

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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.A. 264 of 2001**

**Biswa Nath Santra & Ors.**

**-Vs-**

**The State of West Bengal**

For the Appellants : Mr. Abhijit Adhya

For the State : Mr. Binoy Panda  
Mr. S. Bhakat

Heard on : 29.11.2023, 15.12.2023, 17.01.2024,  
21.02.2024, 02.05.2024

Judgment on : 16.07.2024

**Ananya Bandyopadhyay, J.:-**

1. This appeal is preferred against judgment and order of conviction dated 30.05.2001 and 31.05.2001 passed by the Learned District and Sessions Judge, Howrah in Sessions Trial Case No. XVI (1)/2001 convicting the appellants under Section 304 (II) of the Indian Penal Code and sentencing them to undergo rigorous imprisonment for five years and to pay a fine of Rs.2,000/- each in default to undergo rigorous imprisonment for two months.
2. The prosecution case precisely stated that on 15.05.1996 at about 5.30 p.m. at Village – Boharia, Police Station – Jagatballavpur, District – Howrah when

the three accused persons were ploughing the land allegedly belonging to the deceased, Satish Hazra, trouble ensued. Satish Hazra objected and the accused being infuriated attacked Satish Hazra. Biswanath Santra throttled the neck of the deceased and the other two, Sridhar and Prasanta assaulted him with fists, blows and kicks. Being so assaulted, the deceased fell on the ground and his wife Sankari Hazra and other adjoining people came to the spot and took him to his house and poured water. Subsequently Satish Hazra expired. The incident of his death was reported to the police on the following day at about 11.00 hours by one Prasanta Santra who was the brother-in-law of the deceased.

3. Based on the written complaint as aforesaid, the police recorded the Jagatballavpur U. D. Case No. 29/96 dated 13.05.1996 and held inquest on the dead body. Thereafter, J.B. Pur P.S. Case No. 42/96 dated 13.05.1996 was registered under Sections 302/34 of the India Penal Code against the appellants.
4. On completion of investigation, police submitted charge-sheet against the appellants under Sections 302/34 of the Indian Penal Code. Charges were framed under Sections 302/34 of the Indian Penal Code to which the appellants pleaded not guilty and claimed to be tried.
5. In order to establish its case the prosecutions examined 11 witnesses and exhibited certain documents.
6. The Learned Advocate for the appellants submitted as follows:-
  - i. PW-4 stated that Sukumar Ghosh informed the police over phone. Sukumar Ghosh was not examined or cited as prosecution witness.

General Diary was also not exhibited regarding information given by Subimal Ghosh. There was no explanation of delay of more than 24 hours in filing the complaint.

- ii. No neighbours were examined though PW-3/Sankari Hazra stated that many people of the locality were present. Only the interested persons were examined. Though PW-3 and PW-4 stated 50/60 persons came to the spot, none were examined.
- iii. Civil cases were pending between the accused and the complainant which was disclosed by PW-4. PW-3 disclosed that the accused persons imposed fine concerning an illicit relationship. Enmity between the accused and the victim was emphasized.
- iv. The story that the eyewitnesses were obstructed to inform the police was negated by PW-4 who stated that the accused fled. All of them were living in adjoining houses and had good relations.
- v. Non-examination of the doctor who came to examine the deceased after the incident casts doubt on the entire prosecution story and non-production of telephonic message hit Section 114(g) of the Evidence Act.
- vi. The prosecution evidence and the finding of the Learned Judge being that the accused persons allowed the deceased party to stay over the land out of mercy, deceased Satish Hazra had no right to protest the act of cutting earth by the accused, if believed, and the accused persons had a right of property to use their own property and the deceased party the aggressions and as such the accused were entitled to benefit of doubt.

- vii. There was no mark of violence found on the body of the victim. It was submitted that if the story of the prosecution was taken to be true, for the sake of argument, then there should be marks of violence over the body/resistance of the victim. There was not a drop of blood on the earth. The police had also not seized any blood stained earth.
  - viii. The victim might have died due to some other cause and the entire burden was cast on the accused persons out of previous grudge.
7. The Learned Advocate for the State submitted that the evidence of PW-4 with regard to his cross-examination could not be shaken by the defence. The post mortem report corroborated the oral evidence of PW-3 and PW-4 which could not be controverted. There had been threat of dire consequences which prevented PW-3 and PW-4 to lodge the complaint at the relevant time. The prosecution had been successful in proving its case.
8. A circumspection of the evidence of prosecution witnesses revealed as follows:-
- i. PW-1 and PW-2 were declared hostile by the prosecution.
  - ii. PW-3 deposed that the deceased Satish Hazra, her husband, died five years ago. PW-3 disclosed Biswanath Santra, Sridhar Santra and Prasanta Santra were piling earth on the land belonging to them and was objected to by her husband. The accused persons throttled her husband's neck. Biswanath Santra clasped her husband's neck and other two accused persons kicked his abdomen. When the female folks assembled, the accused persons fled. Her husband fell on the ground with bleeding nose and reddened eyes and subsequently expired. PW-3

further deposed to have been obstructed by the accused persons on her way to the police station. On the following morning, complaint was lodged in the police station by her brother who died in the meantime. Inquest was conducted by police.

- iii. During cross-examination PW-3 deposed PW-1 and PW-2 to be her neighbours. Kanai Samanta, Asit Hazra, Lakshman Manna, Ananda Santra, Basudev Manna, Dulal Manna and Biswanath Manna were other co-villagers. PW-3 deposed that a doctor was called on to examine her husband, who did not issue any death certificate because her husband had already expired. The incident took place between 4 and 5.30 p.m. PW-3 was examined by the I.O. She did not go to police station on the following day. PW-3 could not state the time when police came. PW-3 stated she was perplexed after the incident.
- iv. PW-4 in his deposition stated the deceased victim to be his brother who died on 12.05.1996. PW-4 and PW-3/deceased victim's wife rushed to the spot for rescuing his brother when the accused persons fled. Cold water was applied on his brother. Blood oozed out of his nose, eyes turned red and within five minutes his brother died. PW-4 stated at the time of assault they did not approach the accused persons out of fear. The incident took place at about 5.30 p.m. in the evening. When they proceeded to the police station for lodging complaint they were resisted by the accused persons, who threatened them of dire consequences. On the following day at about 10.30 in the morning Prasanta Santra, brother of PW-3, PW-4 and 2/3 others had

been to the police station and lodged complaint. Inquest was done over the dead body in his presence. PW-4 put his L.T.I. on the inquest.

- v. During cross-examination PW-4 deposed that he told police that accused Prasanta and Sridhar assaulted his brother at his abdomen by fists and blows and kicks. They intimated the responsible persons of the village to give intimation to the police station regarding the death of his brother. One Sukumar Ghosh of the village intimated the matter to police station over phone. PW-4 stated the facts to police. PW-4 stated to be in good terms with the residents of the village. The incident took place for about 5 minutes. During the time of incident only 4/5 persons were present at the spot of incident. After the incident about 50/60 persons assembled at the spot to see his brother.
- vi. PW-5 in his deposition stated he was a Medical Officer of Howrah District Hospital. PW-5 found finger mark on the throat, right thumb on the right side and another four fingers on the left side of the neck. He found rupture of spleen and partial rupture of the liver. PW-5 opined, death was caused due to severe shock due to rupture of the vital organ like liver and spleen and asphyxia which was ante-mortem and homicidal in nature. The death was caused instantly. PW-5 identified his report and signature, prepared by him in his own handwriting, marked Ext. 1 and 1/1. PW-5 further disclosed those injuries might be caused if somebody pressed the neck and inflicted

injury in the abdomen by fists, blows and kicks. Further those injuries could be caused by falling on the ground from the cot.

- vii. PW-5 in his cross-examination stated in the instant case, he did not find any abrasion or echymosis. He noted finger marks. PW-5 did not find any nail marks on either of the victim or the assailants. PW-5 did not find any fracture of larynx and trachea. PW-5 opined in case of throttling abrasion or bruise marks were not always found and PW-5 did not find the same in this case. PW-5 found haematoma in larynx, trachea and pharynx which were injuries of the muscles of the neck. PW-5 did not mention in his post-mortem report that there was bleeding in the nose, mouth and ear of the deceased. In the right side PW-5 got the marks of thumb finger and of no other finger. PW-5 did not mention in his report the continuous marks of the finger prints. PW-5 did not mention in his report the presence of blood under the skin. PW-5 mentioned certain signs in his report which indicated that the deceased expired out of asphyxia. PW-5 did not mention any external sign over the face of the deceased. PW-5 did not mention in his report the measurement of the rapture of the spleen and larynx.
- viii. PW-6 in his deposition stated to have escorted a dead body to Howrah General Hospital for post-mortem examination. PW-6 indentified the said dead body challan and his signature marked as Ext. 2/1.
- ix. PW-7 in his deposition stated to received a written complaint from one Prasanta Santra on 13.03.1996 at about 11:05 hrs. PW-7 received the said complaint under his endorsement marked Ext. 3/1. PW-7 drew

up the formal F.I.R. in his handwriting and signature. PW-7 identified the said formal F.I.R. marked Ext. 4/1.

- x. PW-8 in his deposition stated to be the scribe of the written complaint as aforesaid. PW-8 was not aware of any incident where one Satish Hazra expired.
- xi. PW-9 in his deposition stated to have been deputed as the investigating officer in Jagatballavpur P.S. Case No.42/96 under Sections 302/34 of the Indian Penal Code. PW-9 first held inquest over the dead body in presence of witnesses. PW-9 identified the carbon copy of the said inquest report written in his handwriting and signature marked Ext. 5 and Ext. 5/1. PW-9 sent the dead body to the hospital for post-mortem examination. PW-9 prepared the rough sketch map of the place of occurrence with index in his handwriting and signature and identified the same marked Ext. 6, along with his signature marked Ext. 6/1 collectively. Place of occurrence was identified to PW-9 by the complainant Prasanta Santra. PW-9 examined the available witnesses and recorded their statements under Section 161 of the Cr.P.C. PW-9 raided the houses of Biswanath Santra, Sridhar Santra and another at about 14.50 hours, but could not find them in their houses. On 14.08.1996 PW-9 arrested all the three accused persons and forwarded them to the Court of Learned S.D.J.M., Sadar. PW-9 collected the post-mortem report on 27.08.1996. One U.D. Case being No. 29/96 dated 13.05.1996 was originally initiated and the case records had been tagged with the C.D.

On 08.01.1997 PW-9 was transferred from the police station and handed over the case docket to Officer-in-Charge of the police station.

- xii. During cross-examination PW-9 deposed that he did not seize any “earth cutting instrument”. PW-9 did not take the photograph of the earth cutting place. PW-9 did not seize any types of deeds or other documents from the complainant’s party. PW-9 did not mention in his sketch map that there had been “the occasion of earth cutting in certain portion of the disputed place”. PW-9 disclosed that Sankari Hazra/PW-3 told him that some phlegm came out from the nose but not the blood. PW-9 also examined Nemai Hazra/PW-4. PW-4 did not state before PW-9 that blood was coming out from the nose of the deceased.
- xiii. PW-10 in his deposition stated deceased victim Satish Hazra was his brother. PW-10’s narrative resembled that of PW-3 and PW-4.
- xiv. During his cross-examination PW-10 stated he could not notice how many outsiders assembled at the spot. The total incident last for one hour from 4.30 p.m. to 5.30 p.m. PW-10 did not inform the police.
- xv. PW-11 deposed that he was given the charge of further investigation of the case in Jagatballavpur P.S. Case No. 42/96 by the Officer-in-Charge of the police station. PW-11 did not examine any further witness. PW-11 consulted his superior officers and submitted charge-sheet against the accused persons, namely Biswanath Santra, Sridhar Santra and Prasanta Santra under Sections 302/34 of the Indian Penal Code.

9. The explanation offered by PW-3 and PW-4 that they were restrained by the accused persons from going to police station was not acceptable. At 5.30 p.m. 50/60 people assembled at the spot, the doctor was called at the spot however the prosecution evidence revealed after the incident all the accused persons fled.
10. On 13.05.1996 the wife Sankari Hazra (PW-3), the brother Nemai Hazra (PW-4) and Sannyasi Hazra (PW-10) did not go to the police station and filed the complaint.
11. The evidence of PW-3, PW-4 and PW-10 were contradictory to each other. PW-3 deposed the incident occurred from 4 p.m. to 5.30 p.m. PW-4 deposed the incident was complete within 5 minutes. PW-10 deposed the incident continued for an hour. PW-3 deposed she sent her 8 year old daughter to inform Prasanta Santra, her brother. PW-4 deposed Nepal Pal informed Prasanta Santra about the incident.
12. The telephonic message about the incident sent by Sukumar Ghosh to police on 12.05.1996 was not mentioned in the complaint.
13. The prosecution story was that blood was coming out from the nose of the deceased had been disproved by the evidence of doctor and Investigating Officer. The doctor did not find trace of blood in the nose of the deceased. The Investigating Officer did not seize blood stained earth from the place of occurrence.
14. The I.O. had not seized any kind of earth from the place of occurrence. Moreover, the belated complaint narrated the dispute arose over the bastu land.

15. There had been inconsistencies with regard to the place of occurrence and the manner of occurrence. PW-3 said 4 p.m. and from any time between 4 p.m. to 5.30 p.m. then said at 5.30 p.m. PW-4 said 5.30 p.m. PW-10 said that from 4.30 p.m. to 5.30 p.m. the incident continued for an hour. Blood stained earth or earth cut down and heaped over by accused were not seized by I.O. I.O. showed place of occurrence in the sketch map as shown by Prasanta Santra who was dead and did not depose. No mark of violence was found by the I.O. at the alleged P.O. The manner of occurrence had not been proved clearly. The doctor said that he noticed thumb mark on the right side of the neck of deceased and four finger marks on the left side of the neck.
16. The medical evidence contradicted the prosecution story. The doctor did not observe nail mark, or bruises or abrasions or echymoises on the neck. Larynx, Trachea and Pharynx were not injured. Hyoid Bone was not fractured. So there could not be throttling or strangulation.
17. The Investigating Officer did not obtain the finger print of the accused, Biswa Nath Santra for comparing with the alleged fingers marks found by the doctor on the neck of the deceased.
18. Independent and disinterested persons who immediately came to the spot at 5.30 p.m. on 12.5.96 were not examined.
19. PW-1 and PW-2 were declared hostile by the prosecution.
20. PW-3, the wife of the deceased, recounted the incident to have taken place in the afternoon and ascribed the role of the present appellants. She further stated that at the assemblage of the female folks, the appellants escaped. PW-3, the wife of the deceased victim as well as PW-4 did not report the

incident to the police instantly. PW-3 and PW-4 unanimously claimed the presence of 50/60 persons at the spot to witness his brother. However, none of them dared to rescue his brother and the said statements had been self-contradictory since PW-3 had deposed that the appellants had instantaneously fled at the presence of the female folks of the village. None of the persons forming the assemblage was examined. The doctor who examined the victim who refused to issue the death certificate was not examined. The statements of PW-3 during her cross-examination indicated an illicit relationship of her daughter to the annoyance of the village people who fined the man responsible for such relationship. The appellants were amongst the group of people who issued directions of such fine to be paid. The enmity between the parties cannot be obliterated. The police failed to seize the removed heap of earth as well as the equipment used for conducting such a process. The rough sketch map did not indicate the place of occurrence. PW-4 claimed his inability to approach the accused persons out of fear contrary to the deposition of PW-3 who narrated the flee of the appellants from the spot. PW-3 stated that incident to have occurred at 4:00 P.M to 5:00 P.M whereas PW-4 stated that incident to have taken place at about 5:30 P.M in the evening.

21. The prosecution could not cite any witness to have seen PW-3 and PW-4 to have been obstructed by the present appellants on their way to the police station despite the persons of a large congregation of 50/60 people. PW-3 and PW-4 did not state that the appellants were armed with weapons. PW-4 further stated the incident to have lasted for 5 minutes during which only 4-

5 persons were present at the spot. PW-4 did not name those persons nor were they cited as witnesses.

22. PW-5 did not mention of bleeding in the nose, mouth and ear of the deceased. The finger marks of the thumb and other fingers on the neck of the victim without nail marks or any bruise cannot be acceptable as there must have been resistance on the part of the victim to free himself from captivity. PW-5 did not notice any fracture of larynx and trachea. The report did not mention the measurement of the rupture of spleen and larynx. The medical report of PW-5 was confusing and did not project clarity with regard to the claim of sustaining the injuries and its translation into action. The finger marks on the neck resulting in asphyxia would not have accomplished without application of pressure. Moreover, neither PW-3 nor PW-4 claiming to be present at the spot tried to disentangle the victim from the clutches of the appellants or created a clamour or seek assistance from the adjoining group. The presence of the appellants at the spot, therefore, became doubtful.

23. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeal is allowed.

24. Accordingly, the criminal appeal being CRA 264 of 2001 stands disposed of.

25. There is no order as to costs.

26. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

27. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

**(Ananya Bandyopadhyay, J.)**