

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

Present:

**The Hon'ble Justice Debangsu Basak
And**

The Hon'ble Justice Md. Shabbar Rashidi

**CRA 698 of 2019
with
IA No.: CRAN 2 of 2024**

**Bapi @ Batul Das
Vs.
State of West Bengal**

For the Appellant : Mr. Arkaprabho Roy, Advocate
Mr. Soujanya Pattanayak, Advocate

For the State : Ms. Zareen N. Khan, Advocate
Mr. Sandip Chakraborty, Advocate
Mr. Asif Dewan, Advocate

Heard & Judgment on : May 8, 2025

MD. SHABBAR RASHIDI, J.:-

1. Appeal is directed against the judgment dated August 8, 2017 and order of sentence dated August 9, 2017 passed by learned 3rd Additional Sessions Judge, Bankura in connection with Sessions Trial No.01(12)2016.
2. By the impugned judgment of conviction, the appellant was convicted under Section 302 of the Indian Penal Code and he was sentenced to imprisonment for life with fine of Rs.20,000/-. In

default of payment of fine, the convict/appellant was to undergo further imprisonment for a period of two years.

3. One Baban Das lodged a written complaint with Bankura Police Station on May 9, 2016 stating, *inter alia*, that on May 8, 2016 his father, the appellant, inserted a 'vojali' into the belly of his mother, covering the pillow on her face while she was sleeping. Heavy bleeding occurred from the belly of his mother. He took his mother to Gobindanagar Hospital for treatment. She was admitted and thereafter she was declared dead. On the basis of such written complaint, Bankura P.S. Case No.119/16 dated May 9, 2016 under Section 302 of the Indian Penal Code was started against the appellant. The police took up the investigation and on completion of investigation submitted charge sheet under Section 302 of the Indian Penal Code against the appellant. Accordingly, on the basis of materials in the CD, charge under Section 302 of the Indian Penal Code was framed against the appellant on December 7, 2016. The appellant pleaded not guilty to the charges and claimed to be tried.
4. It has been submitted on behalf of the learned Advocate appearing for the appellant that there is inordinate delay in lodging the First Information Report which has not been explained by the prosecution. To such proposition, learned Advocate appearing for the appellant has relied upon **(2022) 8 Supreme Court Cases 440**

(Jafarudheen and Others vs. State of Kerala) and (2011) 9 Supreme Court Cases 561 (Shivlal vs. State of Chhattisgarh).

5. Learned Advocate appearing for the appellant also submitted that the recovery of the alleged offending weapon was not made in accordance with the provisions of Section 27 of the Evidence Act and as such it cannot be relied upon. In support of such contention, learned Advocate appearing for the appellant relied upon ***(2023) Supreme Court Cases 510 (Ramanand Alias Nandlal Bharti vs. State of Uttar Pradesh)***
6. It is further submitted on behalf of the learned Advocate appearing for the appellant that certain injuries were found on the person of the convict. The prosecution did not explain such injuries. For the reason, the appellant cannot be held guilty of the offence he has been convicted with.
7. It has also been submitted on behalf of the learned Advocate appearing for the appellant that, P.W.9 who happens to be the daughter of the victim was a minor. Her evidence has been relied upon by the learned Trial Court for securing conviction of the appellant. It is submitted that the learned Trial Court did not conduct the necessary enquiry to ascertain the relevance of the testimony given by such witness for the purpose of the case of the prosecution. It has also been submitted that there was no corroboration of the testimony of P.W.9 and as such, the evidence of P.W.9 should not have been taken into consideration for the

purpose of convicting the appellant. In support of such contention, learned Advocate appearing for the appellant relied upon **(2002) 5 Supreme Court Cases 745 (State of Rajasthan vs. Om Prakash)**, **(2000) 3 Supreme Court Cases 70 (State of Uttar Pradesh vs. Ashok Dixit)** and **(2014) 5 Supreme Court Cases 389 (Radhey Shyam vs. State of Rajasthan)**. It has been contended that the evidence of P.W.9 has not been corroborated by independent witnesses and as such it cannot be relied upon. It was also submitted that in **Radhey Shyam** (supra), the learned Appellate Court proceeded to acquit the convict on the basis of the evidence of the child witness where there are contradictions and inconsistencies in the evidence as also the genesis of the occurrence was not proved.

8. Relying upon **(2000) 10 Supreme Court Cases 307 (Kunhayippu vs. State of Kerala)**, it has been submitted by the learned Advocate appearing for the appellant that the instant case is a fit case where the conviction of the appellant should be reduced to one under Section 304 instead of Section 302 of the Indian Penal Code.
9. On the other hand, learned Advocate appearing for the State has submitted that the prosecution has sufficiently proved the charge levelled against the appellant. The prosecution has been able to prove the place of occurrence, the circumstances under which the offence was committed. It has been submitted that the evidence of

P.W.9 was duly corroborated by the testimony of P.W.2. The prosecution has proved the post-mortem report. Moreover, the offending weapon was recovered on the leading statement of the convict. As such, it is submitted by the learned Advocate appearing for the State that the prosecution has been able to bring home the charge levelled against the appellant with the help of overwhelming evidence. He supports the conviction as well as the sentence imposed on the appellant.

10. In order to prove its case, the prosecution examined 14 witnesses. In addition, the prosecution also relied upon certain documentary as well as material evidences.
11. The de facto complainant himself deposed as P.W.1. He stated that, the incident occurred on May 8, 2016 between 12.00 and 12.30 A.M. On the said night, he along with his father, that is, the appellant, were sleeping on the floor of the room and his mother with her two daughters were sleeping on a cot in the said room itself. He has also stated that the relationship between his father and mother were strained. He woke up hearing hue and cry of his elder sister. After waking up, he found that his father had stabbed his mother with a knife. Seeing this, he tried to resist his father whereupon his father tried to attack P.W.1 as well, with the knife in his hand. He pushed his father forcefully as a result of which, he fell down and fled away. P.W.1 also stated that thereafter he called upon the neighbours. His mother had sustained bleeding

injuries due to stabbing. With the help of his neighbours, his mother was taken to BSMCH where his mother was declared dead. P.W.1 has also stated that thereafter police came in the hospital and conducted inquest over the dead body of his mother. He was interrogated and he put his signature on the inquest report. He lodged a written complaint. He put his signature on the written complaint. The bloodstained bed sheet was seized by the police under a seizure list to which he signed. P.W.1 has also stated that after six days of the occurrence, police visited his house with his father and recovered a knife at the instance of his father which was seized by the police under a separate seizure list to which he signed. He also stated to have made a statement before learned Magistrate. He identified his signatures on such statement.

12. One of the daughters of the victim deposed as P.W.2. She stated that on May 8, 2016 at about 12.30 A.M. she along with her sister and mother were sleeping on a cot in a room of her house. Her father and brother were also sleeping on the floor of the said room. She further stated that hearing hue and cry of her elder sister, she woke up and saw her father killing her mother with a knife. She also stated that seeing this her elder brother called the neighbours and thereafter her father fled away from the place by pushing her elder brother. Her mother was taken to hospital and subsequently she came to know that her mother died in the hospital. P.W.2 also

stated that she made statement before learned Magistrate. She proved her signatures on such statement.

13. The brother of the appellant deposed as P.W.3 has stated that, his brother, that is, the appellant has one son and two daughters out of his wedlock with the victim. His brother used to reside in his house along with his wife and children. P.W.3 stated that his sister-in-law, i.e., the victim was dead and she was murdered by the brother of P.W.3. P.W.3 also stated that the incident took place in the midnight at about 12.00/12.30 A.M. in the month of Baishakh. He came to know about the incident over telephone from one of his elder brothers. Hearing the news, he came to the place of occurrence and found his sister-in-law lying in a pool of blood. He along with others took the victim to hospital where she was declared dead. He also signed on the seizure list by which bloodstained articles were seized by the police. P.W.3 also stated that after 5/6 days police came to the house of the appellant accompanied by the appellant. He put his signature on document which he proved.
14. Another brother of the appellant deposed as P.W.4. He stated that he had two other brothers and the appellant was his elder brother whom he identified in Court. He further stated that he was informed by his nephew over telephone that the appellant had killed his wife. He was requested to come as soon as possible. He rushed to the house of the appellant and after reaching there he

found none of them. Subsequently, he came to learn that the family members of the house had been taken the sister-in-law to the hospital. Thereafter, he also heard that his sister-in-law died.

15. A brother of victim deposed as P.W.5. He stated that his sister Shrabani used to reside with her husband and their children. He identified the appellant in Court. He further stated that his sister was no more. She was murdered by his brother-in-law. He also stated that the incident occurred on 8th day of English Calendar corresponding to Baishakh. Around 12.00/12.30 midnight his nephew informed him over telephone about the incident of murder. He was also informed that the appellant, his brother-in-law, had stabbed his sister. He was requested to reach the place of occurrence. He went there accordingly and found his sister lying on the floor in a pool of blood having injuries on the left armpit. She was taken to hospital where she was declared dead. P.W.5 also signed on the inquest report.
16. Another brother of the victim deposed as P.W.6. He stated that after marriage his sister used to reside at her matrimonial house at Pratapbagan. P.W.6 has also stated that his sister had frequent quarrels with her husband, that is, the appellant. He has stated that his sister was murdered by the appellant. The incident occurred on May 8, 2016 at about 12.00/12.30 midnight. He has also stated that on the date of incident while he was sleeping, his elder brother received a phone call from his nephew i.e., the de

facto complainant. It was informed that the appellant had stabbed in the armpit of the sister of P.W.6 by a knife. Hearing the news he went to the place of occurrence. Going there, he found his sister lying in a pool of blood. She was taken to hospital where she was declared dead. Police conducted inquest over the dead body of the victim. P.W.6 proved his signature on the inquest report.

17. A cousin brother of the victim deposed as P.W. 7. He stated that the victim was his cousin sister and she was murdered by her husband.
18. The Recording Officer deposed as P.W. 8. He stated that on May 9, 2016, he received a written complaint from one Baban Das and started Bankura Police Station case No. 119 of 2016 dated May 9, 2016 under Section 302 of the IPC. He proved the endorsement of the receipt of the written complaint in his pen and signature. He also proved the formal FIR drawn by him.
19. The another daughter of the victim and appellant deposed as P.W. 9. She stated that the appellant was her father whom she identified in Court. The victim was her mother. She further stated that her father murdered her mother. The incident occurred on May 8, 2016 at about 11.30 p.m. to 12.00 mid night. She also stated that on the date of occurrence, she was sleeping with her mother and younger sister inside the room and her father and elder brother were sleeping in the verandah of the room. While she slept, she woke up and found her father was stabbing below the

armpit of her mother with a dagger. Seeing the incident, she started shouting and called her elder brother and sister. Her father also tried to assault her elder brother and thereafter fled away. She also stated that her elder brother informed the neighbours as well as the maternal uncle about the incident. They came there and took her injured mother to the hospital where she expired. P.W. 9 had also stated that on May 9, 2016, police visited her house and seized a bloodstained bed sheet. She identified her signature on the seizure list. P.W. 9 had also stated that after six days of the occurrence, police again visited her house with her father and recovered a dagger which was seized by the police under a seizure list to which she signed. She identified the recovered dagger in Court. She also stated to have made a statement before the learned Magistrate and proved her signature on such statement.

20. The police officer who carried the dead body, dead body challan to the hospital deposed as P.W. 10. He stated to have carried the dead body to hospital for post mortem examination. He proved signature on the dead body challan and that the seizure list by which the wearing apparels of the victim were seized.
21. The Autopsy Surgeon deposed as P.W. 11. He stated that on May 9, 2016, he conducted post mortem examination on the dead body of the victim. He had narrated the injuries found on the person of

the victim and proved the post mortem report prepared under a pen and signature.

22. P.W. 11 was confronted with the alleged offending weapon recovered during investigation to which he opined that the injuries found on the person of the victim would be inflicted by such weapon.
23. The Investigating Officer of the case deposed as P.W. 12. He stated that he conducted inquest on the dead body of the victim and proved the inquest report. In course of investigation, he visited the place of occurrence, examined available witnesses and recorded their statements under Section 161 of the Cr.P.C. He also seized bloodstained articles from the place of occurrence and the seizure list which he proved. He also conducted raid to secure arrest of the appellant. Later on, he came to know that the appellant was admitted in the hospital where he visited and arrested the appellant and secured his police remand. During the remand period, he recovered the alleged offending weapon at the statement of the appellant under a seizure list. On completion of investigation, he submitted a charge sheet against the appellant under Section 302 of the IPC.
24. Learned Judicial Magistrate, who recorded the statement of the witnesses under Section 164 of the Cr.P.C. deposed as P.W. 13. She proved such statement recorded by her.

25. Under the Judicial Magistrate, who recorded the statement of witnesses under Section 164 of the Cr.P.C. deposed as P.W. 14, she proved her statement recorded in her pen and signature.
26. Upon conclusion of the evidence on behalf of the prosecution, the appellant was examined under Section 313 of the Cr.P.C. The evidence and circumstances appearing as against the appellant were placed during such examination. The appellant pleaded innocence during such examination.
27. In support of his case, the appellant examined one Medical officer as D.W. 1. D.W. 1 stated that on May 9, 2016, the appellant was admitted at Bankura Medical College and Hospital under him. On examination, he found cut injuries, lacerated injuries and head injuries on the person of the appellant. He proved the photocopy of the injury report.
28. Learned Trial Court on the basis of evidence led at the trial convicted the appellant for the offence punishable under Section 302 of the IPC. From the evidence, it transpires that the appellant and the victim together with three children were sleeping in the selfsame room. It is the statement of P.W. 9, the elder daughter of the victim that she woke up and saw her father stabbing below the arm pit of her mother. Seeing this, she called her elder brother and sister. Her elder brother deposed as P.W. 1. He has categorically stated in his deposition that he heard hue and cry from his elder sister and woke up. Waking up, he saw that his

father had stabbed his mother. The younger sister of P.W. 9 deposed as P.W. 1. She had also stated in her statement that she woke up on the alarm raised by her elder sister. Therefore, from the evidence, it appears that P.W. 9 saw the incident and called her elder brother and sister is duly corroborated by P.W. 1 and P.W. 2. P.W. 1 had stated in his deposition that he informed the matter to the neighbours as well as the maternal uncle. Such statement of P.W. 1 has been corroborated by P.W. 4 and P.W. 5. They had stated that they were informed over telephone about the incident by their bhagney and rushed to the place of occurrence. Not only that they found the information to be correct, coming to the place of occurrence, they found their sister in injured condition and they moved her to the hospital where she was declared to be dead. In his deposition, P.W. 11 has detailed the injuries on the person of the victim. He had opined that the death was due to the affect of ante mortem injuries which were homicidal in nature. P.W. 11 was also confronted with the alleged offending weapon to which he opined that the injuries found on the person of the victim may be caused by such weapon. P.W. 11 has proved the post mortem report prepared by him as Exbt. 11.

29. Therefore, the narration of incident given by the P.W. 9 and corroborated by P.W. 1 and 2 together with the testimony of P.W. 11 as well as Exbt. 11 establish that the victim was murdered by the appellant.

30. There is a contention that a single stab injury should be treated as an offence under Section 304, Part-II rather than Section 302 of the IPC. In support of such contention, reliance is placed on **Kunhayippu** (supra).
31. **Kunhayippu** (supra) was rendered in a factual matrix which is different from the present case. Then the victim and the convict were on friendly terms. The stab was inflicted from the back. One of the persons who saw the incident and lodged the police complaint was not examined at the trial. In the facts and circumstances of the present case, the P.W. 1 who was at the place of occurrence lodged the police complaint. Testimonies of the P.W. 9, 1 and 2 as well as the P.W. 4 and 5 conclusively established that there were matrimonial disputes between the appellant and the victim. In his statement recorded under Section 313 of the Cr.P.C., the appellant acknowledged that there were matrimonial disputes between him and the victim.
32. The manner of inflicting the injury as established at the trial does not permit us to return a finding that the incident can be classified under Section 304, Part-II of the IPC.
33. **Sakatar Singh** (supra) was rendered in a situation where evidence was laid that the information received by the witness was placed on certain documents as well as heard by such witness. The documents relied upon was never produced before the Court. In

such view of the fact, it was noted in the said judgment that such information may be opinion and not evidence of such witness.

34. However, in the present case, admittedly, P.W. 1, P.W. 2 and P.W. 9 were inside the room where the occurrence took place. P.W. 9 claims to have seen the incident herself. P.W. 1 and 2 might not have seen the entire incident, but the testimony of P.W. 9 was duly corroborated by such witnesses. In such view of the matter, the ratio of **Sakatar Singh** (supra) cannot be applied in the present case.
35. **Muluwa** (supra), **Om Prakash** (supra), **Radhe Shyam** (supra) and **Pradeep** (supra) relate to quality of the evidence given by a witness. In the facts of the present case, P.W. 9 was 16 years of age at the time when she deposed and 15 at the time of incident. Under the Oath Act, 12 years is prescribed beyond which a witness is treated to be competent to deposition. A person below 12 years of age can depose subject to the satisfaction of the Court.
36. In the facts of the present case, nothing appears from the records placed before us that any of the witnesses being P.W. 9, P.W. 1 and P.W. 2 suffers from any inability of appreciating the situation that developed before them and deposing with regard thereto. There is no material on record to suspect their testimonies.
37. In **Jafarudheen and Ors.** (supra), it has been noted that an unexplained and inordinate delay in sending the FIR to the learned Magistrate may affect the prosecution case adversely. However, in

the case at hand, the incident took place in the midnight between May 8 and May 9, 2016. The victim was taken to hospital. She was declared dead by the doctor. Inquest was conducted on her dead body. The defacto complainant, P.W. 1 alone remained with the dead body. The written complaint was lodged at about 12.45 p.m. on May 9, 2016. To our view, there appears to be no delay in lodging the FIR.

38. **Rajesh** (supra), **Ramanand** (supra), **Sk. Yusuf** (supra) and **Manjunath** (supra) relate to recovery of evidence in terms of Section 27 of the Evidence Act. In the facts of the present case, the offending weapon was identified at the trial by P.W. 9. P.W. 11 stated that offending weapon was capable of inflicting the injury as appearing in the body of the deceased.
39. In any event, the evidence of P.W. 9 as corroborated by P.W. 1 and P.W. 2 is sufficient to bring home the charge as against the appellant.
40. **Dalip Singh** (supra) is not affected to the facts and circumstances of the present case as the testimonies of P.W. 9, P.W. 1 and P.W. 2 are more sufficient to convict the appellant of the offence that he was charged with.
41. In such circumstances, we find no ground to interfere with the judgment of conviction and order of sentence passed by the learned Trial Court. The same is hereby affirmed.
42. Consequently, **C.R.A. 698 of 2019** is **dismissed**.

43. In view of the dismissal of the appeal, the connected application being CRAN 2 of 2024 is disposed of.
44. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all formalities.

(Md. Shabbar Rashidi, J.)

45. I agree.

(Debangsu Basak, J.)

A.D./S.D.