

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. 576 of 2018
with
CRAN 2 of 2020 (Old CRAN 2388 of 2020)
with
CRAN 3 of 2024.

Sahabuddin Sheikh @
Sahabuddin Sk. & Anr.
Vs.
State of West Bengal

For the Appellant : Mr. Arnab Chatterjee, Advocate,
Ms. Dhanasree Biswas, Advocate,
Ms. Poulami Bose, Advocate.

For the State : Mr. Madhusudan Sur, Id. A.P.P.,
Mr. Manoranjan Mahata, Advocate.

Heard on : 10.4.2024, 23.4.2024, 29.4.2024
& 30.04.2024.

Judgment on : 30.4.2024.

Joymalya Bagchi, J. :-

1. Appellants have assailed the judgment and order dated 17.09.2018 and 18.09.2018 passed by the learned Additional Sessions Judge 3rd Court, Nadia, Krishnanagar in Sessions Trial No. 4 (6) 2018 arising out of Sessions Case No. 7 (3) 2011 convicting the appellants for commission of

offence punishable under Sections 302/34 of the Indian Penal Code and sentencing them to suffer imprisonment for life for the offence punishable under Sections 302/34 IPC and to suffer rigorous imprisonment for two years and to pay a fine of Rs. 20,000/- each, in default, to suffer rigorous imprisonment for two years each.

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 Gosai Sk by the appellants and others. Tota Sk, husband of Ayesa Bibi (PW 2) rushed to the spot. He resisted the miscreants. One of the miscreants Siraj Sk threw bomb. He fell down on the ground. Thereafter, the miscreants including the appellants struck him with a sharp cutting weapon. As a result he died. Police came to the spot.

3. 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 persons including the appellants. 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 as absconders. Appellants were declared as proclaimed offenders and trial commenced against other accused viz., Alam Sekh, Innat Sk. @ Innach and Ejarul Sekh. By judgment and order dated 27.04.2012 they were convicted under Sections 302/34 of the Indian Penal Code and sentenced to suffer life imprisonment. They

appealed against the impugned judgment and order before this Court being Criminal Appeal No.388 of 2012.

4. In 2018 the appellants were arrested and put on trial. Charges were framed against them under Sections 302/34 of the Indian Penal Code. In course of trial, prosecution examined 5 witnesses and exhibited a number of documents. With consent of parties evidence of SI, Saikat Banerjee, SI, Ismail Hossein, SI, Gouri Prasanna Bandhu and Lal Mohan Dutta recorded in the previous trial was adopted.

5. 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 had been registered by Raghu Sk's wife against the associates of the deceased Tota Sk.

6. After considering the evidence on record and the defence of the appellants, trial Judge by the impugned judgment dated 17.09.2018 and 18.09.2018 convicted and sentenced the appellants, as aforesaid.

Arguments:-

7. Mr. Chatterjee 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. In court PW 2 did not state she accompanied her husband to the spot. She was at her residence at Haridrapota and it takes not less than 40 minutes to reach the place of occurrence. Her son and daughter came to the spot later. PW 2 admitted she had not seen the incident with her own eyes. PW 3, father of the deceased stated villagers

informed him of the murder. 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.

8. Mr. Sur for the State submits PW 1, 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 2, 3 and 5. Manner of assault as depicted by these witnesses is corroborated by post mortem doctor PW 4.

Evidence on record:-

9. PW 1 (Aiasha Bibi) is the wife of the deceased. She stated incident occurred at around 1.30 to 2.00 PM in front of Bholadanga Primary School. Appellants and others were snatching money. Her husband protested. Thereupon, appellant No.1 hurled bomb at her husband. He fell down. All the accused including the appellants struck her husband with sharp cutting weapons. As a result, her husband died. She lodged written complaint. During cross-examination, she stated from their house one has to go to Haridrapota Primary School and thereafter Masjid More and then reach Bholadanga Primary School. It takes 40 minutes by foot from Haridrapota village to Masjid More. 10/15 minutes prior to the incident her husband had left their residence. Her sons and daughters came to the spot after some time. She narrated the incident to the police at the spot.

10. PW 2 (Alema Bibi) is the daughter of the deceased. She deposed her father raised protest against the accused. Thereupon, the accused threw bomb at his father and hit him with sharp cutting weapons. Apart from identifying appellant No. 2, she could not name other accused. During cross-examination, she admitted she had not seen the incident with her own eyes.

11. PW 3 (Id. Mohammad Seikh) is the father of the deceased. He stated his son had died due to hurling bombs. Apart from naming appellant No.1, he could not name others. During cross-examination, he stated he heard his son was murdered from villagers.

12. PW 5 (Alauddin Sk) is the son of the deceased. He stated an incident of snatching took place in front of Bholadanga Primary School. His father protested. Thereupon, Siraj Seikh threw bomb. Miscreants assaulted him with sharp cutting weapons. As a result, his father died. He proved the written complaint. During cross-examination, he stated he was a tailor by profession. On the date of incident he was at his house.

13. PW 4 (Dr. Ajit Kr. Biswas) is the post mortem doctor. He noted the following injuries:-

- “1. *Sharp cut injury on left temporal region of head starting from left ear extended down obliquely upto left lateral side of back of neck over left side of occipital region-measuring 8”x 4”bone deep;*
2. *Sharp cut injury on front left shoulder joint extended down obliquely upto the left side of xiphisternum measuring 16”x 8”x chest cavity deep cutting multiple ribs;*

3. *Sharp cut injury on left side of root of neck- 4"x 2" muscle deep;*
4. *Sharp cut injury on front of left arm on middle 1/3 transversely measuring 3"x 2"x muscle deep;*
5. *Sharp cut injury on front of right forearm obliquely measuring 3"x ½ "x muscle deep;*
6. *Fracture sternum on middle part;*
7. *Fracture ribs left side 1st to 8th rib;*
8. *Heart and lung punctured."*

He opined death was due to shock and haemorrhage resulting from above noted ante mortem and homicidal in nature. During cross-examination, he stated he did not find any burn or splint injuries on the dead body.

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 1, 2, 3 and 5.

15. Before one relies on the versions of the said witnesses it is necessary to test their versions on the anvil of broad probabilities to satisfy oneself whether the witnesses were at all present at the spot. Incident occurred in front of Bholadanga school. PWs 1, 2, 3 and 5 are the relations of the deceased Tota Sk. They are the residents of village Haridrapota. PW 1 admitted it takes 40 minutes by foot to Masjid More and therefrom one has to go to Bholadanga School.

16. In FIR PW 1 stated she had accompanied her husband to the spot. But in court she is silent on this score. I would have considered this as an accidental slip but for the fact that none of the inmates of the house corroborated the version of PW 1 in FIR that she had accompanied her husband to the spot. On the other hand, during cross-examination she stated the incident occurred 10/15 minutes after her husband left their residence. It takes 40 minutes by foot to reach Masjid More and from there one has to go to Bholadanga school. Considering the distance between the place of occurrence and her residence it would take PW 1 more than 40 minutes by foot to reach the spot from the time she heard about the incident and left for the place of occurrence. It may be reiterated, her version in FIR that she accompanied her husband is not supported by her in court or by other inmates of the house. It is nobody's case assault on the deceased stretched for more than 40 minutes. These circumstances render her presence at the spot improbable. In this backdrop, it is unlikely her husband would have reached the place of occurrence within 15 minutes. Her claim that she was at the spot at the relevant time is equally doubtful.

17. PW 2, the daughter during cross-examination admitted she had not seen the incident.

18. PW 3, father of the deceased did not support the prosecution case that PWs 1 and 2, namely, mother and daughter had gone to the place of occurrence along with his son. He stated during cross-examination he heard the incident of murder from villagers. He is a reported witness.

19. PW 5 is the son of the deceased. He claimed he had seen the incident. But neither his mother nor his sister spoke of his presence at the spot. In fact, during cross-examination he stated on the day of the incident he was at his house. This shows that presence of family members of the deceased at the time of occurrence who were residing at village Haridrapota which is not less than 40 minutes walking distance from the place of occurrence, i.e. Bholadanga school is doubtful.

20. 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.

21. On the other hand, defence probabalises a completely different picture leading to the death of Tota Sk. Evidence has come on record 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. This gives an impression that the witnesses did not make an honest disclosure of the circumstance leading to the death of Tota Sk.

22. 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.

23. These facts militate against the credibility of the eye-witnesses and cast doubt with regard to their presence at the place of occurrence itself.

24. It is also relevant to note that the appeal preferred against judgment and order dated 27.04.2012 against other accused viz., Alam

Sk, Innat Sk. @ Innach and Nazrul Islam Sk @ Najul Sk. has been allowed.

Conclusion:-

25. In the light of the aforesaid discussion, we acquit the appellants of the charges levelled against them. Conviction and sentence are set aside. Appellants, namely, Sahabuddin Sheikh @ Sahabuddin Sk. and Ibrahim Sk. shall be released from custody forthwith, if not wanted in 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.

26. Appeal is accordingly allowed. Connected applications, if any, stand disposed of.

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

28. 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.)