

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

C.R.A. 388 of 2012

Alam Sk. and others

Vs.

The State of West Bengal

For the Appellants : Mr. Partha Pratim Das, Advocate.

For the State : Mr. Madhusudan Sur, Ld. APP.

Heard on : 10.4.2024, 23.4.2024 and 29.4.2024.

Judgment on : 30.4.2024.

Joymalya Bagchi, J. :-

1. Appellants have assailed the judgment and order dated 27.04.2012 passed by the learned Additional Sessions Judge, 3rd Court, Naida, Krishnagar in Sessions Trial No. IV(May) of 2011 arising out of Sessions Case No. 7(3) of 2011 convicting the appellants under Sections 302/34 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for life and to pay fine or Rs. 5,000/- each, in default to suffer simple imprisonment for 12 months more.

Prosecution case:-

2. Prosecution case, as alleged, against the appellants is to the effect that on 11.6.2009 at 2 p.m a dispute cropped up over snatching money from one Ghosai Sk by the appellants and others. Tota Sk., husband of Ayesha Bibi (PW2) rushed to the spot. He resisted the miscreants. One of the miscreants Siraj Sk threw bomb at him and he fell down on the ground. Thereafter, the miscreants including the appellants struck him with sharp cutting weapons. As a result, he died. Police came to the spot. On the next day PW 2 lodged complaint resulting in registration of Nakashipara Police Station Case no. 248 dated 12.06.2009 under sections 302/34 IPC and sections 3/4 of the Explosive Substances Act against eight named accused including the appellants.

3. In course of investigation, one blood stained sharp cutting weapon was recovered from the spot. In conclusion of investigation, police report was filed against the appellants and other absconding accused. Absconding co-accused were declared as proclaimed offenders and the case was filed against them. Appellants were committed for trial. In course of trial, prosecution examined 9 witnesses and exhibited a number of documents to prove its case.

4. Defence of the appellants was one of innocence and false implication. It was the specific defence of the appellants that the genesis of the case has been suppressed. Siraj Sk and Raghu Sk (accused in the present case) had been murdered at the spot. A case has been registered by wife of Raghu Sk against the associates of the deceased Tota Sk.

5. After considering the evidence on record and the defence of the appellants trial judge by impugned judgment dated 27.04.2012 convicted and sentenced the appellants, as aforesaid.

Arguments:-

6. Mr. Das for the appellants contends the prosecution case is a concocted one. None of the witnesses namely PWs 2, 3, 4 and 7 were present at the spot. PW 2 stated she came from her residence along with her daughter by foot. It took one hour to reach the spot. This improbabilises their presence at the time of assault. PW4 admitted that he had gone to the spot after the incident. PW 7's presence at the spot is not corroborated by her mother, sister or grandfather. All the prosecution witnesses suppressed the genesis of the case which resulted in death of two of the accused namely Siraj Sk and Raghu Sk. Accordingly, appellants are entitled to an order of acquittal.

7. Mr. Sur for the State submits PW 2, wife of the deceased had accompanied him to the spot. She saw the incident and is a reliable witness. Her deposition is corroborated by PWs 3, 4 and 7. Manner of assault as depicted by these witnesses is corroborated by post mortem doctor PW 1.

Evidence on record:-

8. PW 2 Ayesha Bibi is the wife of the deceased. She claimed on the fateful day appellants including eight miscreants were snatching money from one Hasan in front of Bholadanga school. Her husband Tota Sk protested. Thereupon, Siraj hurled bomb towards her husband. He fell

down on the spot. Then the miscreants including the appellants assaulted him with sharp-cutting weapon. They reached the spot. The accused left the place of occurrence leaving behind the weapon. Her husband died at the spot. Police came at the spot. She lodged complaint after cremation of her husband. Bhola Bhagat scribed the complaint. During cross examination she stated one Raghu Bose, a co-accused had also died and his wife had lodged complaint. She further submitted Raghu had been killed after the killing of her husband. She deposed she came to the place of occurrence by foot. It took her one hour. Her daughter accompanied her.

9. PW 3 Alema Bibi is the daughter of the deceased. She stated her father had left their residence. She had followed him and seen the incident. During cross examination she admitted she did not tell the police after hearing the incident her father had left for the place of occurrence and she had followed him.

10. PW 4 Idmahammad Sk. is the father of the deceased. There was a dispute of snatching money of Gosai Sk. His son went to solve the dispute. Siraj threw bomb at him. The miscreants also assaulted him. When he arrived at the spot, his son had died.

11. PW 7 Alauddin Sk. is the son of the deceased. He stated appellants and other miscreants were snatching money. He along with his father and grandfather protested. The dacoits hurled bomb. His father fell down. Thereafter they assaulted him with sharp-cutting weapon. His father died at the spot. He proved the written complaint.

12. PW1 Ajit Kr. Biswas is the post mortem doctor. He noted the following injuries:-

- i. *Sharp cut injury on left temporal region of head starting from left ear extended down obliquely up to left lateral side of back of neck over left side of occipital region – measuring 8” x 4” bone deep;*
- ii. *Sharp cut injury on front left shoulder joint extended down obliquely up to left side of xiphisternum measuring 16” x 8” x chest cavity deep cutting multiple ribs;*
- iii. *Sharp cut injury on left side of root of neck – 4” x 2” x muscle deep;*
- iv. *Sharp cut injury on front of left arm on middle 1/3 transversely measuring 3” x 2” x muscle deep;*
- v. *Sharp cut injury on front of right forearm obliquely measuring 3” x ½” x muscle deep;*
- vi. *Fracture sternum on middle part;*
- vii. *Fracture ribs left side 1st to 8th rib;*
- viii. *Heart and lung punctured.*

He opined death was due to shock and haemorrhage resulting from above noted injuries, ante mortem and homicidal in nature.

13. PW5 received the written complaint from PW 2 at the police station. PWs 6 and 9 are the investigating officer of the case. PW8 is the photographer who took photographs of the deceased.

Credibility of the eye-witness:-

14. Analysis of the aforesaid evidence and the submissions at the Bar show prosecution case primarily hinges on the eye-witnesses i.e. PWs 2, 3, 4 and 7.

15. Before one relies on the versions of the said witnesses it is necessary to test their versions against the anvil of broad probabilities to satisfy oneself whether the witnesses were at all present at the spot at the time of occurrence. Incident occurred in front of Bholadanga school. PWs 2, 3, 4 and 7 are the relations of the deceased Tota Sk. They are the residents of village Haridrapota. PW 2 admitted it takes an hour by foot to reach the spot from their village.

16. In FIR, PW 2 stated she had accompanied her husband to the spot. But in court she is silent on his score. I would have considered this as an accidental slip but for the fact none of the inmates of the house corroborated her version in FIR that she had accompanied her husband to the spot. On the other hand, during cross examination she stated she and her daughter came to the place of occurrence by foot. It took them an hour. It is nobody's case that the incident had continued over an hour. In this backdrop it becomes doubtful whether PW 2 had arrived at the place of occurrence along with her husband and witnessed the incident.

17. Similarly PW 3 deposed for the first time in court that she had accompanied her father to the place of occurrence. This is an embellishment and belied by her mother PW 2 who claimed that they had come together to the P.O.

18. PW 4 father of the deceased did not support the prosecution case that PWs 2 and 3, namely, mother and daughter had gone to the place of occurrence along with his son. He stated his son had gone alone to solve the dispute. When he came to the spot his son had died. PW 7 is the son of the deceased. He claimed he was at the spot along with his father and grandfather when his father was murdered. His grandfather PW 4 contradicts him and stated he had arrived at the spot after his son was murdered. PW 7's presence is not even whispered by her mother and daughter. This shows that presence of family members of the deceased who were residing at village Haridrapota at the time of occurrence, i.e. Bholadanga school is doubtful.

19. Moreover, genesis of the incident arising out of snatching money from Gosai Sk has also not been proved. Said Gosai Sk was not examined in court.

20. On the other hand, defence probabalises a completely different picture leading to the death of Tota Sk. During cross examination prosecution witnesses admitted two of the accused namely Siraj Sk and Raghu Sk had been murdered. A criminal case was registered against the associates of Tota Sk by wife of Raghu Sk. Though PW 2 made a desperate attempt to explain that Raghu was killed after the murder of her husband, death of two of the accused about the same time give an impression that the witnesses had not made an honest disclosure of the circumstances leading to the death of Tota Sk.

21. Even the allegation that Siraj had thrown bomb at Tota which caused him to fall down on the ground is not supported by medical evidence. No doubt post mortem doctor noted sharp cutting injuries on the deceased, but no bomb blast injury was recorded.

Conclusion:-

22. These facts militate against the credibility of the eye-witnesses and cast doubt with regard to their presence at the place of occurrence itself. Hence, we are inclined to extend the benefit of doubt to the appellants. Conviction and sentence of the appellants are set aside.

23. Appeal is allowed.

24. Appellants, namely, Alam Sk, Innat Sk @ Innach and Najrul Islam Sk @ Najul Sk shall be discharged from their bail bond after expiry of six months in terms of Section 437A of the Code of Criminal Procedure.

25. Lower court records along with a copy of this judgment be sent down at once to the learned trial Court for necessary action.

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

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)