

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRA 433 of 2019

**Tapas Das @ Tapas Ranjan Das
Vs.
The State of West Bengal**

For the Appellant : Mr. Koustav Bagchi
Mr. Debayan Ghosh
Ms. Priti Kar

For the State : Mr. Rudradipta Nandy, Ld. APP
Ms. Sanjana Saha

Heard on : 11.02.2025

Judgment on : 28.02.2025

Dr. Ajoy Kumar Mukherjee , J.:

1. This appeal has been directed against judgment of conviction and order of sentence dated 28.06.2019 and 04.07.2019, respectively passed by Additional District & Sessions Judge-1, Fast Track Court, Barrackpore in Sessions Trial no. 2(6) 2013. By the order impugned learned Trial court sentenced the convict/appellant for rigorous imprisonment for a period of 5 years and also fine, for committing offence punishable under section 304 Part-II IPC.

2. In the FIR, defacto complainant who claimed himself as elder brother of the deceased victim, stated that owing to previous grudge, appellant Tapas Das assaulted the victim by a stick on his head and as a result of which, victim fall to the ground and thereafter he was again physically assaulted and for which victim sustained severe injuries on his nose, moth and in the chest. Local people rescued the victim and brought him to the hospital, where certain tests were prescribed by the doctor, which the complainant could not make due to want of money and for which the victim was lying bedridden in his house without treatment, where he died on 20.11.2011.

3. According to the complainant, victim passed away due to the assault caused by appellant Tapas Das. It is worthy to be mentioned that though defacto complainant in the FIR, narrated the incident stating that owing to previous grudge the appellant has assaulted the victim on his head by a stick and thereafter when he fall down, appellant again assaulted on his nose mouth and in the chest, but he admitted during cross examination, that he was not present at the place of occurrence, when the incident happened. He also admitted that he put his signature on a blank paper where subsequently written complaint was written. Not only that though said defacto complaint/elder brother of the victim stated in the complaint that it seems to him that victim passed away due to the infliction of assault caused by Sri Tapas Das but surprisingly when he faced the dock he stated that his brother Kamal died as because he was suffering from various ailments for a long period and without treatment. It further appears from his evidence that the incident had allegedly taken place on 15.11.2011 but

no FIR was lodged on that day. Victim Kamal died 5 days thereafter i.e. on 20.11.2011 at about 8 a.m. and the FIR was lodged on 20.11.2011 at 17:55 hrs. In the FIR the complainant clearly admitted that immediately after alleged occurrence, when the victim was brought to the hospital he was not treated as an indoor patient but was advised to undergo certain pathological tests which the FIR maker could not afford due to want of money and for which the victim was kept bed ridden at his residence, without any treatment

4. Be that as it may, fact remains that though the FIR maker in the FIR has stated that due to previous grudge appellant Tapas Das had assaulted the victim by a stick on his head and it seems that he passed away due to such assault but admittedly said FIR maker/PW1 had not witnessed any such incident. PW-2 Bipradas Chakraborty and PW3 Subimal Chakraborty are the brother and nephew of the deceased and both of them faced the dock but clearly stated that they cannot say how the victim died. PW4 who is a local shop owner and whose shop was lying closed had faced the dock but he also admitted that about four months after the incident, when he visited the area, he heard from one Maran Ghosh that appellant Tapas assaulted Kamal by hand, over some issue due to which Kamal sustained bleeding injury and said Maran and others took him to hospital. But in the cross examination he admitted that he does not have any personal knowledge of the incident. Even said PW-4 has not corroborated the prosecution case that appellant assaulted the victim with stick.

5. The person from whom PW-4 allegedly heard about the incident, had faced the dock and in his examination-in-chief, said Maran Ghosh

admitted that he was also not present at the time of occurrence and when he reached the spot he heard that accused gave a push to victim. He even could not say what injuries were sustained by victim but he only stated that after the incident he along with others took the victim to the hospital. In the cross examination he admitted that though he had stated that he has heard that Tapas had pushed the victim, but he could not say who has stated this to him. He also admitted that hospital authority only prescribed some medicine and thereafter the hospital authority had discharged him immediately.

6. PW-6 is a local tea-stall owner who clearly admitted that he does not have any personal knowledge about the incident and he has only heard that some incident took place in between the accused and Kamal Chakraborty but he neither knows the details of any such incident nor he knows how victim/Kamal Chakraborty died.

7. PW-7 is the doctor who treated victim on 15.11.2011, when victim was brought to the hospital after the alleged occurrence. She stated that she noted down that as per statement, the injury was caused due to pushing down the victim on the ground and on examination he found swelling and abrasion on the nose only and after giving primary treatment, he referred the patient to ENT department for further examination and in the cross examination, she made it specific that neither the victim nor the person who had brought him in the hospital has named anyone as to who had pushed him.

8. PW-8 is the autopsy surgeon in whose opinion *‘the death was due to the effect of the diseased condition of brain and anti mortem in nature, no*

injury was detected on examination. cerebral edema was found on desection, which may be caused due to third grade diffuse axonal injury, caused from trauma or from the infection as I found pus on both the lungs’.

9. The prosecution witness no. 9,10 and 11 are FIR recording Police officer, first investigating officer and second investigating officer respectively, who all stated that they do not have any personal information about the incident. While the accused was examined under section 313 Cr.P.C, he pleaded his innocence.

10. In the aforesaid background learned Trial Court overenthusiastically recorded that *“there is no denial of the facts that appellant herein at the relevant point of time playfully pushed Kamal Chakraborty”* and thereby he came to a definite finding that due to provocation, accused pushed him and caused victim’s injury which resulted the death of the victim.

11. The most surprising part appearing from the judgment is that, relying upon evidence of PW5 and on the basis of exhibited documents he came to the conclusion that the charge against the accused has been proved beyond reasonable doubt and he convicted the accused on the grounds i.e.

(a) accused person should have given clarification regarding the evidence of PW5 and the exhibited documents to the answer of question no.5 put to him during examination under section 313 Cr.P.C but he failed to discharge his duty to prove the fact

(b) the accused person is a 4th Dan Black Belt holder in karate and as such assault by any means by such a strong man upon a person may certainly cause danger to life

(c) though the accused taken the plea that victim died as he was suffering from various ailments but there is no proof of such sufferings and furthermore taking alcohol on regular basis is not an unnatural incident and cannot be the basis of allegation that the victim was suffering from various ailments.

12. Accordingly court below concluded that the incident actually started on the relevant time on 15.11.2011 when the injury was caused and the same continue till 20.11.2011, when victim died and as such the accused appellant caused the death of the victim and for which he was convicted under section 304 IPC.

13. Such finding of fact and conviction under section 304 IPC against the present appellant is absolutely perverse and has caused complete miscarriage of justice for the following reasons:-

- (a)** The provision under section 304 part II of I.P.C attracts 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. In the present case though in the FIR, it is alleged that the appellant had assaulted victim with a stick but it has not been corroborated and even the hearsay evidence of prosecution witnesses only disclosed that victim was pushed and he fall down on the ground. But admittedly no one had seen the appellant either to cause assault or to push the victim.
- (b)** There is no evidence that the death which occurred five days after the alleged incident has direct proximity with the alleged occurrence. Infact none of the prosecution witnesses had supported the F.I.R case by adducing direct evidence.
- (c)** The doctor who treated the deceased immediate after alleged occurrence only found swelling and abrasion on the nose and he also admitted that neither the victim nor his companion had named

the appellant. The autopsy surgeon stated that he found pus on both the lungs, which might have caused due to infection also.

(d) The basis of conviction that the appellant is 4th Dan Black Belt holder in karate and for which he might have pushed the victim and thereby victim sustained fatal injury is absolutely ridiculous.

(e) Though no prosecution witness has stated that he was an eye witness of the occurrence, but the court below with utmost zeal treated such witnesses as eye witness who according to him corroborated the FIR story. In fact, since the allegation in the FIR has not been established from FIR maker's evidence, the corroboration of the same by medical officer does not arise.

14. Considering the facts and circumstances of the case it is very much clear that the prosecution has miserably failed to prove charged against the appellant herein and as such the Appellant is liable to be acquitted.

15. CRA 433 of 2019 thus stands allowed.

16. The impugned judgment of conviction and order of sentence passed by the Court below in Sessions Trial case no. 2(6) 2013 dated 28.06.2019, and 04.07.2019 are hereby set aside. Appellant is set at liberty and released from his bail bond.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)