

07.01.2025
Court No.13
Item No.26
pk

CRA 396 of 2014

Susanta Das
Vs.
State of West Bengal

Mr. Pratip Kumar Chatterjee,
Mr. Asish Deb,
Mr. Ranjit Mndal,
Ms. Maitreyee Chatterjee
... for the appellant.

Mr. Rudradipta Nandy
Ms. Sanjana Saha
... for the State.

1. The instant appeal is directed against the judgment and order of conviction and sentence dated 28.04.2014 and 29.04.2014 passed by the learned Additional District and Sessions Judge, Fast Track Court, Rampurhat in Sessions Trial No. 5(02) of 2012 arising out of Sessions Case No. 160 of 2011.

2. By the said judgment, convicted the appellant u/s 302/326/307 of IPC and sentenced to suffer rigorous imprisonment (R.I.) for life and also to pay a fine of Rs. 5,000/- i.d. to suffer R.I. for a period of further one (1) year for committing the offence punishable u/s 302 of IPC. The appellant also sentenced to suffer rigorous imprisonment (R.I.) for ten (10) years and also to pay a fine of Rs. 3,000/- i.d. to suffer R.I. for a period of further 6 months, for committing the offence punishable u/s 326 of IPC. The

appellant further sentenced to suffer rigorous imprisonment (R.I.) for ten (10) years and also to pay a fine of Rs. 3,000/- i.d. to suffer R.I. for a period of further 6 months, for committing the offence punishable u/s 307 of IPC. All the sentences shall run concurrently.

3. The brief facts relevant to the case are that on 05.04.2011, around 8 p.m. the appellant attacked Tapan Bagdi with a Tangi (a sharp cutting instrument used in agriculture) and also upon his father Haradhan Bagdi when he came to save his son, Tapan Bagdi with the same Tangi.

4. Immediately prior thereto, there was an altercation between the appellant and Tapan Bagdi. The reason for the altercation was that while the wife of Tapan, Probita (PW 7) was relieving herself at a nearby lake, Tapan asked the appellant not to proceed any further in that direction. A heated altercation occurred thereafter. PW7 and Tapan were thereafter returning to their house on the other side of the road. Susanta also left for his own house to fetch a Tangi and his wife. He found Tapan and his wife were on the moram road. The appellant and his wife Latika attacked Tapan. Latika was encouraging and instigating the appellant to kill Tapan.

5. At the relevant point of time, Tapan's father, Haradhan (deceased victim), was chatting with PW2 Ashish, son of Tapan near moram road. Haradhan upon hearing the sound

of Tapan rushed to the spot where appellant was attacking his son, Tapan. He intervened. Hearing the aforesaid commotion, PW 4, Shibnath Bagdi, resident of the village also rushed out.

6. The appellant inflicted two wounds of 1 and ½ inches size with Tangi on both Tapan and his father Haradhan. Both victim collapsed on the road. The appellant and his wife fled from the scene. Nearby villagers came to the spot after hearing the commotion and immediately removed Tapan and Haradhan to the local BPSC.

7. At the place of occurrence, PW-7 and PW-4 are stated to have splashed the faces of the two injured with water. Tapan Bagdi, who gained his consciousness, is stated to have informed PW-3, PW-4 and PW-5 about the assault by the appellant on him.

8. After being given initial treatment by Doctor (PW 12) at the local BPHC they were shifted to Suri Sadar Hospital for better treatment. At the BPHC both Haradhan and Tapan informed PW 12 that they were assaulted by Tangi.

9. Haradhan Bagdi died on the next day of the incident at Suri Sadar Hospital. The complainant Jhantu Bagdi was also the son of the deceased Haradhan Bagdi. Formal FIR No. 88 of 2011 dated 5th April, 2011 was registered by the Mayureswar Police Station under Sections 326, 307 and 34 of the Indian Penal Code. The charge-sheet was, however, filed

under Sections 326, 307, 302 and 34 of the Indian Penal Code.

10. The eyewitnesses to the incident were, however, PW-2, Ashis Bagdi, son of Tapan Bagdi and PW-6, Tapan Bagdi himself and PW-7, Prabita Bagdi, wife of Tapan Bagdi.

11. PW-8 conducted the inquest. PW-10 was the first Investigating Officer of the case, who seized the offending weapon and recorded the statements of the witnesses for the prosecution under Section 161. PW-11 was the Post Mortem Doctor.

12. The Trial Court, having considered the entire evidence on record, has convicted the appellant, Susanta Das under Sections 326, 307, 302 of the Indian Penal Code and sentenced as aforesaid. The other accused, namely, Latika Das was acquitted since there was no common intention found with her husband in perpetrating the offence.

13. The appellant, namely, Susanta Das sentenced to suffer rigorous imprisonment (R.I.) for life and also to pay a fine of Rs. 5,000/- i.d. to suffer R.I. for a period of further one (1) year for committing the offence punishable u/s 302 of IPC. The appellant also sentenced to suffer rigorous imprisonment (R.I.) for ten (10) years and also to pay a fine of Rs. 3,000/- i.d. to suffer R.I. for a period of further 6 months, for committing the offence punishable u/s 326 of IPC. The appellant further sentenced to suffer rigorous imprisonment

(R.I.) for ten (10) years and also to pay a fine of Rs. 3,000/- i.d. to suffer R.I. for a period of further 6 months, for committing the offence punishable u/s 307 of IPC. All the sentences shall run concurrently.

14. This Court has carefully considered the evidence available on record. What is clear and explicit from the chain of events and the evidences that has come on record is that the appellant had no intention of causing any harm or inflicting any injury on Haradhan Bagdi. Haradhan was inflicted with the blow by the Tangi as he intervened to save his son. Tapan, who was the primary target of the appellant. Had Haradhan Bagdi not been there to intervene to save his son, he would not have sustained any injury much less suffer any serious consequence therefor.

15. The attack on Tapan Bagdi cannot also come within the four corners of Section 302 of the Indian Penal Code in view of the Explanation No.IV to Section 300 of the Indian Penal Code. More explicitly and directly it appears to this Court that the appellant attacked Tapan Bagdi due to their altercation. As already stated hereinabove, the attack on Haradhan Bagdi was not premeditated.

16. It is only after the heated altercation with Tapan Bagdi that the appellant went to his house, fetched the Tangi and went on to attack Tapan Bagdi and/or his wife. Tapan Bagdi may have suffered grievous injury but the Haradhan's death

and injury were purely incidental to the situation. There was also very little cooling off period between the first altercation and the second altercation where the grievous injuries were inflicted and sustained. It cannot, therefore, be ruled out that the incident occurred in the heat of the moment.

17. In view of the above, this Court is of the view that the impugned judgment of conviction and sentence passed by the learned Additional District & Sessions Judge, Fast Track Court, Birbhum at Rampurhat in Sessions Trial No. 05(02)12 arising out of Sessions Case No. 160 of 2011 is required to be modified. The conviction under Section 302 of the Indian Penal Code cannot be sustained in law. The appellant can at best be convicted under the second part of Section 304 of the Indian Penal Code.

18. The conviction of the appellant under Sections 326 and 307 of the Indian Penal Code are not disturbed as this Court upholds the findings of the Trial Court. Each of the sentences were to run concurrently.

19. Since the appellant has served his sentence for a period of ten years as ordered hereinabove, the Superintendent, Berhampore Correctional Home, Murshidabad after due verification and realizing fine imposed under Section 326 and 307 from the appellant shall release him after complying with all the requisite formalities.

20. The release is subject to the appellant not being wanted in any other case.

21. Bail bond of the appellant, Susanta Das shall be discharged after six months in terms of Section 437A of CrPC corresponding to Section 481 of the BNSS, 2023.

22. Let a copy of this judgment and Trial Court Records be sent down to the Court below for information.

23. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)