

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 573 of 2005

Ranjit Ghosh & Ors.

-Vs-

The State of West Bengal

For the Appellants : Mr. Ujjal Ray

For the State : Mr. Binay Panda
Mr. Subham Bhakat

Heard on : 04.04.2024, 20.06.2024, 31.07.2024

Judgment on : 08.05.2025

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 18.08.2005 passed by the Learned Additional District and Sessions Judge, 2nd Fast Track Court, Serampore, Hooghly in Session Case No.58 of 2005 arising out of Sessions Trial No.8 of 2005 convicting the appellants under Sections 304(Part-II)/34 of the Indian Penal Code and sentencing to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.2000/- in default to suffer rigorous imprisonment for 2 months and also convicting the appellants for commission of offence under Section 325 of the Indian Penal Code and sentencing to suffer rigorous imprisonment for 2 years and to pay a fine of Rs.1000/- in default to suffer rigorous imprisonment for 1 month and also sentencing to suffer rigorous imprisonment for 1

year and to pay a fine of Rs.1000/- in default to suffer 1½ months rigorous imprisonment for the offence committed under Section 342 of the Indian Penal Code and all the sentenced will run concurrently.

2. The prosecution case precisely stated on 17.08.99 at about 05:30 p.m., the complainant Sukumar Ghosh lodged a written complaint before the Chanditala P.S. that 975 of previous grudge accused Tarak Ghosh, Sambhunath Ghosh, Biswanath Ghosh and deceased Bhaja Ghosh tied up the father of complainant Sanatan Ghosh with a light post and started assaulting with iron rod, bamboo etc., as a result of which complainant's father became seriously injured and thereafter they took his father to the house of complainant in the evening at 06:00 p.m. The accused persons resisted the complainant when he tried to remove his father to hospital and threatened to assault and for that reason complainant could not take his father to hospital and then in the late night when his father was suffering from severe pain, he was removed to Chanditala Hospital with the help of neighbours and on the way complainant's father expired. The further allegation of the complaint was that when they took the victim to the hospital, the doctor declared him as dead and as they were busy with the treatment of the victim, some delay was held for lodged complaint and prayed for taking necessary action against the appellant persons.
3. On the basis of the complaint lodged by the de-facto complainant with the local Police Station, Chanditala Police Station Case No. 102/2008 dated 18.08.1999 under Sections 342/325/304/34 of the Indian Penal Code was initiated against the appellants and registered for investigation.

4. After completion of investigation, the Police submitted charge-sheet against the appellant to which they pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution examined as many as 13 witnesses and exhibited certain documents.
7. The Learned Advocate representing the appellants submitted as follows:-

- i. PW-1 de-facto complainant stated that the incident had been occurred on 17.08.1999 at about 05:30 p.m. But he did not take his father to his house whereas one Madhab Ghosh brought his father to his house at about 6 p.m. and it came to the evidence that he did not take his father then and there but took at 3 a.m. at night to the Hospital and on the way his father died.

From that part of evidence it revealed he was not at all in his house or locality in the afternoon on the date of occurrence and made false implication to the appellants out of previous grudge beside that he deposed on his cross-examination saying "*When I reached the P.O. my father was lying on the ground*". So from his version it came out that he had come to the P.O. after the incident was over because it came to the evidence deceased was tied with the lamp post PW-2 deposed on his cross-examination said that "*when I reached the P.O. Sanatan Ghosh was lying on the land and I then came back to my house*". So he is not eye-witness of the occurrence. Beside that he made contradictory statement with PW-3 who stated in his evidence both in his chief and cross examination that not the appellants, but one Bhoja assaulted the deceased who was tied with lamppost.

- ii. From the evidence of PW-4 it appeared that he had telephone service in his house, but he did not make any contact with Police Station informing the incident and identified one Khuti/Khota, marked as Mat Ext.-1 in Court. Besides that, the investigating Officer deposed that that witness did not make any statement regarding threat on him. From the evidence it appeared that PW-1 and PW-4 after due thought make the implication of the appellant subsequently.
- iii. PW-5 made different fact with regards to time of taking her injured father to Hospital i.e. at 9 to 10 p.m. She had been tutored and guided by the PW-1 and PW-4 in that case. It was hard to accept that seeing her father in dying condition she could not try with other member of her family to come to P.O. or inform Police over telephone or with some other messenger to inform Police to save her father.
- iv. PW-6 in her cross-examination deposed that she had not seen the incident and she had been tutored by PW-4 in that case. So her evidence could not be relied upon.
- v. PW-8 is a hearsay witness. PW-9 was not present at P.O.
- vi. PW-10 was a van rickshaw puller who brought the injured Sanatan Ghosh to the Hospital at the instruction of PW-1. He deposed that PW-1 told him in his examination-in-chief at the time of carrying his father in his van rickshaw that one Bhoja assault his father and in cross-examination also said that PW-1 said that the fighting between his father and one Bhoja was there and as a result his father died and excepting Bhoja no other persons assaulted his

father. So his evidence clearly shows that the F.I.R. had been lodged by passing of hours and after due thought implicating the appellants suppressing the fact of incidence. That fact was also supported by PW-3.

- vii. PW-12 is a medical officer who held P.M. Examination. He supported the suggestion of the defence that the person having drunk can die on fall and there was ample evidence that the deceased was drunk.
- viii. The Police has not seized the alleged lathi and iron rod in connection with the case. There were contradiction of the facts and other aspects of the incidence.

8. The Learned Advocate representing the State submitted that the prosecution was able to prove its case based on corroborative evidence of the prosecution witnesses supported by the medical evidence and the appeal shall be dismissed.

9. A circumspection of the prosecution witnesses revealed as follows:-

- i. PW-1, the son of the deceased, deposed that while attending a marriage ceremony at a neighbouring house, he heard a commotion and immediately rushed to the place of occurrence. Upon his arrival, he witnessed the appellants — Bhaja, Ranjit, Shambhunath, and Biswanath—tying up his father to a post and mercilessly assaulting him with lathis and iron rods. Despite attempts by the witnesses and local persons to intervene, they were prevented from doing so by the accused. The victim, gravely injured, was removed to Chanditala Hospital where he was declared dead. PW-1 identified his complaint as Exhibit-1 and the

inquest report prepared in his presence as Exhibit-2. During cross-examination, PW-1 reaffirmed that he had indeed witnessed the incident directly, having seen his father lying on the ground after being assaulted. He acknowledged a history of dispute between their family and the appellants, primarily over property matters, but maintained the veracity of his testimony. He further clarified that the police did not interrogate him following the registration of the complaint.

- ii. PW-2 corroborated the account of PW-1, asserting that from his adjacent residence, he too witnessed the appellants assaulting the victim, who had been tied to a lamp post. He tried to intervene but was threatened with dire consequences and retreated to his house in fear. In cross-examination, PW-2 revealed familial ties with PW-1, as Balai Pal was his elder brother, and Pannalal Pal, his cousin. He admitted of a strained relationship with the family of the appellants and was uncertain about any pending civil litigation between the parties. Nonetheless, he consistently affirmed the presence of the appellants at the scene and the assault upon the victim.
- iii. PW-3, while returning from a consultation with Dr. Kahna, saw Bhaja physically assaulting the victim as other appellants stood nearby. When questioned by the witness, Bhaja threatened him, compelling him to leave the place. He distinctly observed injury marks on the victim. In his cross-examination, PW-3 clarified that the appellants were the only individuals close to the victim at that time, though others were present at a distance. He admitted the

victim had a habit of consuming alcohol and was unaware of any prior altercation involving the victim and Bhaja. He also confirmed seeing sticks in the hands of the appellants.

- iv. PW-4 supported the previous witnesses, stating that upon hearing a commotion, he rushed to the scene and observed the victim tied to a light post and being assaulted with lathis and iron rods by the appellants. His attempt to save the victim was thwarted by threats from the accused, forcing him to flee. Later that night, accompanied by others including Sukumar Ghosh and Krishna, he helped transport the victim to Chanditala Hospital where he was declared deceased. PW-4 identified his signature on the inquest report (Exbt.-2/1), the seizure list of the rope (Exbt.-3), and confirmed that the rope with khuti produced in court was the one seized in his presence (Mat. Exbt.-I). During cross-examination, he stated that he was interrogated by police and reiterated that the appellants had issued threats to him as well.
- v. PW-5, the daughter of the victim, narrated that she was present at her father's residence when she heard the commotion. She too saw the appellants tying up and assaulting her father. Attempts to approach were met with threats, causing her to withdraw. Later, Madhav brought her father home and at midnight, he was taken to the hospital where he was declared dead. She disclosed strained relations between their family and the appellants stemming from familial disputes. Under cross-examination, she confirmed seeing her father tied to a post and stated that she had no prior discussion about the incident with others, denying any fabrication.

- vi. PW-6, who was working at the marriage ceremony, also testified that she saw the appellants assaulting the victim after he was tied to a post. Upon being threatened, she too fled the scene.
- vii. PW-7, a constable at Chanditala P.S., stated that as per the challan, he transported the victim's body to Serampore Walsh Hospital for post-mortem examination. He also deposited the victim's clothing with the Investigating Officer, who seized them under a seizure list marked as Exbt.-5 and Exbt.-5/1. However, during cross-examination, PW-7 admitted he had no personal knowledge of the incident and could not identify the seized clothing in court.
- viii. PW-8 and PW-9, although aware of the incident, were not eyewitnesses. PW-8 explicitly stated his lack of interest in the matter and did not enquire into the circumstances surrounding the victim's death. PW-9, while not present at the scene, deposed to having heard from locals about the appellants' involvement in the fatal assault. However, he could not identify those from whom he received such information.
- ix. PW-10, a van rickshaw puller, transported the victim to the hospital at the request of Sukumar Ghosh, who informed him that Bhaja had assaulted his father. He was accompanied by Krishna, Ganesh Pal, and Sukumar during this journey. The victim succumbed to his injuries at the hospital. In cross-examination, he clarified that only Bhaja was named by Sukumar as the assailant and that he was not aware of other accused being implicated at that moment.

- x. PW-11, the Sub-Inspector of Chanditala P.S., testified that he received the written complaint from Sukumar Ghosh and registered the case under Sections 342, 325, 304, and 34 IPC. The complaint and formal FIR were marked as Exbt.-1/1 and Exbt.-6 respectively. A U.D. Case No. 58/99 was also initiated. PW-11 had no personal knowledge of the facts of the case.
- xi. PW-12, the Medical Officer at Serampore Walsh Hospital, who conducted the post-mortem on the deceased, stated that he found multiple injuries including fractured ribs on both sides, lacerations over the left eyebrow, abrasions across the body, ruptured lungs, and pale and ruptured liver and spleen. He opined that the cause of death was hemorrhagic shock due to the injuries, all of which were ante-mortem in nature. He affirmed that such injuries could have resulted from assault with an iron rod. During cross-examination, he admitted to omissions in the report concerning the age and dimensions of the injuries and conceded that such injuries might also result from a fall on brickbats, whether in an inebriated or sober state. The presence of rigor mortis suggested that the death occurred recently and the body was not decomposed.
- xii. PW-13, the Investigating Officer, deposed that he prepared the inquest report (Exbt.-2/2), visited the place of occurrence and prepared a sketch map (Exbt.-8), seized the rope and bamboo splints (Exbt.-3/1), and sent the body for post-mortem (Exbt.-4/1). He also recorded witness statements under Section 161 Cr.P.C., made arrests, and submitted a charge-sheet (C.S. No.20 dated 19.03.2000) under Sections 342, 325, 304, and 34 IPC. The U.D.

case report was marked as Exbt.-9. In cross-examination, he noted inconsistencies regarding labelling and preservation of seized items, and could not recall specific details regarding the rope or whether a level was attached to it.

10. PW-13 prepared the inquest report marked as Exhibit 2/2 on visiting the place of occurrence and prepared a rough sketch map with index collectively marked as Exhibit 8. He has seized one rope with 4 knots and split bamboos through seizure-list marked as Exhibit 3/1. During his cross-examination PW-13 recounted to forgotten as to whether a label was attached to the rope as well as the person who had signed the label on the seized alamats. He did not record the statement of Sukumar Ghosh under Section 161 Cr.P.C. The said Sukumar Ghosh i.e. PW-1 being the complainant of the instant case did not state that Vhaja and Ranjit were equipped with 'lathi' and Sambhu and Biswanath were armed with an iron rod. He further did not mention during investigation that he attended a marriage near the place of occurrence at the time of the alleged incident which was similarly not divulged by Sudham Pal and Ganesh Pal. The inquest report did mention the deceased victim to have been found inebriated. PW-13 did not mention of an electric post installed at the place of occurrence. The absence of electric post at the place of occurrence which had not been categorically stated by PW-13 either in the inquest report or the rough sketch map did not support the prosecution case in terms of the deceased victim to have been tied to the electric post and thereafter assaulted.

11. PW-1 in examination-in-chief stated the victim to have been tied with a rope to a post and thereafter assaulted with 'lathi' and iron rod. Apart

from mentioning what Vhaja and Ranjit possessed a 'lathi' and Sambhunath and Biswanath carried an iron rod respectively. He did not describe as to who in what manner assaulted his father. It was further deposed that the brother of Vajha removed the rope with which his father was tied and was escorted to their house. PW-1 further stated at one instance that the accused persons fled after witnessing PW-1, Sudham Pal, Panchanan Pal and others at the place of occurrence. However, contradicted himself stating that the accused persons did not permit them to go to the hospital. If the accused persons are already fled from the place of occurrence at the site of a gathering in the locality they could not have garnered to reassemble further in order to prevent the victim from being transmitted to the hospital, to their own detriment and peril. It was further submitted that Shital Ghosh, Krishna Ghosh and Ganesh Pal accompanied him in his way along with his injured father.

12. The complainant further stated that on the next morning at 6.30 a.m. they were resisted on their way to report to the police station by the accused persons. During cross-examination PW-1 stated on reaching the place of occurrence he witnessed his father being assaulted by the accused person who lay on the ground contrary to his earlier claim that his father was tied to an electric post with a rope and had been assaulted. PW-1 admitted that his father (since deceased) was an alcoholic who under the influence of alcohol blabbered filthy languages being intoxicated. He further recounted that his father on an earlier occasion had assaulted Vajha Ghosh with 'boti', as a result of which he sustained severe injuries on his hand and PW-1 paid Rs. 1000/- for his treatment in consequence of a settlement between the parties.

13. On another occasions the deceased victim assaulted one Tarak Ghosh with a 'bakari' and he was occasionally and frequently throbbed due to notoriety of his father. He admitted of a long term dispute between themselves and the accused persons over property. He further stated to have deposed before the Court that the accused persons were armed with 'lathi' and iron rod which had not been stated in the complaint.
14. PW-2, Sudham Pal deposed out of fear that he could not say Sanatan Ghosh who was tied to a electric post with a nylon rope and mostly reiterated the evidence of PW-1.
15. PW-3 recounted to have noticed mark of injury in the hands of the deceased. PW-3 stated to have seen sticks in the hands of accused persons contrary to 'lathi' and iron rod as mentioned by PW-1 and PW-2.
16. PW-4 conceded to the fact of the victim to have been tied to an electric post and thereafter assaulted.
17. PW-5 repeated the narrative of PW-1.
18. PW-6 recounted to have fled from the place of occurrence being threatened by the accused persons. He admitted the victim to have assaulted one Bibha Ghosh. He too affirmed the deceased victim to be an alcoholic.
19. PW-8, PW-9 refrained to depose substantially, stated to have heard about the occurrence of the incident from the local people.
20. The evidence of PW-10 is based on hearsay.
21. PW-11 registered the U.D. case thereafter received written complaint and instituted the FIR case being Chanditala PS Case No. 102 dated 18.08.1999.

22. PW-12 deposed that on examination he found fracture of ribs both sides, lacerated injury over left eye brow, multiple abrasion all over the full body, hyde body intact, both lungs were pale and raptured, liver and spleen were also pale and raptured. As per his opinion, the cause of death was due to shock of hemorrhage, due to injury stated above and ante-mortem in nature. The post-mortem report was filled up and signed by him, which was marked as Exhibit 7. The type of injury might be caused due to assault by iron rod and that might cause death of the victim.
23. Though the medical report indicated injuries sustained by the deceased victim who was intoxicated at the time of occurrence which had been the consequence of being assaulted. However, there had been serious inconsistencies in the deposition of PW-1, PW-2, PW-3, PW-4 and PW-5. The offending weapons had not been recovered. The presence of the appellants at the spot of incident and their overt act had not been described. The age-old dispute between the parties cannot obliterate the possibility of false implications with embellishment in statements of the complainant and other prosecution witnesses who had not stated the appellants to have been armed with 'lathi' and iron rod to the police, however, testified the same before the Court for the first time. The victim being intoxicated at the relevant time had been corroborated through ocular as well as the medical report. The possibility of a provocation and an incident of assault resulting in the injury sustained by the victim and his subsequent death cannot be ruled out. However, the inconsistencies and contradictions in the evidence of the prosecution witnesses cannot attribute criminality to the appellants in entirety in absence of an electric post at the place of occurrence. The resistances offered by them at

different times after having fled from the place of occurrence are vague and unreliable.

24. Section 304 Part II of the Indian Penal Code applies when the act of the accused persons caused death, there was no intention to cause death primarily. However, the accused persons possessed knowledge that such an act on his part was likely to cause death. In the instant case, due to contradictions in the testimonies of the prosecution witnesses stating that the accused persons had assaulted the victim, tying him to an electric post. The existence of the same being ambiguous and evasive had been inconsistent and contrary to the other versions of the prosecution evidence where the victim was found lying on the ground and being assaulted. The medical evidence though linked the assault leading to the consequential death of the victim, however, it also indicated the victim to have been inebriated which might raise a probability of entering into a brawl with the miscreants resulting in his death whose over acts had not been defined or described specifically. The intention and the motive leading to such assault by the appellants could not be established by the prosecution. Further, the prosecution failed to elicit the possession of knowledge by the appellants for inflicting such assault which would imperatively and unconditionally lead to the death of the victim. The prosecution failed to prove the imminent reaction of such assault as a forceable death by the appellants acquiring knowledge of the same without probabilities.

25. In **Jagriti Devi vs. State of Himachal Pradesh**¹ the Court held: “Where there was no intention or knowledge that the act was likely to cause death, the conviction under Section 304 Part II could not be sustained.”
26. In **Sarabjit Singh vs. State of Punjab**², it was observed that: “scuffle led to the victim falling and dying due to head injury.” The Court held that the act was done with knowledge that it could cause death and accordingly acquittal was upheld.
27. The conviction under Section 304 Part II cannot be sustained in absence of compelling evidence to show that the accused persons had requisite knowledge that their act was likely to cause death. When the causation is interpreted or the act is spontaneous or lacking mens rea, the Court is duty bound to give the benefit of doubt to the accused persons. The presumption of innocence must not be displaced likely where the fundamental elements of the offence remained unproven.
28. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and as such the instant criminal appeal being CRA 573 of 2005 is allowed.
29. Under such facts and circumstances, the judgment and order dated 18.08.2005 passed by the Learned Additional District and Sessions Judge, 2nd Fast Track Court, Serampore, Hooghly in Session Case No.58 of 2005 arising out of Sessions Trial No.8 of 2005 is set aside.
30. Accordingly, the instant criminal appeal being CRA 573 of 2005 stands disposed of.
31. There is no order as to costs.

¹ (2009) 14 SCC 771

² (2009) 16 SCC 46

32. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
33. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)