

(2023) 04 CAL CK 0009

In the Calcutta High Court

Case No : Criminal Appeal (DB) No. 37 Of 2022, CRAN 1 Of 2022

Tapash Mahanta & Another

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision : 05-04-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2023) 04 CAL CK 0009

Hon'ble Judges : Debangsu Basak, J;Md. Shabbar Rashidi, J

Bench : Division Bench

Advocate : Jayanta Narayan Chatterjee, Nandini Chatterjee, Suprem Naskar, Jayashree Patra, Ritushree Banerjee, Dipanwita Das, Rudradipta Nandy, Sonali Das

Final Decision : Dismissed

Judgement

Debangsu Basak, J

1. The appellants have assailed the judgement of conviction dated February 10, 2022 and the order of sentence dated February 11, 2022 passed by the learned Additional Sessions Judge, 2nd Court, Islampur, Uttar Dinajpur in Sessions Trial No. 40 (3) / 2017 arising out of Sessions Case No. 23/2017.

2. By the impugned judgement of conviction the appellants had been found guilty under Sections 302/34 of the Indian Penal Code, 1860. By the impugned order of sentence the appellants had been sentenced to suffer life imprisonment and to pay a fine of Rs. 10,000/- each in default to suffer rigorous imprisonment for 6 months.

3. The case of the prosecution at the trial was that, the appellants had on March 24, 2015 at about 11 PM at Subhasnagar under Chopra Police Station, Uttar Dinajpur, with common intention committed culpable homicide not amounting to murder by causing the death of Sona Mohanta.

4. Police had received the written complaint dated March 25, 2015 from Prosecution Witness (PW) 1 stating that, her son indulged in a quarrel with the appellants. The appellants had threatened to murder her son. After that incident, her family had avoided meeting and talking to the families of the appellants. On March 24, 2015 in the morning, her son and one Bikash Debnath had gone somewhere around Kharibari of District Darjeeling to deliver tea leaves in a pickup vehicle. At around 9 PM, the appellants had come to her house and woke her up and started searching for someone in the room of her son. On inquiry, they had asked about the whereabouts of her son when she informed them that her son did not return yet. They had started abusing her and told her that they would kill her son that day and left her house. Around 11 PM in the night after her son and Bikash had returned home, she had locked the grill. After sometime the appellants had come to her house and asked her to open the lock from the grill. They had started to break the lock with a brick lying in her veranda. She had denied to open the lock. When they had failed trying to break the lock, they brought one crowbar from their house and after breaking the lock they had started assaulting her son on his chest and back with the crowbar. Bikash and she had tried to protect her son. They had also hit them and dragged her son out. Even after trying hard they could not save her son from the appellants. Later she had started searching for her son in different ways. Around 12 O'clock in the night with the help of truck's headlight she had found that her son was lying over NH-31 near Subhashnagar Durga Mandir. Bikash and she had taken her son to the Hospital. Doctor had declared her son dead. She had understood that, after beating her son with crowbar in his chest, abdomen and back, when her son died with huge loss of blood from nose, mouth and ears, the appellants threw her son on the NH-31. The appellants had murdered her son by assaulting her son with a crowbar.

5. Police had registered a First Information Report (FIR) being Chopra Police Station FIR No. 355/15 dated March 25, 2015 under Section 302/34 of the Indian Penal Code, 1860. On Completion of the investigations, police had submitted the charge sheet against the appellants. Court had framed charges as against the appellants on March 29, 2017 under Sections 304/34 of the Indian Penal Code, 1860. The appellants had pleaded to be not guilty and claimed to be tried.

6. At the trial, prosecution had examined 13 witnesses. Prosecution had also relied upon various documentary and material evidences in order to bring home the charges as against the appellants.

7. Learned Advocate appearing for the appellants has submitted that, the cause of death of the victim was not established by the prosecution at the trial. He has referred to the deposition of the doctor conducting the post mortem on the victim being PW 10. He has submitted that, PW 10 stated in cross examination that the death of the victim might be homicidal or accidental.

8. In view of the cause of death not being established conclusively by the

prosecution, learned advocate appearing for the appellants, relying upon 1992 Volume 3 Supreme Court Cases 547 (Bhupendra Nath Prasad vs. State of Bihar) has submitted that, the charge of murder as against the appellants does not stand conclusively proved.

9. Learned advocate appearing for the appellants has submitted that, the prosecution did not examine any witness who was an eyewitness to the incident of assault. The prosecution had relied upon circumstantial evidences. According to him, the chain of circumstances leading to the guilt of the appellants have not been conclusively established as against any of the appellants.

10. Learned advocate appearing for the appellants has submitted that, there was enmity between the appellants and the victim. Such enmity had been acknowledged by the mother of the victim being PW 1 and the maker of the written complaint to the police. In such circumstances, there was a possibility of the appellants being falsely implicated due to such enmity which the prosecution and the learned Court had overlooked.

11. Learned advocate appearing for the appellants has submitted that, the body of the victim had been found on NH No. 31. A number of vehicles had plied over NH 31 and therefore the cause of death being accidental cannot be overlooked. More so, when, the prosecution had failed to establish that the death was homicidal in nature.

12. Learned advocate appearing for the appellants has submitted that, the police had conducted the investigations in a perfunctory manner. He has contended that, the appellants were entitled to the benefits of such perfunctory investigations by the police. The alleged broken lock and the crowbar used during the incident have not been seized by the police.

13. Learned advocate appearing for the appellants has submitted that, the area in which the incident is alleged to have taken place was densely populated. The prosecution had failed to produce any independent eyewitness to the incident. The body of the victim had been found within 50 metres distance from the house of the victim. Benefit of doubt therefore should be given to the appellants.

14. In such circumstances, learned advocate appearing for the appellants has submitted that, the appellants should be acquitted of the charges framed.

15. Learned advocate appearing for the State has submitted that, the prosecution proved the charges beyond reasonable doubt as against the appellants. He has submitted that, the prosecution established that, there was an incident at the house of the victim where, the gate of the house of the victim was broken, the victim was assaulted by the appellants, and the victim was dragged out of the house. He has referred to the post mortem report of the victim as well as the testimony of the post mortem doctor. He has submitted that, the injuries suffered by the victim were commensurate with the assault spoken of by the prosecution witnesses on the victim. The victim had died due to the reasons of

the injuries suffered by the victim. Therefore, the prosecution have been able to establish that, the victim had died due to the injuries suffered by the assault inflicted by the appellants. Consequently, the appellants have been rightly held to be guilty of murder of the victim.

16. PW 1 is the mother of the victim and the de facto complainant. She had lodged the written complaint against the appellants. She had identified the appellants in Court. She had stated that the incident occurred on March 24, 2015. On that day at about 9 PM when she was awake, she had seen the appellants in front of her gate by her house. They had asked to open the lock of the gate of her house. First she had refused to open the gate but the appellants repeatedly asked her to open the gate and she had opened the lock of the gate. Thereafter, both the appellants had entered into the house and searched for the victim. The victim was not at home at that time and then the appellant No. 1 had told her that she would see the victim dead tomorrow and that no one can save the victim from his hand. Thereafter, the appellants had gone away.

17. PW 1 had stated that her daughter, mother-in-law and her husband were present at home at that time. When the appellant had left her home she called the victim on his mobile phone and asked about his whereabouts. That time the victim had told her that the victim was with his friend Bikash and that they were at Batashi, Kharibari. Around 11 P.M the victim had returned home with his friend Bikash. After her son had returned with his friend, she locked the gate of her house. At that moment, the appellants had come to her house and again asked her to open the lock of the gate but she refused. That time, the victim had gone near the gate and asked them about the reason of their being in his house. Appellant No. 1 had slapped the victim on his face with his hand after entering his hands through the grill gate. Then both the appellant had started hitting on the lock of the gate with bricks and stone so as to break the lock. Thereafter the appellant No. 1 had brought one crowbar and then broke the lock with such crowbar. Appellant No. 1 had forcibly opened the gate. Thereafter, appellant No. 2 had assaulted the victim with blows. At that time, appellant No. 1 had also assaulted her son with crowbar on his hand on both the shoulders and legs of the victim. On seeing such incident, she had gone to rescue of her son. Appellant No. 1 had slapped her on her face as a result of which she fell down. Thereafter, her husband, daughter, mother-in-law and Bikash had come forward to save the victim. Both the appellants had dragged and took away the victim along with them. Thereafter, she had gone to search for her son when she saw that her son was lying at the side of the road with the help of the light of a vehicle. She had found her son lying unconscious. She had called Bikash and asked him to bring a vehicle so as to take the victim to a hospital. That time, she had found the appellants had taken Bikash to their house. Thereafter, Bikash had gone to bring one vehicle. Later Bikash had come with a vehicle. She along with her husband, sister-in-law, Bikash and Prasanta Mohanta had taken the victim to the hospital. The doctor at the hospital after examining the victim had declared him as brought dead. Thereafter, she had gone to the police station and lodged a

complaint. The complaint had been written by a scribe named Kalyan Kanti Sarkar as per her version. She had stated that she can read Bengali, she had signed on the complaint after going through the contents. She had stated that, she knew the hand writing of the scribe. The written complaint had been tendered in evidence and marked as Exhibit 1 and her signature as Exhibit 1/1.

18. In cross-examination, she had stated that, both the appellants were her relatives and that they had dispute with regard to property and her shop.

19. The daughter of PW 1 and the sister of the victim had deposed as PW 2. She had stated that PW 1 lodged the complaint against the appellants. She had identified the appellants in Court. She had corroborated the statements made by PW 1 in examination-in-chief.

20. In cross-examination, PW 2 had stated that, there was a dispute between PW 1 and the appellants with regard to the tea shop of PW 1.

21. The grandmother of the victim and mother-in-law of PW 1 had deposed as PW 3. She had corroborated the evidence of PW 1 and PW 2. In cross-examination, she had acknowledged that there was a dispute between PW 1 and the appellants in regard to a tea shop.

22. Bikash who had been identified by PWs 1, 2 and 3 to be present along with the victim on the date and time of the incident, had deposed as PW 4. He had corroborated the testimonies of PWs 1, 2 and 3. In cross-examination, he had denied any knowledge about any civil dispute between the victim and the appellants.

23. PW 5 is a post occurrence witness who had identified the appellants in Court. She had stated that, she was informed by the one person that the appellant was lying in between two roads and that PW 1 was crying when she had gone to the spot and found the victim lying on the road smeared with blood all over his body. Thereafter, she along with her son and the parents of the victim took the victim to the hospital. The doctor had informed them that the victim was brought dead. Thereafter, she had come to learn from PW 1 that the appellants had assaulted the victim with iron rods and dragged the victim to the road. Police had come to the house of the victim after two days of the incident. At that time she was in the house of PW 1 and the police had interrogated her.

24. A relative of the victim had deposed as PW 6 stating that, the victim was his brother. He had stated that, he was informed that the victim had met with an accident and was lying in between two roads. He is one of the witnesses to the inquest report which he had tendered and identified his signature thereon which was marked as Exhibit 2.

25. The brother of the victim had deposed as PW 7. He had arrived at the hospital post the occurrence of the incident. He had witnessed the inquest report. He had identified his signature thereon which was marked as Exhibit 2/1. He had been examined by the police on March 25, 2015. Police had seized the crowbar

with which the appellants had hit his brother and broke the grill. He had tendered the seizure list dated March 25, 2015 which was marked as Exhibit 3. He had identified his signature on the crowbar seized which was marked as Material Exhibit I/I.

26. The doctor who was posted at Islampur Sub-divisional Hospital and who was directed to conduct the post mortem over the dead body of the victim had deposed as PW 8. He had been shown the inquest report. He had referred the matter regarding the post mortem to the head of the Department, Department of Forensic and State Medicine, North Bengal Medical College. He had tendered the carbon copy of the reference memo dated March 20, 2015 which was marked as Exhibit 4.

27. The scribe of the written complaint had deposed as PW 9. He had stated that, PW 1 narrated the incident and requested him to write the written complaint on her behalf. Accordingly, he had drafted the complaint, read over and explained the same to PW 1 who being satisfied put his signature in it. He had identified a signature and written complaint which was marked as Exhibit 1/2.

28. The doctor who had conducted the post mortem on the dead body of the victim had deposed as PW 10. She had stated that, on examining the dead body, she had found 11 injuries. She had mentioned those injuries in the post mortem dated March 26, 2015. She had opined that the cause of death was due to the effects of the injuries as mentioned in the post mortem and that the injuries were ante mortem in nature. The post mortem report had been tendered in evidence and marked as Exhibit 5.

29. PW 10 had stated that, she had received a letter by which, the Investigating Officer sought opinion from her. Such letter of the Investigating Officer was tendered in evidence and had been marked as Exhibit 6. She had stated that, she communicated her opinion to the Investigating Officer by a letter dated June 4, 2015 which was tendered in evidence and marked as Exhibit 7.

30. PW 10 had stated that, the second injury mentioned in the post mortem report being Exhibit 5 was caused by the impact of hard blunt material and that such injury was sufficient to cause death. PW 10 had been shown the crowbar which was marked as Material Exhibit I. She had stated that, the second injury as mentioned in Exhibit 5 may have been caused by Material Exhibit I being the crowbar seized by the police. She had also stated that the second injury mentioned with the post mortem report generally was not possible by falling down from a running vehicle and that the same could not be caused by being hit by a running vehicle.

31. In cross-examination, PW 10 had stated that, the instrument which may have been used in causing injuries in Serial No. 3 in Exhibit 5 had entered the body of the deceased in rectangular shape. PW 10 had been shown Material Exhibit I in cross-examination and after that, she had said that, the flat edge of Material Exhibit I might have caused the injury mentioned in Serial No. 2 of

Exhibit 5. She had stated that, it can be that the body was in motion when the injuries were sustained by the victim. She had volunteered and said that the injuries might also be sustained if the body was dragged. She had stated that it is difficult to say whether the injuries were the effect of single act or several acts.

32. PW 10 was referred to her opinion dated June 4, 2015 being Exhibit 7. She had stated in cross-examination that the blackish colour stain over lateral aspect of both sides of full pant and medical aspect of right foot were consistent with road traffic accident. She had acknowledged that, she did not state in the post mortem report whether the death was homicidal, suicidal or accidental. She had stated that the death might be homicidal or accidental.

33. The doctor before whom, the victim had been placed for the first time deposed as PW 11. He had stated that, on May 25, 2015 he was on emergency duty at the block hospital. The victim had been brought to the hospital by PW 6 at about 12.15 A.M and that the victim had been brought dead. PW 6 who had brought the victim to the hospital stated that, it was a case of road traffic accident. He had therefore, referred the dead body for post mortem. He had tendered the injury report of the victim which was marked as Exhibit 8. He has stated that he did not examine the injury of the victim.

34. The police personnel who had prepared the inquest report had deposed as PW 12. He had identified the inquest report which was marked as Exhibit 2/2 and his signature which was marked as Exhibit 2/3.

35. The Investigating Officer had deposed as PW 13. He had tendered the formal First Information Report in evidence which was marked as Exhibit 9. He had narrated about the investigations conducted by him. The rough sketch map along with the index which he had prepared were tendered in evidence and marked as Exhibit 11 respectively. He had seized various articles on May 25, 2015 by a seizure list which was marked as Exhibit 3/1. He had identified Material Exhibit I.

36. In cross-examination, PW 13 was shown the broken lock whereupon he had stated that, it was broken by hammering as well as by using pressure. He could not say how the crowbar had been bent. If pressure had been used or the crowbar was used for hammering for the lock then there must be some mark on the crowbar which he did not notice.

37. On conclusion of the evidences of the prosecution, the appellants had been examined under Section 313 of the Criminal Procedure Code where, they claimed to be falsely implicated. They had also stated that there was a tea shop of PW 1 in front of their house. At night, PW 1 used to drink alcohol in the shop. They had asked them to shift the shop to some other places and they were creating nuisance. Out of grudge they had filed a false case against the appellants.

38. The victim had been brought dead to the hospital and was first attended to by PW 11. According to PW 11, the victim had been brought by PW 6 who stated that, it was a case of road traffic accident.

39. PW 6 had stated in his evidence that he was informed that the victim met with an accident. He was not an eyewitness to the incident of assault. He had arrived at the place of occurrence subsequent to the discovery of the body of the victim.

40. PW 11 had referred the dead body for post mortem. PW 11 was thereafter tasked with the duty of post mortem over the dead body of the victim. PW 8 had referred the matter of post mortem to the North Bengal Medical College by Exhibit 4.

41. PW 10 being a doctor posted in North Bengal Medical College had conducted the post mortem of the dead body of the victim on March 26, 2015.

42. PW 10 had tendered the post mortem of the victim which was marked as Exhibit 5. Exhibit 5 had noted 11 injuries on the dead body of the victim which are as follows :-

"Injuries: (1) Pressure abrasion 1" x X" over fronto nasal angle (nasion). O/D the scalp, thick haematoma over Rt. parietal, frontal & whole occipital region. SDH over Rt. frontal, parietal lobe

& over cerebellum and base of brain at Rt. side. On removing the brain fissure fracture 1 ½" found over middle cranial fossa. (2) Obliquely placed rectangular shaped pressure abrasion 4" x 1½" over Rt. mid chest wall (extended from 3" below sternal angle at mid line upto 4" above and 2" medial to Rt. nipple. O/D the chest haematoma found over Rt. chest wall with fracture of sternum & Rt. 2nd rib at mid clavicular line. On opening the chest cavity haematoma found over Rt. lung and liquid and clotted blood in cavity with lacerated injury 1" x 3" depth upto parenchyma found over middle lobe of Rt. lung. (3) Pressure abrasion 6" x 3" over back of Rt. shoulder (over scapula) and graze abrasion 6" x 1" at the lower margin. (4) Graze abrasion 9 ½" x 1" at back of Rt. chest wall. (5) Pressure abrasion 4" x 3" over back of Lt. shoulder (over scapula). (6) Pressure abrasion 3" x 1" over anterior aspect of fRt. knee. (7) Pressure abrasion 3 ½" x 2" over anterior aspect of upper Rt. leg, 2" below the injury no. 4. (8) f Pressure abrasion 1 ½" x 1½" over anterior aspect of Rt. ankle. (9) Pressure abrasion 1" x 1" over Lt. knee. (10) Pressure abrasion 1" x 1" over lateral aspect of Rt. elbow (11) Two scratch abrasions parallel to each other with 1" gap in between, at upper Lt. arm near axilla, one is 2" x 2mm & another one is 1 ½" x 1mm."

43. PW 10 had stated that, the second injury as mentioned in Exhibit 5 generally was not possible by falling down from running vehicle and that it could not be caused being hit by a running vehicle. She had stated in cross-examination that, the crowbar being Material Exhibit I might cause the injury as mentioned in Serial No. 2 of Exhibit 5.

44. Much has been sought to be made out with regard to the statement of PW 10 that she did not specify in Exhibit 5 as to whether the death was homicidal, suicidal or accidental. In cross-examination, she had stated that, the death may

have been homicidal or accidental.

45. Accidental death must be ruled out in view of eyewitnesses account stating that, the victim had been assaulted by using Material Exhibit 1 at his residence and thereafter, the victim was dragged out to NH 31 where the dead body of the victim had been discovered by his mother, PW 1. Injuries sustained by the victim and as has been noted in Exhibit 5 can be caused by Material Exhibit 1, is the consistent stand of PW 10 both in examination-in-chief as well as in cross-examination.

46. In view of the eyewitnesses account of assault on the victim read with the oral testimony of PW 10, the cause of death of the victim is the injuries suffered by the victim due to the assault on him inflicted by the appellants on March 25, 2013. Therefore, the prosecution had been able to establish at the trial, that the victim had been murdered by the appellants. Both the appellants had been involved in the assault on the victim.

47. Bhupendra Nath Prasad (supra) has considered a case where, the post mortem doctor was not examined. The post mortem report did not establish the cause of death. The doctor who had examined the deceased had stated that the family members who brought the deceased to the hospital told him that somebody made the deceased take wine and betel and thereafter, the deceased had started vomiting. The evidence regarding the dying declaration had been found to be untrustworthy and does not inspire confidence. Therefore, the Court had found reasonable doubt about the cause of death.

48. The facts and circumstances of the present case are different as has been noted above. Eyewitnesses have implicated both the appellants of the assault upon the victim by Material Exhibit 1. The injuries suffered by the victim as appearing on his dead body are commensurate with injuries that can be inflicted by Material Exhibit I.

49. The eyewitnesses are relatives of the victim and a friend of the victim. Each of such eyewitness have corroborated each other with regard to every material aspect of the incident. Each of them have described how the appellants had broken into the house of the victim by using Material Exhibit I, assaulted the victim by using Material Exhibit I and dragged the victim out of the house NH 31 where the victim was ultimately found dead. Each of the eyewitnesses, can be said to be natural witnesses present at the time of occurrence. The relatives of the victim were at the residence of the victim. Such place was the residence of such eyewitnesses. The friend of the victim had returned with the victim and each of the relative eyewitness of the victim had corroborated the presence of the friend of the victim at the time when the assault took place. Friend of the victim had also implicated the appellants in the same manner as the other eyewitnesses.

50. The broken lock as also the crowbar used in the assault had been seized by the police by seizure list being Exhibit 3. Two broken bricks had also been seized.

Eyewitnesses had testified as to how the appellants used bricks initially to break upon the padlock.

51. The defence of enmity as has been sought to be set up on behalf of the appellants does not assist the appellants. Victim and the appellants are relatives and that, there were enmity between the victim and the appellants with regard to a tea shop of PW 1 has been admitted both by the prosecution as well as by the appellants in their examination under Section 313 of the Criminal Procedure Code.

52. Eyewitnesses accounts are both trustworthy and inspire confidence in the Court. Eyewitnesses account have been corroborated by the medical evidences placed on record by the prosecution.

53. In such circumstances we find that, the conviction of the appellants under Section 302/34 of the Indian Penal Code, 1860 was justified. The quantum of punishment imposed by the impugned order of sentence is also justified.

54. We have therefore found no ground to interfere with the impugned order of conviction of the order of sentence.

55. CRA (DB) 37 of 2022 is dismissed.

56. In view of the dismissal of the appeal, CRAN 1 of 2022 is also dismissed.

57. A copy of this judgement and order along with the trial Court Records be remitted to the appropriate Court expeditiously.

58. Period of detention pre-trial, during trial and post-trial be adjusted against the sentences imposed.

59. Urgent Photostat certified copy of this judgement and order be supplied to the parties applying for the same, on completion of all formalities.

60. I agree.