1, husband and wife, owned and ran the hotel, without any help. The appellant and one Bishu worked with the victim, in the garage.

8. It has come out from the evidence of PW-9, Pulak Debnath, a neighbouring tire shop owner that there was a dispute with regard to repair conducted on a particular car between the said Bishu and the appellant, Pintu Biswas. The victim took the side of Bishu on the dispute. On the fateful day, i.e., 7<sup>th</sup> September, 1998, at about 7.00 p.m., as per the version of PW-1, Dipika Saha, PW-9, Pulak Debnath and PW-8, Bapi Sarkar who was about 11 years of age at the time of the incident, the following clearly transpired.

9. Pintu came to the garage, which is open from all sides except may have been covered by a tarpaulin/plastic sheet and lit with an electric lamp which was borrowed from nearby. The appellant came to the garage where the victim was present. The appellant is stated to have enquired about Bishu. When the victim stated that Bishu was not there, a hot altercation ensued, as per the inquest report. The appellant, thereafter, in a fit of rage, took out a knife from his waist under his clothes and stabbed the victim in the abdomen once. The inquest report and the postmortem report clearly confirmed the injuries on the victim. The inquest report was proved by PW-2, Ahammad Ali Mia, A.S.I., who conducted the same.

10. PW-3, Dr. D.K. Roy, examined the blood group of the deceased. PW-4, Subhankar Saha, was the son of the victim and PW-1, Dipika Saha, the wife of the victim. PW-4 was about 6 years old at the time of the incident.

11. Given the nature of the evidence and its clarity and his floundering in the cross-examination, this Court does not wish to give much credence PW 4, son of the victim, Subhankar Saha. What would however be relevant to the case is the evidence of PW-11, Avijit Sarkar.

12. PW-8, Bapi Sarkar (declared hostile) clearly narrated the entire incident. PW-8 has however stated that PW-1 was not physically present at the place of occurrence at the time of the incident and he was directed to inform her about the incident by PW 7. He, upon finding the victim lying in a stabbed and bleeding, rushed the victim to the hospital along with other persons.

13. Given the fact that the garage and the hotel were located either next to each other or not more than a distance of 3 to 4 feet apart, and given the fact that there were regular customers in the hotel as deposed by PW-1, and also the fact that PW-1 and the victim were the only persons running the hotel and cooking there at, the presence of PW-1 and the likelihood her being in the very close vicinity of the place of occurrence cannot be ruled out.

14. PW-9's evidence has established the motive behind the offence committed by the appellant i.e. a dispute between the appellant and Bishnu, with regard to a car that had come to the garage. Admittedly, the victim took the side of Bishu. The presence of the appellant at the place and time of occurrence is

established from his answer to questions in the statement recorded under Section 313 of Cr.P.C.

15. The post mortem report establishes the cause of death due to the knife injury inflicted by the appellant on the victim. The victim most likely must have bled to death at the place of occurrence and died on the way to the hospital.

16. This Court is of the view that the entire chain of circumstances, that have been established from the evidence of the prosecution witnesses including those who were declared hostile. This Court is of the view that it is only the appellant who had committed the offence of stabbing the victim around 7.00 pm on the 7th of September 1998.

17. Mr. Chatterjee, learned Senior Counsel for the appellant has sought to discredit the evidence of PW-1 and PW-4, namely, the wife and the son of the victim. While it is true that there are some inconsistencies in the evidence of PW-1 and PW 4, the other parts of the evidence are duly corroborated by the evidence of other witnesses. The appellant in answer to questions recorded under Section 313 of the Cr.P.C. the inquest and post mortem report have proved beyond reasonable doubt the role of the appellant in the incident. This Court has no hesitation to conclude that the appellant has committed the offence of stabbing the victim which eventually led to his death.

18. This Court, however, notes the following circumstances which clearly indicate that the accused appellant was guilty of offence under the first part of Section 304 of the IPC rather than Section 302.

- a) While it is true that the appellant brought the knife to the place of occurrence, and it is equally established that he stabbed the victim which caused an injury of 1 1/2 inches in the abdomen of the victim. It is proved that the wound was inflicted in the fit of rage after a hot altercation.
- b) The appellant/accused was in fact not premeditated in ending the life of the victim, in which case he would have inflicted more wounds than one stab injury.
- c) One single stab injury to the extent of penetrating 1 1/2 inches in the body of the victim cannot by itself, be normally a cause of death. Appellant did not inflict any other injury with either hands or implements available in the garage, on the victim.
- d) The appellant had in fact come enquiring about Bishu and most likely was inclined towards settling a score with Bishu.
- e) The appellant was working for at least 6 years with the victim. He possessed expertise in vehicle mechanics. There is no evidence on record to indicate any history of enmity between the appellant who was employed by the victim to work with in garage.

f) There is nothing on record to establish that the appellant had in the criminal antecedents.

19. Learned counsel for the State has vehemently opposed the prayer for conversion of the conviction under Sections 302 and 304 of the IPC. It is submitted by Ms. Khan since the appellant has brought the weapon in question and carried it in person in the place of occurrence, he must be deemed to have premeditated the crime in the question i.e. to end the life of the victim or even the fellow worker Bishu with whom he has dispute.

20. This Court notices that a knife may be carried by a car mechanic for many reasons. Even assuming that the appellant carried a knife with a motive to cause injury, it is more likely that he came searching for Bishu, to inflict injuries on him. The deceased was a mere victim of circumstances. He was not and could not have been the prime target.

21. In view of the circumstances indicated above, this Court is of the view that the appellant ought to have been convicted under Section 304 and not under Section 302. The appellant admittedly has served 16 years of incarceration. This, in the opinion of this Court is sufficient punishment that the appellant has undergone. This fine imposed by the Court below shall remain permanently stayed.

22. In view of the above, this Court is inclined to modify the impugned order of conviction to that of the period he had already been incarcerated for under Section 304 of the IPC.

23. The appellant shall stand convicted as above and shall be set at liberty for having served the sentence under which he has been convicted as indicated hereinabove.

24. The instant appeal is allowed in part.

25. Let the LCR be returned to the Trial Court.

26. The appellant shall be released forthwith from the correctional facilities, if not wanted in connection to any other case, upon execution of a bond to the satisfaction of the trial court which shall remain in force for a period of six months in terms of section 437A of the Code of Criminal Procedure corresponding to Section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023 .

27. In view of the above, the instant appeal is disposed of.

28. There shall be no order as to costs.

**(Rajasekhar Mantha, J.)**

**(Ajay Kumar Gupta, J.)**