

13.03.2025
Court No.13
Item No. 20
Sudipta/AP/sp

C.R.A. 617 of 2011

Arun Sarkar
Vs.
The State of West Bengal & Ors.

Mr. Partha Sarathi Bhattacharyya,
Ms. Sukla Das Chandra,
Ms. Swarnale saha.

... for the appellant.

Mr. Debasish Ray, Ld. P.P.,
Mr. Partha Pratim Das,
Ms. Sonali Das,
Ms. Chandreyi Dutta.

..for the State

1. The instant appeal is directed against judgment and order of conviction dated 21st September, 2011 and 22nd September, 2011, passed by the learned Additional Sessions Judge, Fast Track Court, Sadar, Cooch Behar in Sessions Trial No. 8(9) 10 arising out of Sessions Case No. 356 of 2009. The appellant was convicted under Section 302 of the IPC for life. The facts relevant to the case are that the appellant was married to one Jyotsna Sarkar (deceased) about 10-11 years ago prior to the date of occurrence.
2. The marriage was turbulent. The appellant and deceased had two daughters, namely, Jayanti Sarkar (PW 2) and Rakhi Sarkar (PW 3).
3. Prior to the date of occurrence, the deceased had lodged a complaint that was registered as F.I.R. under Section 498A of the IPC. The appellant was in custody for about a month.

4. Although one of the witnesses has stated that the appellant was acquitted in the said proceeding, there was no clear evidence to that effect before this Court.
5. After release from custody, the appellant started to reside with the deceased and two daughters. There was peace for a few days. The incident occurred within two weeks after the appellant was released from custody.
6. PW 2 and PW 3, daughters of the appellant, had stated that on the fateful night there was another quarrel between the appellant and the deceased. The appellant assaulted his wife with an axe, five times on the head, neck, back and other parts of her body. The victim died immediately at the spot.
7. The daughters namely PW-2, Joyanti Sarkar and PW-3, Rakhi Sarkar, were present at the place and time of occurrence and witnessed the incident. The appellant fled from the place of occurrence after the incident.
8. On hearing the cries and wails of PW-2 and PW-3, neighbors PW-4, PW-5, PW-6, PW-7 and PW-11 immediately rushed to the spot. They found the victim lying on the floor in a pool of blood. They were informed by PW-2 and PW-3 that the appellant assaulted his wife with an axe a number of times and fled away. The victim was found by the said neighbours, with blood all around her.
9. PW-1, Basana Mallick, lodged a complaint scribed by PW-11, Biswanath Sarkar, on the next day of the incident i.e. 4th September, 2009.

10. The police arrived at on the next day. Investigation was conducted by PW-12, SI Bidyut Kumar Roy. Originally U.D. Case No.213 of 2009 was started that was converted to a formal FIR upon receipt of complaint from PW-1. The FIR was registered as Kotwali Police Station Case No.659 of 2009 dated 4th September, 2009 under Sections 302 and 109 of the Indian Penal Code. Inquest was conducted and the body of the deceased was sent for post mortem.
11. PW-10, Dr. Amal Basak was the post mortem doctor. He noted five several injuries on the body of the deceased.
12. Charge sheet was filed after investigation. The Trial started after framing of charges against the appellant.
13. PW-1 was the mother of the deceased and mother-in-law of the appellant. She stated that relations between her daughter and the appellant was strained. She confirmed that a case was registered on the complaint of the deceased under Section 498A of the Indian Penal Code and the appellant was in custody for a month. The incident occurred a fortnight after the release of the appellant from the custody and while he was on bail.
14. The PW-1, Basana Mallick came to the place of occurrence after being informed by PW-8, Keshab Roy, on his motorbike. Her house was two miles away from the house of the deceased. She stated that immediately upon arriving at the place of occurrence PW-1 found her daughter lying on the floor in a pool of blood. She was informed by PW-2 and PW-3 that the appellant assaulted the

victim with an axe several times and killed her. She found injury marks on the deceased on head, shoulder, neck and back.

15. On the next day she filed a complaint scribed by PW-11, Biswanath Sarkar, who was a neighbor. She stated that after the incident she brought her two grandchildren PW-2 and PW-3 to her own house to take care of them. She herself was a daily labourer and for the upkeep and feeding the children she sold the house of the deceased and the appellant and the adjoining fruit bearing trees and shrubs and a pump set. Her evidence could not be shaken in the cross-examination.

16. PW-2 was Jayanti Sarkar, daughter of the deceased. She was 11 years old at the time of deposition in the trial. Learned counsel for the appellant argued that insufficient and vague questions were put by the Trial Judge to assess the ability of PW-2 to depose in evidence. Her evidence, therefore, should not be taken into consideration by this Court.

17. This Court has in three earlier decisions had elaborated the manner by which ability of a child witness ought to be tested. This Court, however, finds the questions put by the Trial Judge to be relevant, while it is true that more questions could have been put to test the mental capacity of a 11 year-old witness, this Court is satisfied with the finding of the Trial Judge that PW-2 was giving rational answers. This Court relies upon the assessment of the demeanour of PW-2, by the Trial Judge, who is, in fact, best placed to assess the capacity of a child witness.

18. PW-2 despite identifying the presence of her father in Court, refused to look at him in disgust. This ought to have indicated that the incident was clear and fresh in her mind and the dislike and hatred towards her father continued for such reason. She clearly deposed that her mother, the deceased, was chopped with an axe by her father. She also deposed that relations between her mother and father are not good. She stated that her father tortured her mother and assaulted her on repeated occasions. On the date of incident, she deposed that she and her little sister were present at the place of occurrence and had seen the appellant strike five times on their mother.

19. While it is true that a child may not be recollect the exact number of strikes made by the appellant on the victim. The exactness and number of strikes matching with the post mortem doctor's report could be deemed as partially tutored in the facts and circumstances of the case. This Court is unable to discard the evidence of PW-2, since presence of PW-2 and PW-3 at the place and time of occurrence have been corroborated by PW-4, PW-5, PW-6, PW-7 and PW-11.

20. She further deposed that she and her sister started crying and shouting after the incident when their neighbours arrived and later on PW-1 also arrived at the place of occurrence. She also confirmed that she had put seven signatures on her statement under Section 164 of the Code of Criminal Procedure before a Court (Magistrate). She confirmed that her grandmother was an agricultural labourer and provided her and her little sister with

all maintenance. Her evidence could not be disturbed or shaken in the cross-examination.

21. PW-3, Rakhi Sarkar, is the second daughter of the deceased. She was six years old at the time when she was deposing in Court. The answers of PW-3 indicate that she was mentally alert and was clearly aware of what she was exactly doing. She also understood the object and purpose in presence of Court. She deposed that PW-1 was maternal grandmother. PW-2 was her elder sister. Her mother had died about a year ago. She identified her father in Court. She stated that her father chopped and killed her mother with an axe. She clearly indicated that the father giving one strike on the mother's head, one on the neck, two on the back and one on her hand. She and her elder sister were present when their mother was killed.

22. After the strikes, the mother fell down in a pool of blood and died instantly. Upon hue and cry being raised by her and her older sister, neighbours and grandmother and grandfather were arrived. The incident was narrated by her to her grandfather, grandmother and neighbours. She stated that the police came and recorded her statement. She thereafter further confirmed that she put six signatures on her statement under Section 164 of the Code of Criminal Procedure. She identified her signatures.

23. She clearly stated that she did not depose in Court on the basis of instructions of her grandmother. She confirmed that she had stated what she had deposed earlier before the police and the Magistrate.

24. PW-5, Mukti Das, was a neighbour of the deceased and wife of PW-6, Abani Das. They lived next door to the victim. She deposed that she knew the deceased as well as the appellant and their two daughters. She deposed that the appellant was in custody for about a month in connection with proceedings under Section 498 of the Indian Penal Code. On the fateful day, two weeks after release of the appellant from the custody, PW-5 woke up upon hearing hues and cries from PW-2 and PW-3. She along with her husband went to the house of the deceased and found the victim lying in a pool of blood and the daughters of the deceased crying. Upon asking the daughters of the victim, she was informed that their father had chopped the mother with an axe and killed her. Many other neighbours assembled in the house thereafter. She confirmed that the police interrogated her and recorded her statement.

25. There was a full moon in that night. She confirmed that upon her arrival being the first person to arrive at the place of occurrence, nobody except PW-2 and PW-3 were in the place of occurrence. She deposed that she was shaken and disturbed after seeing the deceased lying in a pool of blood.

26. PW-6, Abani Das was a farmer and husband of PW-5. He deposed on the same lines as that of PW-5 and registered the same. He only confirmed that he was on the verge of losing his senses after seeing the deceased at the place and time of occurrence.

27. PW-7, Biren Adhikary, was another person, who was a farmer. His wife was the local Gram Panchayat member. He came to

know of the incident from PW-4. He confirmed the entire incident and deposed similar to that of PW-4, PW-5 and PW-1.

28. He confirmed that on the date and time of incident about 25 to 30 neighbours and villagers gathered at the place of occurrence including PW-5 and PW-6, Keshab Roy, Biswanath Sarkar, Biswanath Biswas and others. He denied that there was any political rivalry between himself and the appellant.

29. PW-8, Keshab Roy, was a local Gram Panchayat member. He brought PW-1 to the place of occurrence immediately upon coming to know of the incident over the telephone in the middle of the night on 4th and 5th September, 2009. He confirmed what he saw at the place of occurrence and as narrated by PW-4, PW-5, PW-6 and PW-7.

30. PW-9 was the Magistrate, who recorded the confessional statement of the appellant. She stated that the appellant gave such statement voluntarily. The statement was read out to him and he put his signature voluntarily on such statement. The confessional statement has been marked as Exhibit 5.

31. PW-10, Dr. Amal Basak, was the post mortem doctor, who found the following injuries on the body of the victim:-

- “1. One elliptical sharp cut wound at the back of neck measuring 2½” x 1” x 1½”. The wound is seen cutting up the cervical vertebra.
2. One oblique elliptical sharp cut wound seen on the left side of neck measuring 2½” x 1½” x 2”. The wound has cut into the great vessels of the neck in left side.
3. One similar sharp cut wound measuring 2½” x 1” x 1” seen over left shoulder close to No.2 injury.

4. One sharp cut wound seen at the middle of the back of chest in the horizontal plane measuring 2½" x 1½" x 1½". The wound has cut into the dorsal vertebra.

5. One sharp cut would seen on the middle of the skull with depressed fracture of the skull bone exposing the brain matter.

These sorts of injuries may occur due to strike by axe."

32. PW-11 was another neighbour and scribe of the complaint. He, however, stated that he came to the place of occurrence after hearing the cries of PW-2 and PW-3. He narrated what he found exactly on the same lines as PW-4 to PW-8. His evidence could not be shaken in cross-examination. He confirmed that his statement was recorded by the police under Section 161 of the Cr. P.C.

33. PW-12 was the Investigating Officer who narrated the entire investigation conducted upto the time of filing of the charge sheet. In examination under Section 313 Cr. P.C., the appellant confirmed that he was in custody before the date of incident for a period of one month in connection with a proceeding under Section 498A of the IPC. He also confirmed having recorded a confessional statement before the Judicial Magistrate under Section 164 of the Cr. P.C. against question no. 25. He, however, stated that the appellant guilty of offence under Section 302 of the IPC.

34. This Court is in complete agreement with the findings of the learned Trial Judge. The evidence of PW-2 and PW-3, albeit child witnesses, cannot be discarded as has been rightly accepted by the Trial Court. The learned Trial Judge was in the best position to ascertain the demeanour and capacity of PW-2 and PW-3.

Their presence at the place of occurrence was confirmed by the PW-4 who was the first to arrive at the place of occurrence after the incident. The evidence deposed by PW-2 and PW-3 is duly corroborated by PW-4, PW-5, PW-6, PW-7, PW-8 and PW-11. They confirmed in course of evidence that PW-2 and PW-3 had informed them upon their arrival at the place of occurrence that the appellant, inflicted five blows on the body of the victim whereupon she fell down and died instantaneously. All persons who arrived at the place of occurrence have confirmed the same.

35. It is true that the admission by the appellant of recording statement under Section 164 of the Cr. P.C., in course of examination under Section 313 of the Cr. P.C. cannot be used against him. The factum of the statement having been made and confirmed has been independently proved by PW-9 who was the Magistrate before whom the statement was recorded.

36. Even if the appellant's confession is ignored by this Court, the evidence of PW-2 and PW-3 are conclusive proof of the ingredients of Section 302 of the IPC committed by the appellant. The statement of PW-2 and PW-3 are duly corroborated by PW-4, PW-5, PW-6, PW-7, PW-8 and PW-11.

37. For reasons stated hereinabove, the impugned judgment calls for absolutely no interference whatsoever.

38. CRA 617 of 2011 fails and is hereby dismissed.

39. Consequently, all connected pending applications, if any, are also dismissed.

40. Let the Trial Court Records and a copy of this judgment be sent back to the court below.

41. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)