

07.01.2025
Court No.13
Item No.20
AP/sp

CRA 684 of 2014

**Sarajit Mallick & Anr.
Vs.
The State of West Bengal**

Mrs. Nasra Ali Rahman

...for the Appellants.

Mr. Jayanta Narayan Chatterjee, Sr. Adv.

... Amicus Curie.

Mr. Debasish Roy, Ld. P.P,
Mrs. Amita Gaur

...for the State.

1. Although the matter has been listed under the heading “Bail in Connection with appeal”, since no application for bail has been filed, the appeal itself is taken up for hearing.
2. The instant appeal is directed against a judgment and conviction dated 15th & 16th September, 2014 passed by the learned Additional Sessions Judge, 3rd Court, Barasat in S.T. No.2(1) 2011 arising out of S.C. No.18(9) 2010 under Sections 302 and 304 of the Indian Penal Code and sentencing them for life.
3. The brief facts relevant to the case are that on 29th June, 2009 between 1 pm and 2 pm one Arjun Gayen (victim), went to the house of the appellants to seek return of a ceiling fan mortgaged to them. He had tendered Rs.250/- representing the full mortgage payment. Despite receiving the said sum of Rs.250/- the appellants refused to part with a fan on one pretext

or the other. The victim thereupon sat on the courtyard of the appellants and refused to leave until he was delivered the ceiling fan.

4. The appellants immediately thereupon started to assault the victim with a bamboo stick and with fisticuffs kicks and blows. Upon Arjun Gayen (victim) running away from the courtyard of the appellants, he was again waylaid in front of a temple belong to one Dulal Sarkar and beaten up for the second time with the bamboo stick, kicks and blows.

5. Having found the victim bleeding profusely PW-1, Sribash Gayen, brother of the victim along with few others took him to a local hospital. The victim died.

6. A complaint was lodged by the PW-1, and was registered as FIR No.245 dated 29th June, 2009 under Sections 302 and 34 of the IPC. The accused persons were Sarajit Mallick, Sarathi Mallick, and his wife and their son Biswajit Mallick, who was a minor.

7. After investigation was completed, a charge sheet was filed. Upon coming to know of the death of the victim, the inquest was performed by PW-11, Amalesh Ghosh, SI attached to Habra Police Station. The offending weapon, a bamboo stick, was seized at the residence of the appellants.

8. Post mortem was conducted by PW-2, Dr. Mohan Lal Bhattacharya. The injuries mentioned in the post mortem are :-

- (i) Abrasion 1" x ½" over left shoulder.
- (ii) Abrasion 1 ½" x 1" over left superior scapular angle left side.
- (iii) 1" x ½" abrasion back of chest at T7 level.
- (iv) Abrasion ½" x ½" back of left elbow.
- (v) Extensive laceration of liver, fluid and blood in peritoneal cavity.

9. The post mortem doctor further went on to opine that all the injuries showed evidence of vital reactions, lacerations of liver has irregular margins and congested. In the opinion of the post mortem doctor the death was due to injuries as noted ante mortem in nature. Investigation was completed. Charge sheet was filed and trial commenced.

10. PW-1, Sribash Gayen, brother of the victim identified the accused persons. He narrated the mortgage transaction between the victim and the appellants and the dispute that ensued immediately thereafter on the date of occurrence. He stated that the accused persons assaulted the victim with kicks blows on the chest and also with a bamboo sticks.

11. In course of cross-examination he, however, admitted that he was not present when the transaction of mortgage occurred between his brother and the appellants.

12. The evidence of PW-1 is corroborated by the evidence of PW-3, Subal Baidya. He has stated that his house and the house of the appellants was in close proximity. On the date of occurrence at about 2.00 p.m. upon hearing hue and cry, he came out of his house and noticed the appellants and his wife and son assaulting the victim with a bamboo stick and kicked in front of the temple of Dulal Sarkar. This is second part of the assault on the victim by the appellants.

13. After the accused persons fled away he stated that the mother of the victim sprinkle water on his face and he was removed to the Habra Hospital by rickshaw van. PW 1 went to the hospital by bus. he was present at the time of inquest. PW-3, Subal Baidya was, therefore, clearly an eyewitness to the incident.

14. The first part of the attack on the victim is clearly evident from the evidence of PW-6, Smt. Basanti Gayen. She deposed that her house is situated behind the house of the appellants and the courtyard of the appellants where the first part of the assault took place is clearly visible from her house. She saw the entire incident and also narrated the demand of the victim for returning of the ceiling fan. She also deposed the victim had tendered Rs. 250/- to the appellants. She mentioned in substantial detail of the entire incident of assault on the victim which occurred in the courtyard of the appellants. The evidence of other witnesses, does not call for serious discussion at this stage.

15. Mr. Jayanta Narayan Chatterjee, learned Senior Advocate, appearing as Amicus Curie, leading Ms. Nasra Ali Rahman, learned counsel appearing for the appellants has argued as follows:-

- (a) The offending weapon, namely, the bamboo stick was not seized from the place of occurrence but from the residence of the appellants. The blood on the offending weapon was not sent for FSL to match it with the blood of the victim.
- (b) The Postmortem Doctor has not deposed as to whether the injuries on the victim were homicidal, natural or otherwise.
- (c) The victim was a known thief in the village. He has been assaulted by the villagers, on a few occasion earlier.
- (d) Even assuming for the sake of argument that the appellants have been proven to have assaulted the victim, there is no causal connection with the injuries inflicted by the appellants and the actual death of the victim.
- (e) It is lastly argued that the accused no. 3, son of the appellants is being tried before Juvenile Justice Board. It is unlikely that the injuries inflicted on the victim could have been caused by a lady being the appellant no. 2. He also submits that PW-6 and PW-3 have not recorded any

statement before the police and have conjured up a story for the first time in course of trial.

16. In view of the above, it is argued by Mr. Chatterjee that the impugned judgment cannot be sustained.

17. This Court has carefully considered the argument of the learned Amicus Curie. The evidence of PW-1 is clearly corroborated by the evidence of PW-3 and PW-6. The two places of assault, i.e., the courtyard of the appellants themselves and the second place, namely, in front of the temple of Dulal Sarkar have been clearly and comprehensively established. PW-3 and PW-6 could easily be described as eyewitnesses to the incident. They have corroborated the evidence of PW-1, the complainant.

18. In the above circumstances, the factum of the assault by the appellants on the victim at two different places firstly in their courtyard and subsequently chasing the fleeing victim and assaulting him further, clearly established motive and aggravated assault with the intent to cause death of the victim. The aforesaid facts are corroborated by the findings of the Postmortem Doctor of the nature of injuries.

19. The seizure of the bamboo stick from the residence of the appellants and not the place of occurrence, in fact, strengthen the case of the prosecution that the appellants took away the offending weapon and stored it in their residence. The chain of

events, circumstances, motive and version of eyewitnesses is comprehensive and complete.

20. The Post Mortem doctor has clearly opined that the death of the victim was caused by the injuries inflicted on him by the appellants. The omission to mention homicide by the Post Mortem doctor is not fatal to the prosecution case. In fact the Post Mortem Report and the evidence of the Post Mortem doctor clearly establish a causal connection between the injuries and death of the victim.

21. There is no clear evidence on record of any criminal antecedents of the victim. Even if they were there the same is irrelevant to the offences charged and proved against the appellants.

22. The evidence on record clearly indicates that the appellants herein have with the help of their son committed the offense in question. The Appellant No. 2 being a lady would not mitigate her role in the offenses committed by the accused persons/convicts.

23. Having considered the entire evidence on record, this Court is of the view that the trial Judge has applied the evidence and the law on the subject appropriately and effectively. There is, therefore, no error found by this Court in the impugned judgment and sentence.

24. CRA 684 of 2014 fails and hereby dismissed.

25. In view of the dismissal of CRA 684 of 2014, connected applications, if any, are also dismissed.

26. Let a copy of this judgment be sent down the Court below for information.

27. 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.)