

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. 515 of 2019

With

CRAN 2 of 2019

(Old CRAN 3998 of 2019)

Saudamini Mondal @ Soudanmini Mondal

-Vs-

The State of West Bengal

For the Appellant : Ms. Trina Mitra.

For the State : Mr. Bitasok Banerjee.

Heard on : 29.11.2024

Judgment on : 29.11.2024

Joymalya Bagchi, J. :-

1. Appellant has assailed judgment and order dated 21.06.2019 and 24.06.2019 passed by learned Additional Sessions Judge, 1st Court, Sealdah, South 24 Parganas in Sessions Trial No. 4(2)/2019 arising out of Baruipur GRPS Case No. 32/17 dated 10.05.2017 convicting the appellant for commission of offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life and to pay fine of Rs. 50,000/- each, in default, to suffer rigorous imprisonment for a

period one year more for the offence punishable under Section 302 of the Indian Penal Code.

Prosecution case :-

2. On 10.05.2017 the victim Padmabati was returning home by Lakshmikanatapur local train. When the train entered Joynagar Railway Station there was an altercation and Padmabati was pushed by the appellant from the train with the intention to kill her. She fell down and suffered injuries. She was shifted to a nursing home. Appellant was caught by local people and detained.

3. Padmabati's father (PW 5) lodged written complaint resulting in registration of Baruipur P.S. Case No. 34/17 dated 10.05.2017 under Section 307 IPC. Unfortunately, Padmabati did not survive and Section 302 came to be added. Charge was framed against the appellant under Section 302 IPC. She pleaded not guilty and claimed to be tried.

4. In course of trial, prosecution examined 17 witnesses and exhibited a number of documents.

5. In conclusion of trial, trial Judge by the impugned judgment and order dated 21.06.2019 and 24.06.2019 convicted and sentenced the appellant, as aforesaid.

Evidence on record:-

6. PW 5, Kumar Mondal, is the father of the deceased. He deposed his daughter was thrown from the train at Joynagar Platform no.1. Police personnel shifted her to Santanu Nursing Home, Lakhikantapur. 5/6 days later she died. Police had arrested the miscreant at the spot. Dispute arose

over sitting arrangements in the train. He lodged complaint which was scribed by PW 6.

7. PWs 1 and 2, Uday Sankar Das and Gourav Kundu, are constables who were attached to Baruipur GRPS at the material point of time. They stated victim had fallen from the train. They took the victim to Santanu Nursing Home after informing Baruipur GRPS.

8. PW 3, Anima Paik was a co-passenger. She stated she was in the train. She saw one lady named Padmabati was pushed by another from the train. She identified the lady before Magistrate during trial and also in Court.

9. PW 4 corroborated PW 3 and stated the latter informed that Padmabati had been thrown from the train by a lady. However, PW 3 could not give out her name.

10. PW 10, Dr. Santanu Halder, is the doctor who treated Padmabati at the nursing home. He found scalp haematoma in the fronto parietal region. He prepared the injury report. He recorded the history of assault. As per patient she had been frequently assaulted by co-passenger Durga. On that day Durga poured irritant liquid in her eyes. She was pushed from the train. He proved the injury report. He also proved the bed head ticket. He stated nature of injuries found on the patient would be caused if she was pushed from the train.

11. PW 9, Dr. Arobinda Chatterjee, is the post mortem doctor. He proved the post mortem report. He opined death was due to injuries and ante mortem in nature.

12. PWs 13 and 15 are the police officers attached to Mandir Bazar PS. They deposed they shifted the body of the lady to Diamond Harbour Hospital for inquest and started an unnatural death case.

13. PW 17, Pradip Kr. Das, is the investigating officer. He deposed during investigation he visited the place of occurrence. He prepared rough sketch map. He examined witnesses. He visited the nursing home where the victim was admitted. He recorded her statement. He collected medical report. After the victim expired he collected the inquest and post mortem reports. He submitted charge sheet.

Arguments at the Bar:-

14. Ms. Mitra for the appellant submits the victim in her dying declaration implicated one Durga as the person who assaulted her and put irritant in her eyes. The dying declaration runs counter to the prosecution case against the appellant. Hence, she ought to be acquitted.

15. Mr. Bitasok contends PW 3, a co-passenger, identified the appellant as the person who had pushed the victim from the train. She was detained and arrested at the spot. Accordingly, her prayer for acquittal be rejected.

Analysis and findings:-

16. I have considered the rival submissions in light of the evidence on record. From the evidence on record particularly that of a co-passenger PW 3 and the medical officers PWs 9 and 10 it is clearly established that the victim had been pushed from a railway compartment at Joynagar Railway Station and had suffered severe injuries. Consequentially, she died.

17. Issue which falls for decision is did the appellant push the victim?

18. In this regard, PW 3 is the most vital witness. She was in the compartment when the incident occurred. She deposed Padmabati had been pushed by a lady whose name she did not know. After the incident the said lady was detained and handed over to police. PW 4 deposed she heard the matter from PW 3. As PW 3 was unaware of the name of the lady, she could

not report her name to PW 4. This does not improbabilise PW3's version. On the other hand, her version is corroborated by the appellant's detention at the place of occurrence. After detention, name of the appellant transpired and PW 5 recorded her name in the FIR. During trial PW 3 identified the appellant which corroborates her identification.

19. Ms. Mitra relied on the history of assault as narrated to PW10 by the patient wherein name of one co-passenger Durga transpired but not that of the petitioner. For better appreciation the history of assault as narrated is set out hereinbelow:-

"As per the statement of the Pt. she was frequently assaulted by some person co-passenger, Durga. On 10.5.17 she was assaulted sprinkled some irritant liquid on eyes by Durga and associates. She was pushed on the platform from running train. She added more, Durga sprinkled some irritant liquid on her eyes."

20. A scrutiny of the dying declaration would show petitioner stated that she was frequently assaulted by some persons including a co-passenger, named, Durga. On the date of the incident Durga sprinkled irritant in her eyes. Then she was pushed onto the platform from the running train. A dissection of the said statement would show on the fateful day one co-passenger named Durga and others harassed the victim. Durga sprinkled irritant in her eyes. Thereafter, someone pushed her from the train. Due to the attack the victim was incapacitated and naturally could not identify who had pushed her from the train. However, the incident was seen by a co-passenger, PW 3, who in no uncertain terms implicated the appellant as the person who had pushed the victim from the train. At that time PW 3 was unaware of the appellant's name and could not disclose it to PW 4. Immediately after the incident, the appellant was detained at the station and

handed over to police. At that stage, her name transpired and was recorded in the FIR. Under such circumstances, the dying declaration cannot be said to run counter to the prosecution case as narrated by the eye-witness, PW3.

Conclusion:-

21. Accordingly, I uphold the conviction and sentence of the appellant.
22. Appeal is dismissed. Connected application, if any, is also dismissed.
23. Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon her in terms of Section 428 of the Code of Criminal Procedure.
24. Let a copy of this judgment along with the trial court records be forthwith sent down to the trial court at once.
25. Photostat certified copy of this judgment, if applied for, shall be made available to the appellants upon completion of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)