

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bibhas Ranjan De

C.R.A. 597 of 2019

Lakshi Ram Hembram @ Laxmiram Hembram

-Vs-

State of West Bengal

For the Appellant : Mr. Dipayan Kundu, Adv.

For the State : Ms. Shreyashee Biswas, Adv.

Heard on : 05.01.2022

Judgment on : 05.01.2022

Joymalya Bagchi, J. :-

Appellant being aggrieved by his conviction under Sections 341/302 of the Indian Penal Code and sentence of rigorous imprisonment for life and fine of Rs.5,000/-, in default, to suffer rigorous imprisonment for 30 days more for the offence punishable under Section 302 IPC and simple imprisonment for one month for the offence punishable under Section 341 IPC has appealed before this court.

The prosecution case as alleged against the appellant is to the effect that on 19th January, 2012 around 11:00 A.M., there was an altercation between the appellant and one Manik Hembram (PW 1) over drawing water for irrigation through a pump. Quarrel ensued between them. Thereafter, PW 1 left for his residence. Subsequently, on the fateful day i.e., 21st January, 2021 at 2:00 P.M. the appellant again threatened PW 1. In the evening around 05:45 P.M. while the deceased namely, Gangaram Hembram, father of PW 1 was going on a bicycle to Sangrampur market, appellant dragged him down from his bicycle near Kasundipara Adibasi Aleka Gaota club. Thereafter, the appellant and others mercilessly beat Gangaram with a hasuli. He expired at the spot. FIR was lodged by PW1 resulting in registration of Polba Police Station Case No.09 of 2012 dated 21.01.2012 under Sections 341/302/34 IPC against the appellant and unknown others. In course of investigation, the appellant was arrested and on his leading statement the weapon of assault namely, hasuli was recovered. In conclusion of investigation, charge-sheet was filed against the appellant and eleven others. Charges were framed under Sections 341/302/34 of the Indian Penal Code. In the course of trial, prosecution examined 15 witnesses and exhibited a number of documents. The defence of the accused persons was one of innocence and false implication. In conclusion of trial, the trial Judge by the impugned judgment and order dated 26th August, 2019/28th August, 2019 while convicting and sentencing the appellant, as

aforesaid, acquitted other accused persons of the charges levelled against them.

Mr. Dipayan Kundu, learned counsel appearing for the appellant argues the genesis of the prosecution case has been substantially altered by the so-called eye witness PW 5 in court. While the witness stated that the appellant and other acquitted persons had assaulted the deceased conjointly, in court PW 5 attributed the assault with hasuli to the appellant only. Post-mortem doctor (PW 7) noted single penetrating wound on the stomach which improbabilises the prosecution case of conjoint assault. It is also argued that the seizure of hasuli is doubtful and the length of the weapon does not match the dimension of the injury as noted by the post-mortem doctor. Relying on the almanac (Exhibit-A) which was produced during trial, it is contended that the sun had set at 05:15 P.M. and therefore, light was insufficient for PW 5 to witness the incident. He accordingly, prayed for acquittal.

Ms. Shreyashee Biswas, learned advocate, appearing for the State, submits that the name of the appellant had featured in the FIR which was promptly lodged on the date of the incident, whereas names of the acquitted persons did not appear in the FIR. PW 5 who witnessed the incident and gave out the specific role played by the appellant who assaulted the deceased on the chest with a hasuli. Her version corroborates the injury found by the post-mortem doctor. Weapon of offence was seized in the presence of witnesses on the leading

statement of the appellant. Hence, the prosecution case is proved beyond reasonable doubt.

PW 5, Smt. Padma Hembram is the eyewitness to the incident. She stated that on the relevant date and time she saw Gangaram passing Kasundipara Adibasi Alek Gauta club riding a bicycle. Appellant and others were sitting by the roadside. Suddenly they pulled down Gangaram from his bicycle. She saw the appellant continuously assault Gangaram with the help of a *hasuli*. As a result Gangaram died. Other accused persons also assaulted. Two/three of them dragged the body of Gangaram and left him by the side of the road. On hearing hue and cry, others came to the spot and PW 5 narrated the incident to them. On the next date, she narrated the incident to police. Subsequently, on 22.01.2012, complaint was reduced into writing by Rabilal Hansda, PW 10, as per her version wherein she put her LTI. She made her statement before the Magistrate. She identified the seized *hasuli* in Court as the weapon of offence.

PW 1 is the son of the deceased. He along with PW 2, PW 3 and PW 4 rushed to the spot immediately after the incident. PW 5 had narrated the incident to them. On 21.01.2012 PW 1 lodged the First Information Report which was scribed by PW 15. PW 1 also narrated the prior incident of altercation between him and the appellant in the morning of 19th January, 2021 with regard to pumping of water from the pond for irrigation. He also spoke about a quarrel in the afternoon on the fateful day near Moinarani pond. He further deposed that police

came to the spot at 8.30 P.M. He signed on the inquest report. He also deposed with regard to recovery of the *hasuli* on the showing of the appellant from his residence. He is a signatory to the seizure list (Exhibit-3). He deposed that on 24.01.2012 police seized the bicycle of his father. In cross-examination, he admitted that there was a dispute between the accused persons and his family as they had converted to Christianity.

PW 4 corroborated the evidence of PW 1 with regard to dispute between the latter and the appellant at 11.00 A.M. over drawing of irrigation water from Moinarani pond on 19th January and subsequently at 2.00 P.M on the fateful day. He is also a witness to the recovery of the *hasuli* on the showing of the appellant and had signed on the seizure list (Exhibit-3/1).

Pw 6 is another reported witness who reached the place of occurrence and PW 5, Padma Hembram narrated the incident to him. He went to Polba Police Station and lodged a general diary. Thereafter, police arrived at the spot and collected blood stained earth. He was also present at the time when the weapon of offence was recovered from the house of the appellant.

PW 9 is a reported witness. PW 9 reached the spot after the occurrence and heard about the incident from Padma. He was witness to the seizure of the bicycle from the house of the deceased and a signatory to the seizure list.

PW 7 is the post mortem doctor. He noted the following injuries on the deceased:-

“ ...I found a deep penetrating injury lying transversely measuring 2 X ½” in length found in the centre of the wound in the right upper side of abdomen 2 “ lateral from right side of midline with the gaping in the corner of the wound. Depth of the wound was 3” in the direction of upward, backward and medially. On examination of track of the wound, it was found all the structures below skin were cut, multiple cut injuries of liver, gut (intestine) were found. Abdomen was full of blood.

One small injury 1 X 2” abrasion at the left side of jaw was also found.”

He opined death was due to the effect of aforesaid injuries which are ante-mortem and homicidal in nature. He proved the postmortem report in Court (Exhibit-6). He identified the seized hasuli as a weapon which may cause the aforesaid injuries resulting in death.

PW 11 is the Block Land and Land Reforms Officer, who replied to the queries from the Investigating Officer with regard to the possession and ownership of Moinarani pond.

PW 13 and PW 14 are the Investigating Officers in the instant case. PW 14 proceeded to the spot and held inquest over the body of the deceased (Exhibit - 2/3). He sent the dead body for post mortem examination. On 21.01.2012 Manik Hembram lodged written complaint before the Polba Police Station. Upon registration of criminal case, investigation was assigned to him. He prepared rough sketch map of the place of occurrence with index. He collected blood stained earth from the place of occurrence. He recorded the statement of witnesses.

Statement of PW-5 was recorded under Section 164 of the Code of Criminal Procedure before the Magistrate. On the confessional statement of the appellant, *hasuli* was recovered under seizure list (Exhibit – 3/3). He also seized wearing and apparels of the deceased. On 24.02.2012, he seized the bicycle of the deceased. Subsequently, investigation was handed over to PW 13 who finally submitted charge sheet.

Prosecution case principally rests on the evidence of the sole eye witness, PW 5. It is argued genesis of the incident as narrated in Court is at variance with PW 5's earlier statement before the Magistrate. She could not have witnessed the incident after sunset. It is also argued the complaint dated 22.03.2012 purportedly authored under instruction of PW 5, is a manufacture document.

I have analyzed the evidence of the eye witnesses in the light of the aforesaid contentions. PW 5 in her deposition has explained the circumstances in which she witnessed the incident. She stated she had seen the deceased passing Kasundipara club in a bicycle. At that time the appellant and others accosted the deceased and appellant had assaulted the deceased with the help of *hasuli*. She also claimed other persons had also assaulted. In her statement before Magistrate, the witness stated that the appellant had dragged the deceased down and thereafter he and others had assaulted him to death.

However, her evidence with regard to the role of the other accused persons is not corroborated by PW 1 in his First Information

Report (Exhibit – 1-3). In the First Information Report, it is alleged appellant along with unnamed others assaulted the victim with a *hasuli*. The identity of the so-called unnamed assailants was unknown at the time of registration of the First Information Report though the document was registered after consultation with PW 5. Even in the inquest report, prepared by PW 14, immediately after the incident, it is alleged the appellant along with unknown others had assaulted the deceased with a sharp weapon. PM doctor, PW 7 shows presence of two injuries on the deceased. Fatal wound is a penetrating injury measuring 2"x ½" in length in the right upper side of the abdomen. An abrasion on the left side of the Jaw was also noticed. Assessing the evidence of PW 5 in the light of the aforesaid pieces of evidence, namely, First Information Report, inquest report and the medical evidence, I find sufficient corroboration with regard to the role played by the appellant in assaulting the deceased with a *hasuli* but not with regard to the role of other accused persons in the assault.

In India, the principal '*falsus in uno, falsus in omnibus*' does not apply in the matter of appreciation of evidence. When the Court is called upon to assess the evidence of a witness, it becomes its bounden duty to assess the evidence of the witness on the anvil of probability and separate the kernel of truth from the chaff of embellishment. The trial court has rightly assessed the evidence of PW 5 and upon ignoring her embellished effort to implicate other associates of the appellant in the crime, correctly relied on the role of the appellant as the sole

assailant of the deceased. I wholly concur with the line of reasoning of the trial Judge as the role of the appellant in the assault of the deceased not only transpires at the earliest opportunity in the inquest report/FIR but is also supported by the medical evidence at hand.

The incident occurred in the course of a melee where though other persons were present along with the appellant, they do not appear to have participated in the assault. Effort of PW 5 to implicate other accused persons appears to be over enthusiastic and was rightly mixed by the trial Judge due to lack of corroboration. However, her version vis-à-vis role of the appellant in the murder resonates with truth and finds corroboration from other sources. It would be wrong to ignore her evidence qua the appellant while discarding her embellished version with regard to other accused persons. Hence, the acquittal of the other accused persons does not affect the truthfulness of the prosecution case, *vis-à-vis* the appellant.

With regard to sufficiency of light at the place of occurrence, I find incident occurred around 5:30 P.M. in the evening. Though, the sun set on 5:15 P.M. on that day, it is common knowledge that it does not become pitch dark as soon as the sun sets. On the other hand, there is an intervening period during which light slowly fades which would give sufficient opportunity to PW 5 to identify a known person as the appellant shortly after the sun set. Moreover, on the leading statement of the appellant, weapon of offence was recovered on the date of incident from his residence. It is contended that the purported

confessional statement leading to recovery was recorded prior to his arrest. I do not find any inconsistency in this regard. Upon lodging of FIR, police promptly arrived at the spot and apprehended the appellant. Soon, thereafter, he was interrogated and on his leading statement, weapon of offence was recovered from the residence. Aforesaid events make it clear that the apprehension of the appellant and recording of the statement leading to recovery of the weapon of offence were almost simultaneous and soon after the incident. Therefore, neither the leading statement recorded by PW 14 in the instant case cannot be said to be an after-though nor the weapon of offence can be said to have been planted in his residence. Finally, the plea that the fatal injury on the stomach could not be caused by the seized *hasuli* is wholly refuted by the opinion of Post Mortem doctor (PW 7) who opined the seized weapon could have caused the said injury resulting in death.

In the light of the aforesaid discussion, I am of the opinion that it was the appellant who dealt the fatal blow on the deceased with a *hasuli* resulting in his death. The manner in which he had attacked the victim and the injury caused on the vital organ of the body, leaves no doubt in my mind that he intended to murder him. Thus, I am inclined to confirm the conviction and sentence of the appellant.

The appeal being C.R.A. 597 of 2019 is, accordingly, ***dismissed***.

The period of detention, if any, undergone by the appellant during investigation, enquiry and trial shall be set off against the substantive sentences imposed upon him in terms of section 428 Cr.P.C.

Lower court records along with a copy of this judgment be sent down at once to the learned trial Court for necessary action.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Bibhas Ranjan De, J.)

(Joymalya Bagchi, J.)

Saswata / AKD
Assistant Registrars (Court)
PA