

**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. 397 of 2018
CRAN 1 of 2019
(Old CRAN 3900 of 2019)**

**Dhiren Hembram
-Vs-
State of West Bengal**

For the Appellant : Mr. Angshuman Chakraborty, Adv.

For the State : Mr. Saibal Bapuli, Ld. APP
Mr. Saryati Datta, Adv.
Mr. Soumya Basu Roy Chowdhuri, Adv.

Heard on : 11.02.2025

Judgment on : 11.02.2025

Joymalya Bagchi, J.:-

1. Appellant has assailed judgment and order dated 18.04.2018 and 30.05.2018 passed by the learned Additional Sessions Judge, Kalna, Burdwan in Sessions Trial No.13/13 arising out of Sessions Case No.16/2013 convicting him 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.5,000/-, in default, to suffer

simple imprisonment for six months for the offence punishable under Section 302 of the Indian Penal Code.

2. Nobody appears for the appellant. Mr. Angshuman Chakraborty is requested to represent the appellant. Member Secretary, West Bengal State Legal Services Authority shall regularize his appointment.

Prosecution Case :-

3. On 25.11.2012 at 07.30 PM one Nagi Hembram (PW 1), was accompanying her husband i.e. the deceased along with their minor son Biswajit Hembram (PW 4) to see the immersion procession of Jagadhatri idol. When they arrived near Narayani pond appellant attacked her husband Chatur Hembram with a *hasua* and struck him on the throat and neck. Thereafter, he fled away. Nagi Hembram (PW 1) cried out for help and local people came to the spot. Before her husband could be removed to hospital he died.

4. She lodged written complaint at Kalyani Police Station resulting in Kalna P.S. Case No. 525 dated 26.11.2012 under Section 302 IPC. During investigation appellant was arrested. Appellant made a disclosure statement which led to the recovery of *hasua* near the pond.

5. Charge sheet was filed against the appellant and charge was framed under Section 302 IPC. Appellant pleaded not guilty and claimed to be tried.

6. In course of trial prosecution examined 10 witnesses and exhibited a number of documents. In conclusion of trial, trial Judge by impugned judgment and order convicted and sentenced the appellant, as aforesaid.

Arguments at the Bar :-

7. Mr. Chakraborty contends the purported eye-witnesses i.e. PWs 1 and 4 are unreliable. PW 1's evidence is in contradiction to the FIR. She does not state her son was present at the place of occurrence. She is also silent with regard to the fact that she was accompanying her husband to see the immersion procession of Jagadhatri idol. PW 4 is a 10-year-old child and his presence is not corroborated by his mother PW 1. Motive of the crime has not been proved. Recovery of the offending weapon is not supported by the independent witnesses i.e. PWs 5, 6 and 8.

Analysis and findings :-

8. I have considered the evidence on record in light of the aforesaid submissions.

9. PWs 1 and 4 are the wife and minor son of the deceased Chatur Hembram. They claim to be eye-witnesses.

10. PW 1 (Nagi Hembram) deposed she was at a distance of 20 feet and had seen the incident with a torchlight. Appellant had killed her husband with a *hasua*. She lodged written complaint which was scribed by PW 3. She proved her signature on the written complaint. She is also a signatory to the post-mortem report. She admitted there is no extra-marital affair between the appellant's mother and her husband.

11. PW 4 (Biswajit Hembram) is her son. He was a student of class IV and aged about 10 years. Trial Judge put questions to him and being satisfied with regard to his competence to depose recorded his evidence. He stated his father had gone to answer nature's call beside a mango tree at

Narayani Pukur. Appellant assaulted his father on the neck. His mother tried to resist the accused.

12. Mr. Chakraborty vehemently questions the credibility of the aforesaid witness. He submits they are relations of the accused. Their presence at the place of occurrence is doubtful. Genesis of the incident as narrated in the FIR is at variance to their depositions in Court.

13. Mere relationship between the witness and the deceased is no ground to doubt the credibility of a truthful eye-witness. It is absurd to presume a relative would falsely accuse an innocent person and thereby screen the real offender. I am also not convinced by the submission that PW 1's evidence in Court is at variance to the FIR. In the FIR she stated she along with her minor son was accompanying her husband to see the immersion procession of Jagadhatri idol. When they reached the crossing of the road near Narayani and Belgar ponds appellant had attacked her husband. In Court she stated appellant had gone to urinate near a tree beside Narayani pond when the appellant attacked him. Failure to mention the fact that her husband was urinating at the time when the attack took place in the FIR is a minor omission which does not improbabilise her presence at the place of occurrence.

14. On the contrary, in cross-examination she stated she was 20 feet away from the spot when the incident occurred and had seen the incident with a torchlight. She also stated after the incident the appellant had ran away from the spot with *hasua* in hand. Her evidence is corroborated by PW

6, a neighbour. He deposed on the fateful night he saw PW 1 coming home from the fair shouting that the appellant had killed her husband.

15. Mr. Chakraborty submits PW 1 during cross-examination claimed no one else was at the spot. This improbabilises the presence of PW 4, her son at the place of occurrence.

16. I am of the opinion the said statement cannot be read in isolation but must be appreciated in context of the earlier question put to the witness. PW 1 was questioned whether many people were passing along the pathway beside Narayani Pukur or not. In reply, she stated one or two persons were passing the pathway but no one was present apart from herself at the time of occurrence. The aforesaid statement must be read contextually to mean no unknown passerby was present at the spot and does not refer to her son. In fact, presence of her son is clearly acknowledged in the FIR wherein PW 1 stated she and her minor son were accompanying her husband to see the immersion procession. PW 4's presence at the spot is clearly established in the FIR. Though he was a minor he saw the brutal attack on his father and unequivocally stated in Court appellant had attacked him with a *hasua* resulting in his death.

17. Presence of PWs 1 and 4 at the place of occurrence is proved beyond doubt. Their evidence is credible and finds corroboration from PW 6 who saw PW 1 returning from the fair crying that her husband had been killed by Dhiren. Their pristine and unalloyed ocular version with regard to the brutal assault resulting in death of the victim is also corroborated by the medical evidence on record.

18. Dr. Smkriti Ranjan Halder (PW 9) found the following injuries on the deceased:-

- “1. Clean cut injury over right side of neck, measuring 7 inch X 3 inch in length and depth.*
- 2. Injury over right side of neck 6 inch X 3 inch with separation of larynx and trachea.*
- 3. Injury back of neck 6 inch X 3 inch which cut cervical spine 2’ and 3’.*
- 4. Injury over right shoulder 2 inch X 1 inch clean cut.*
- 5. Clean cut injury over right mandible with separation of same.*
- 6. Clean cut injury over anterior chest wall 3 in numbers (i) 2 inch X 1 inch.”*

He also opined the injuries are homicidal in nature and may be caused by the use of *hasua*.

19. It has been argued that motive of crime has not been established. When evidence of eye-witnesses are clear, convincing and supported by medical evidence, absence of motive to commit crime would not be a ground to disbelieve prosecution case.

20. Finally, it is argued recovery of weapon of offence pursuant to appellant disclosure statement has not been proved. Investigating Officer (PW 10) deposed appellant during interrogation had made a disclosure statement (Exhibit 10). Accordingly, he took the appellant to the pond and on his identification recovered the *hasua* from the side of the pond in presence of witnesses. None of the independent witnesses, namely, PWs 5, 6 and 8 have not supported the recovery. They stated their signatures were taken on a blank paper by police. Recovery was from the side of a pond which is accessible to all. Even the *hasua* had not been sent for forensic examination.

21. Though I find force in the appellant's submission that recovery of weapon of offence is doubtful but in light of the convincing ocular evidence of two eye-witnesses corroborated by medical evidence of post-mortem doctor proving the fatal cut throat injuries, I am of the opinion prosecution case has been proved beyond doubt.

Conclusion:-

22. Conviction and sentence of the appellant are upheld.

23. Appeal is accordingly dismissed. Connected application, if any, stands disposed of.

24. Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon him in terms of Section 428 of the Code of Criminal Procedure, 1973 / Section 468 of BNSS , 2023.

25. Let a copy of this judgment along with the trial court records be forthwith sent down to the trial court at once.

26. 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.)