

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 338 of 2009

Manu Let & Ors.

-Vs-

The State of West Bengal

For the Appellants : Mr. Subodh Banerjee
Mr. Saptarshi Chakraborty
Mr. Samrat Banerjee

For the State : Mr. Binay Panda

Heard on : 26.09.2023, 12.10.2023

Judgment on : 10.01.2024

Ananya Bandyopadhyay, J.:-

1. This instant criminal appeal is preferred against the impugned judgment dated 12.3.2009 and order dated 13.3.2009 passed by the Learned Additional District & Sessions Judge, 1st Track, 2nd Court, Rampurhat, Birbhum in connection with Sessions Trial No. 74 of 2002 arising out of Sessions Case No. 45 of 2000, in Rampurhat Police Station Case No. 82 of 1999 dated 19.7.1999, under Sections 304/34 of the Indian Penal Code whereby the accused persons Manu Let, Ananda Let and Panchu @ Panchanan Let were convicted being guilty of the offence punishable under Sections 304/34 of the Indian Penal Code and were sentenced to suffer

rigorous imprisonment for 7 years along with a fine of Rs. 5000/- each and in default to undergo imprisonment for 6 months more.

2. The prosecution case precisely stated that on 19.7.1999 the de-facto complainant lodged a complaint to the Officer-in-Charge of Rampurhat Police Station alleging that the accused appellants assaulted the victim Balaram Let with "Sabol" and "Lathi" at Village – Kusumba and sustained bleeding injuries on his head and fracture on his hand. Thereafter the victim was shifted from the P.O. to Rampurhat Sub-Divisional Hospital for treatment and eventually he expired.
3. On the basis of the aforesaid complaint, Rampurhat Police Station Case No. 82 of 1999 dated 19.7.1999 was initiated under Sections 304/34 of the Indian Penal Code.
4. After completion of investigation, charge-sheet was submitted against the appellants on 22.02.2000 for the commission of offence under Section 304/34 of the Indian Penal Code.
5. Subsequently, charge was framed against the appellants for the commission of offence under Sections 304/34 of the Indian Penal Code to which the appellants pleaded not to be guilty and claimed to be tried.
6. In course of trial the prosecution examined 13 witnesses and exhibited certain documents.
7. The Learned Advocate for the appellants submitted as follows:
 - i. The PW-1 de-facto complainant Mahamaya Let deposed that on 20.8.2007 Panchanan Let, Manu Let, Daru Let and Ananda Let assaulted her husband at random with "Sabol" and "Lathi". Panchanan

Let and Manu Let assaulted on the head of Balaram Let with “Sabal” while Daru Let and Ananda Let assaulted her husband with “Lathi”. Due to such assault her husband sustained bleeding injury on his head and fracture on his left hand. She had witnessed the incident directly. Other villagers including Bhajahari Let, Jatai Let, Pankaj Let and also witnessed the incident. The villagers assembled and shifted her husband in injured condition to Rampurhat Sub-Divisional Hospital by Trolley Rickshaw of Bhajahari Let. She had accompanied her husband to the hospital. Her husband expired during treatment. The information of such death of her husband in the hospital was reported to the police from the hospital. Subsequently two police officers came to the hospital and interrogated her and recorded her statement. Thereafter she went to the Police Station at Rampurhat and submitted the written complaint in respect of the incident. The wearing apparels of her husband at the time of the incident got blood stained. She had shown them to the police and police had taken the same. She was married to Balaram Let for the second time. Prior to that, she was married to Ravi Let of Village Mallarpur. Ravi Let expired, but during his lifetime the marital tie between PW-1 and Ravi Let severed and she had married for the second time. At the relevant time her sons Pankaj Let and Palash Let were working in the field of her village. Her husband was alive during treatment and the information of his injuries during the incident was reported to the police from the hospital and the police had seen her husband on the bed while she was also sitting by his side. She had

narrated the fact of the entire incident to the police. Police wrote the same and had taken her signature thereon. The other accused persons were the relatives of Manu Let.

- ii. The PW-2, Bhajari Let deposed that on 20.8.2007 at the relevant time he was passing by the village road with his trolley rickshaw when heard the noise while crossing the house of Anand Let. He had seen Balaram Let lying on the ground with bleeding injuries in front of the door of the house of Ananda Let. At that time wife of Baidyanath Let, wife of Panchanan Let, wife of Balaram Let and other villagers assembled at the place of occurrence. Balaram Let in injured condition was lifted on his trolley rickshaw by PW-2 and Jatai Let had taken the injured to Rampurhat Sub-Divisional hospital. PW-1 also accompanied them. PW-2 also deposed that he had not seen the accused persons to assault Balaram Let. He had learnt the incident of assault from PW -1 Mahamaya Let. During cross-examination he deposed his failure to state whether any enmity existed between Balaram Let and his brother Manu Let over the issue of landed property or not.
- iii. PW-3 Jatai Let deposed that the deceased and the accused persons were his maternal uncle. While he was working in the house of his master, he heard a noise of shouting and went out for an enquiry. He had seen certain persons to flee and found his maternal uncle Balaram Let lying on the village road in injured condition. His aunt Mahamaya Let was standing and on query he learnt that Panchu @ Panchanan

Let, Manu Let, Daru Let and Ananda Let had assaulted Balaram Let and fled.

PW-3 however did not see the accused persons to assault Balaram Let.

- iv. PW-4 Palash Let, the son of the deceased of his first wife deposed to have heard the occurrence of the incidence from his mother and elder brother, however he could recollect the dispute to have taken place between the accused persons and his father over the issue of Vastu Land.
- v. PW-5 Pankaj Let deposed that his father Balaram Let was assaulted by the accused persons who sustained serious injuries succumbed to the same at Rampurhat Sub-Divisional Hospital. PW-5 deposed that he was working in the field and fetched fertilizers from the house of his master and on the way back he went to the house of Dalim Mondal. At that time he heard a clamour and rushed to the place of occurrence wherefrom he witnessed Panchanan Let assaulting on the head of his father with “sabol” while Manu Let assaulted his father over the left ear and scalp with “Sabol”. Daru Let and Ananda Let assaulted his father at random. Due to such assault his father sustained bleeding injury and expired in the hospital.
- vi. PW-6 Samar Paul had taken the dead body of Balaram Let to the morgue at Rampurhat Hospital as per instruction of the O.C.
- vii. PW-7 Dhana Kishore Mondal deposed that he heard the incident from Pankaj and his mother. In cross-examination he further deposed that

the deceased was his friend. Palash and Pankaj i.e. the son of the deceased were working in the field along with him.

- viii. PW-8. A.K. Saha, the Doctor of Rampurhat S.D. Hospital, held post-mortem examination of the victim. PW-8 opined the cause of death was due to shock and hemorrhage due to the injuries he found at the time of examination. The injuries were ante-mortem and homicidal in nature.
- ix. PW-9 Dr. Ramesh Chakraborty deposed being on emergent duty in the hospital, he examined Balaram Let admitted in the male surgical ward. The patient was brought to the hospital by his wife Mahamaya Let and the history of assault on 19.7.1999 was disclosed by Mahamaya Let who however did not state the name of any assailant of the patient.
- x. PW-10 Dr. Goutam Deb Mukherjee deposed the history of assault and the cause of injury had not been mentioned on the injury report. He had not seen the dressed up scalp injury. He did not consult any X-ray plate or X-ray report to satisfy fracture on the left arm elbow. The statement on the back side of exbt.-7 was not written by him. He had not advised for X-ray of the suspected fracture. He had examined Daru Let on the same day as an indoor patient in the hospital. He had examined the patient and found stitched up and dressed injury over scalp. The patient was admitted on 19.7.1999 and was discharged on 28.7.1999. He had noted the details of examination and treatment of patient on the bed head ticket.

- xi. PW-11 Subhas Ranjan Mukherjee wrote the complaint as per direction of the de-facto complainant. He deposed that the de-facto complainant along with Balaram Let @ Balay used to come to him for drafting applications and defending other cases, for being an advocate by profession.
- xii. PW-12 Bimalendu Singh A.S.I. of Police of Rampurhat Police Station, was entrusted with the investigation of U.D. Case No. 156 of 1999.
- xiii. PW-13 Anil Kumar Ghose, the Inspector of Police on cross examination deposed that the investigation was not conducted properly and lawfully.

8. The Learned Advocate for the appellants further submitted that:-

- i. The Trial Court unfortunately ignored the depositions of the PWs. The de-facto complainant suppressed that the accused Daru Let, on the date of incident was injured by the victim and was admitted in the Sub-Divisional Hospital for his medical treatment both in the complaint as well as before the Court.
- ii. The Trial Court failed to appreciate the evidence of PW-1 in truest sense which was false and concocted. The PW-1 in her deposition dated 20.8.2007 stated that Balaram Let i.e. the victim was her husband. She did not disclose to have been married for two times. PW-1 only stated that she married Balaram Let for the second time. Prior to that she was married to Ravi Let of Village Mollarpur who has expired. During his life time the marital tie between herself and Ravi Let discontinued and she had married for the second time. However, it appeared from the voter list at the year 2009 that aforesaid Ravi Let

- was alive and PW-1 was the wife of Ravi Let and there was no divorce and / or judicial separation. The said PW-1 with some ulterior motive did not disclose her marriage with Ashok Kumar Dutta, the retired health employee. The said PW-1 and her sons filed a T.S. in the Court of Learned Civil Judge, (Jr. Division), 1st Court Rampurhat being T.S. No. 104 of 2007, praying for declaration that one Ashok Kumar Dutta, the retired health employee was the natural father. It appeared from the depositions that the PW-1 is a woman who could cheat, fraud could not be trusted. She made her depositions falsely to grab the landed property of Balaram Let with false statements that she was married wife of Balaram Let. From her false and fabricated depositions, it appeared that the said PW-1 knew nothing about the incident of Balaram Let, who was not her husband.
- iii. The PW-4 and 5 i.e. the sons of the PW-1 also deposed that the victim was their father which was false, fabricated and concocted. They also suppressed the name of their father. They and along with their mother suppressed the name of natural father and Title Suit being No. 184 of 2007 in the Court of Learned Civil Judge. (Junior Division) 1st Court, Rampurhat. In the year 2007 the de-facto complainant and her sons deposed before the Learned Trial Court that Balaram Let @ Balay and/or deceased was husband and / or father. On the contrary they had filed a Title Suit being No. 184 of 2007 to the effect that One Ashok Dutta was their natural father. They had willfully suppressed

- the material fact before the Learned Trial Court. The evidence of de-facto complainant and her sons was not trustworthy.
- iv. PW-1 claimed to be an eyewitness was not an eyewitness. The prosecution cited 13 witnesses but other than de-facto complainant there was no other eyewitness. The evidence of other prosecution witnesses was based on 'hearsay'. The appellants were the brothers of the deceased. They were innocent and had been falsely implicated in connection with the above noted case.
 - v. One Chaina Let, Daughter of Late Jagannath Let of Village - Chakaipur, Police Station Rampurhat, Birbhum was the legally married wife of the deceased. No divorce was made. There were sufficient documents of the said marriage. There was an illicit relation in between the deceased and the PW-1. The deceased in collusion with the PW-1, driven out the aforesaid Chaina Let from the house of deceased. At present she is alive and has been residing at her father's house at Chakaipur. The appellants being brother of the deceased objected to such illicit relation and raised the imputations against of PW-1 and subsequently they had been implicated in connection with the above noted case.
 - vi. The Trial Court failed to appreciate that police did not seize any blunt substance which was used at the time of commission of offence. The blood stained wearing apparels of the victim were not seized by the police.

- vii. The judgment dated 12.3.2009 and order dated 13.3.2009 passed by the Trial Court was not sustainable either in law or on facts, weight of evidence and probabilities of the case. The said judgment and order based on mere presumption and false depositions of the PW-1 and 5 should be set aside.
9. The Learned Advocate for the State submitted that PW-1 and 5 had been the eyewitness to the incident of assault corroborating each other's evidence which could not be shaken during cross-examination and was worthy credence. Lapses on the part of the Investigating Officer cannot be fatal to the prosecution case in presence of trustworthy, credible evidence of the eye witnesses and therefore the appeal shall be set aside.
10. The incident of assault which led to the death of the victim was claimed to be witnessed by PW-1 who stated that the appellants Panchanan Let and Manu Let assaulted the victim by 'Sabol' and Daru Let and Ananda Let assaulted the victim with a 'Lathi'.
11. During her cross-examination, she deposed that on the previous day of the incident, the victim had assaulted a kid owned by the appellant Panchanan Let resulting in its death which initiated an altercation between the appellants and the victim husband which subsequently evolved into a fight between the victim and the appellants whereby the victim succumbed to the injuries inflicted by the appellants.
12. The deposition of PW-1 was at variance to the complaint lodged by her in terms of the reason leading to the assault on the victim.

13. PW-2 had been informed of the incident by PW-1 and his narrative was based on hearsay.
14. PW-3 had been a post occurrence witness who accompanied the victim to the hospital for admission. During his cross-examination, PW-3 stated he had not seen the accused persons to assault the victim. Similarly, the evidence of PW-4 too had been based on hearsay being informed by his mother, i.e. PW-1 about the incident of assault.
15. PW-4 in his cross-examination deposed to have stated to the police officer that his mother told him of the victim being assaulted by Panchanan Let and Manu Let, Daru Let and Ananda Let with respective weapons as aforesaid. Moreover, on the date of the incident, he was about 8-9 years of age. He referred to a constrained relationship between the victim and his brothers, i.e. appellants concerning an issue of Vastu Land which further deteriorated on the event of the death of a "kid".
16. PW-5 the son of PW-1 deposed to have witnessed the incident of assault on the victim by the appellants and reiterated the statement of PW-1 corroborating the same. PW-5 stated to have seen Panchanan Let who assaulted the victim with 'Sabol' along with Manu Let, Daru Let and Ananda Let. He mentioned of the villagers rushing to the place of occurrence which insisted the appellants to flee from the spot. None of such villagers were examined by the prosecution.
17. The victim was claimed to have been taken to hospital by a trolley rickshaw of one Bhajahari Let. The said Bhajahari Let was not examined by the prosecution.

18. The deponent PW-10 in his cross-examination stated that he did not advice X-Ray of suspected fracture with regard to the victim. He had mentioned about a bed head ticket in respect of another patient. The co-accused Daru Let whom he had examined on the same day as an injured patient in the hospital who was later on arrested from the hospital by the Investigating Officer, i.e. PW-13 who was subsequently shifted to the police cell from the male ward of the hospital.
19. The said accused Daru Let was examined by PW-10 medically who found stitched and dressed up injury over scalp who being admitted in the hospital from 19/7/99 till 28/7/99. The bed head ticket was marked Exhibit A on behalf of the defence.
20. PW-11 the scribe an advocate by profession had written the complaint under the instruction of the PW-1 who was known to him.
21. The sequence of event indicated an incident of assault on both the victim who succumbed to death as well as the co-accused Daru Let.
22. The prosecution failed to correlate the role of the exact perpetrator to have inflicted the injuries of the Daru Let as well as the deceased victim. Apart from the interested eye witnesses, the prosecution did not cite any independent witness to corroborate the deposition of the de facto complainant and her son PW-5.
23. PW-13 the Investigating Officer did not seize the blood stained wearing apparels or the blood stained earth for examination. The alleged two offending weapons were also not seized. The injured accused Daru Let was not examined.

24. It was further submitted by PW-13 to have ascertained that the instant case was related to an incident of killing of one goat. However, he could not find any dead goat around the place of occurrence.

25. Section 304 of the Indian Penal Code, 1860 has been reproduced below:-

“304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

26. In the case of **Mahadev Prasad Kaushik v. State of U.P.** reported in **(2008) 14 SCC 479**, the Apex Court held the following:-

“20. ... A plain reading of the above section makes it clear that it is in two parts. The first part of the section is generally referred to as Section 304 Part I, whereas the second part as Section 304 Part II. The first part applies where the accused causes bodily injury to the victim with intention to cause death; or with intention to cause such bodily injury as is likely to cause death. Part II, on the other hand, comes into play when death is caused by doing an act with knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

21. The makers of the Code observed:

“The most important consideration upon a trial for this offence is the intention or knowledge with which the act which caused death, was done. The intention to cause death or the knowledge that death will probably be caused, is essential and is that to which the law principally looks. And it is of the utmost importance that those who may be entrusted with judicial powers should clearly understand that no conviction ought to take place,

unless such intention or knowledge can from the evidence be concluded to have really existed.”

The makers further stated:

“It may be asked how can the existence of the requisite intention or knowledge be proved, seeing that these are internal and invisible acts of the mind? They can be ascertained only from external and visible acts. Observation and experience enable us to judge of the connection between men's conduct and their intentions. We know that a sane man does not usually commit certain acts heedlessly or unintentionally and generally we have no difficulty in inferring from his conduct what was his real intention upon any given occasion.”

22. *Before Section 304 can be invoked, the following ingredients must be satisfied:*

- (i) the death of the person must have been caused;*
- (ii) such death must have been caused by the act of the accused by causing bodily injury;*
- (iii) there must be an intention on the part of the accused:*
 - (a) to cause death; or*
 - (b) to cause such bodily injury which is likely to cause death (Part I);*
- (iv) there must be knowledge on the part of the accused that the bodily injury is such that it is likely to cause death (Part II).”*

27. In the instant case, the prosecution failed to prove that the appellants had knowledge of commission of alleged offence or had intention to cause injury or bodily harm to the victim in order to cause his death. Apart from an alleged altercation to have taken place between the appellants and the victim over a death of a kid goat in absence of trustworthy, credible, independent evidence, the knowledge and or intention on the part of the appellants could not be proved. The driver of the trolley claimed to have transported the victim from the place of occurrence to the hospital for his treatment was an important witness and should have been examined by the prosecution.

Moreover, the villagers claimed to have been present at the spot after the incident occurred and assisted the victim's transmission to the hospital for admission could not be proved. The injury incurred by the accused Daru Let who was a party to the incident of assault was not investigated by PW-13 and curiously he was arrested from the hospital.

28. It can be presumed that the incident of assault might have involved the victim as well as the injured co-accused Daru Let irrespective of the present appellants whereby the prosecution has failed to correlate or establish their presence at the spot through independent witnesses and has failed to prove its case beyond reasonable doubt with regard to preponderance of probabilities.
29. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and accordingly the instant criminal appeal is allowed.
30. Under such facts and circumstances, the impugned judgment dated 12.3.2009 and order dated 13.3.2009 passed by the Learned Additional District & Sessions Judge, 1st Track, 2nd Court, Rampurhat, Birbhum in connection with Sessions Trial No. 74 of 2002 arising out of Sessions Case No. 45 of 2000, in Rampurhat Police Station Case No. 82 of 1999 dated 19.7.1999, under Sections 304/34 of the Indian Penal Code is set aside.
31. Accordingly, the instant criminal appeal being CRA 338 of 2009 stands disposed of.
32. There is no order as to costs.

33. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
34. 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.)