

**IN THE HIGH COURT AT CALCUTTA**  
***Circuit Bench at Jalpaiguri***  
CRIMINAL APPELLATE JURISDICTION  
APPELLATE SIDE

Present:

**The Hon'ble Justice Joymalya Bagchi**

And

**The Hon'ble Justice Apurba Sinha Ray**

***C.R.A. 24 of 2019***

***Rupesh Lohar***

**-Vs-**

***The State of West Bengal***

**For the Appellants** : Mr. Sandip Datta, Adv.,  
Mr. Sourav Ganguly, Adv.

**For the State** : Mr. Aditi Shankar Chakraborty, Id. A.P.P.  
Mr. Aniruddha Biswas, Adv.

**Heard on** : 07.12.2023

**Judgment on** : 07.12.2023

**Joymalya Bagchi, J. :-**

1. Appellant has assailed the judgment and order dated 17.01.2012 & 19.01.2012 passed by the learned Additional Sessions Judge, 2<sup>nd</sup> Fast Track Court in Sessions Case No. 113 of 2007 arising out of Sessions Trial No.20 of 2008 convicting the appellant for commission of offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/-, in default, to suffer simple imprisonment for six months more.

2. Prosecution case levelled against the appellant is as follows :-

On 16.09.2005 at 9.30 PM a quarrel had broken out between the appellant and his wife. Nanka a neighbour had come to wash his hands in a nearby tubewell. His brother Shib Sankar (PW 10) was also present at the spot. In course of the quarrel appellant turned around towards Sib Sankar and Nanka and confronted them by saying “*tomra ekhane ki korcho, Dadagiri korte asecho?*” (what are you doing here, Dadagiri?). Thereafter, the appellant went to his house and brought a knife and stabbed Nanka. Shib Sankar protested and was also stabbed by the appellant. After being stabbed, Nanka ran towards Surhati more. Mother and wife of Nanka (PW 1 & 9 respectively) came to the spot. Nanka and Shib Sankar were taken to hospital where Nanka was declared dead and Shib Sankar was admitted for medical treatment. Mother of Nanka (PW 1) lodged written complaint resulting in registration of Banarhat P. S. Case No.111 of 2005 dated 17.09.2005 under Sections 326/302 of the Indian Penal Code. In course of investigation, appellant was arrested and on his leading statement the weapon of offence, i.e. knife was recovered. Charge sheet was filed. Charge was framed under Section 302 of the Indian Penal Code. To prove its case prosecution examined twenty witnesses. Defence of the appellant was one of innocence and false implication.

3. In conclusion of trial, learned trial Judge by the impugned judgment and order dated 17.01.2012 & 19.01.2012 convicted and sentenced the appellant, as aforesaid.

**Arguments at the Bar :-**

4. Learned Advocate appearing for the appellant contends the prosecution case has not been proved beyond doubt. PW1 did not see the incident and is a reported witness. PW 9 also did not see the incident. No injury report of PW 10 is placed on record. Without prejudice to the aforesaid, it is argued that the incident occurred in the course of a sudden quarrel. Victim and his brother in an inebriated condition had intervened in the family affairs of the appellant. This enraged the appellant who in a fit of passion attacked the victim. He had no intention to commit murder.

5. Mr. Biswas, learned Advocate for the State contends evidence of the injured witness is corroborated by PWs 1 and 9. Ocular version is supported by the medical evidence of post mortem doctor (PW 18). Minor contradictions in the deposition of the witnesses do not improbabilise the gist of the prosecution case. Appellant had struck the victim in the belly with a knife. He had intention to commit murder. Accordingly, he prays for dismissal of the appeal.

**Whether appellant is responsible for the murder of the victim?**

6. PW 10 (Shib Sankar Roy) is the star witness. He deposed on 16.09.2006 at 9.30 PM he was returning with his brother Nanka from the market. He stopped near a tubewell which is in front of the house of Janak thakur to wash his hands. His brother Nanka proceeded to his residence. At that time, appellant who is a tenant of Janak Thakur was quarrelling with his wife. Nanka returned from his residence to wash his

hands in the tubewell. Appellant confronted them stating “*tomra ekhane ki korcho, Dadagiri korte asecho?*” (what are you doing here, Dadagiri?). Then he brought out a knife and stabbed Nanka in the belly. Nanka started running away from the place of occurrence. When PW 10 protested he was also struck and became unconscious. He was taken to North Bengal Medical College and Hospital where he was admitted for treatment. His brother was declared dead. He identified the knife which was produced in Court.

7. Learned Advocate for the appellant has challenged the evidence of the injured witness on the ground that medical report has not been placed on record. In the facts of the case, I am of the opinion failure to produce medical report is a remissness in investigation which ought not be a ground to discredit the witness. PW 10 in his deposition categorically stated he was admitted at North Bengal Medical College and Hospital. This fact is corroborated by other witness. Defence did not cross-examine PW 10 on this score at all. Hence, I hold PW 10 was injured in course of the incident and had been admitted to North Bengal Medical College and Hospital for treatment.

8. PW 10 is corroborated from other sources as discussed hereinbelow.

9. PW 11 (Beauty Roy) is the wife of the deceased. She stated around 9.30 PM her husband had returned home from work. She was about to serve food to her husband. He went out to wash his hands in the tubewell when the incident occurred. She had witnessed the

incident. She stated that her husband and his brother (PW 10) were taken to hospital. Her husband was declared dead and PW 10 was admitted for treatment.

10. PW 1 (Smt. Dinobala Roy), mother of the deceased also claimed she had seen the incident. Her deposition is severely criticised by the learned Advocate for the appellant. He contends while in Court the witness stated she saw both her sons were coming together holding hands, in the FIR she claimed she had been informed by her daughter-in-law i.e. PW 11 that a quarrel had ensued between the appellant and her sons. In another part of her deposition she claimed she had heard of the stabbing from her son, PW 10.

11. In the light of the aforesaid contradictions, it is doubtful whether PW 1 was an eyewitness. Immediately after the incident she had rushed to the place of occurrence and had been informed of the incident by her injured son (PW 10). Under such circumstances, her evidence with regard to the manner of assault is relevant as *res gestae* under Section 6 of the Evidence Act.

12. The ocular versions of the aforesaid witnesses find corroboration from the medical evidence on record.

13. PW 18 (Himanish Kumar Mandal) held post mortem examination over the body of the deceased. He found the following injuries:-

- a) *Incised wound 3" x 1", deep penetrating type in the left hypochondrium directed slightly upward, backward and medially with everted margins showing omental prolapsed piercing skin*

*fascia mussule spleen stomach wall liver causing laceration and intra peritoneal bleeding and no other external injury detected;”*

He opined death was caused by haemorrhagic shock due to penetrative stab injury ante mortem in nature most likely homicidal. In the post mortem report he stated injury was sufficient to cause death but in cross-examination he opined injury was most likely homicidal in nature.

14. In course of investigation, the Investigating Officer (PW 19) interrogated the appellant. On the appellant's showing a knife with wooden butt was recovered.

15. PW 12 (Debasish Das), PW 13 (Jahirul Haque) and PW 17 (Pranab Kumar Das) have proved the recovery of knife. PW 10 identified the knife as the weapon used to commit the murder.

16. In the light of the aforesaid evidence on record, I am of the opinion appellant had caused fatal injury on the stomach of the victim with a sharp cutting weapon i.e. knife resulting in his death in the factual matrix.

**Whether conviction under section 302 IPC is justified?**

17. It has been argued that the appellant had no intention to cause death and the incident occurred in the course of a sudden quarrel.

18. I find substance in such submission. PW 7 is the wife of the appellant. She was present at the place of occurrence. She stated on the fateful night she was quarrelling with her husband in the courtyard. At that time the victim Nanka and his brother came to the spot. A quarrel

ensued between them and her husband. Nanka and her brother were in an inebriated condition.

19. Version of PW 2 finds corroboration from the FIR wherein it is stated wife of Nanka (PW 11) reported to her mother-in-law (PW 1) that her sons were quarrelling with the appellant.

20. These circumstances show that the victim and her brother in an inebriated condition intervened in the matrimonial dispute between the appellant and PW 7. A quarrel ensued between the appellant on the one side and the victim and his brother on the other side. Appellant claimed that the victim and his brother were officious intervenors in a private matter. In a fit of passion he struck a single blow. No doubt the blow was struck on a vital part of the body i.e. belly with a sharp cutting weapon but the attending circumstances show the victim and his brother who were inebriated had intervened in a domestic quarrel between the appellant and his wife. Out of rage, the appellant had lost control and struck at the victim. These circumstances persuade me to extend the benefit of exception 4 to Section 300 IPC and I am inclined to convert the conviction of the appellant from Section 302 IPC to Section 304 Part-I IPC.

21. In the light of the alteration of the conviction of the appellant from murder to culpable homicide not amounting to murder, I modify the sentence imposed on the appellant also.

22. I am informed that the appellant has suffered incarceration for twelve years. Accordingly, we direct that he shall suffer rigorous

imprisonment for the period already undergone and pay a fine of Rs.10,000/-, in default, to suffer simple imprisonment for six months more.

23. Appeal is accordingly disposed of.

24. As the appellant has already served out the substantive sentence, he is directed to deposit the fine amount within seven days from date. In the event he does so, he shall be discharged from his bail bonds. On the other hand, if the fine amount is not paid within the stipulated time, his bail bonds shall stand cancelled and trial court shall take necessary steps for execution of the sentence in accordance with law.

25. Lower court records along with copies of this judgment be sent down at once to the learned trial Court as well as the Superintendent of Correctional Home for necessary compliance.

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

I agree.

**(Apurba Sinha Ray, J.)**

**(Joymalya Bagchi, J.)**