

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 734 OF 2014
[CRLMP No.6247 of 2014 in SLP (CrI.) No.6775 of 2010-Jail
Petition]**

**Saroj @ Suraj Panchal & Anr. ... Appellant(s)
versus
State of West Bengal ... Respondent(s)**

J U D G M E N T

C. NAGAPPAN, J.

- 1. Leave granted.**
- 2. This appeal is preferred against the judgment of the High Court of Calcutta in C.R.A. no.207 of 2002.**
- 3. The appellants herein are accused nos.1 and 3 respectively in Sessions Trial Case no.XXX(April) of 2000 on the file of Fourth Additional Sessions Judge at Howrah and they were tried along with two other accused and all of them were convicted for offence under**

Section 302 read with Section 34 IPC and each of them was sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- and in default to undergo rigorous imprisonment for one year. Aggrieved by the conviction and sentence accused nos.1 to 4 preferred appeal in Criminal Appeal no.207 of 2002 and the High Court by impugned judgment dated 12.5.2008 dismissed the appeal preferred by accused nos.1 and 3. Challenging the same they have preferred the present appeal.

4. The prosecution case in brief is as follows :
Accused no.1 Saroj @ Suraj Panchal is the elder brother of accused no.3 Anil Panchal. Accused no.2 Tapan Panchal and accused no.4 Swapan Panchal are sons of accused no.1 Saroj @ Suraj Panchal. PW1 Srikant Ray and PW9 Sameer Ray are brothers of deceased Sukumar Ray. All of them are residents of Bangalpur village and their houses were nearby. There was a love affair between Sukumar Ray and Kumari Bandana Panchal aged about 20 years, daughter of accused no.1 Saroj @ Suraj Panchal. On

10.7.1990 at about 8.00 p.m. a hue and cry was heard from the first floor of the house of accused no.1 Saroj @ Suraj Panchal and PW1 to PW4, PW9 and PW12 went there and saw accused nos.1 to 4 beating Sukumar Ray with iron rod and lathi and dragging him by tying his hands and legs through wooden staircase from the first floor to the ground floor and left him in the dange of Gobinda Mondal. PW11 Tapan Kumar Pramanik took the injured Sukumar Ray to the Bagnan Hospital by his trolley van. PW1 Srikant Ray lodged a written complaint at 23.25 hrs. on 10.7.1990 in Bagnan Police Station. Exh.2 is the G.D. Entry. PW13 the sub-Inspector of the Police registered the case against the accused and Exh.3 is the F.I.R. Sukumar Ray died at 1600 hrs. on 11.7.1990.

5. PW14 Dr. Kumud Ranjan Chatterjee conducted the post-mortem and found the following :

i) One abrasion 2"x2" over left leg;

ii) One bruise mark over left temple region with black eye;

iii) One lacerated wound 4"x1" X bone deep over left occipital region;

iv) One lacerated wound 2"x ½" X bone deep over right temporal region;

On dissection he found multiple diffused and spotted haematoma on the scalp present, depressed fracture over right temporal occipital region with haemorrhage inside the brain tissue.

He opined that death was caused due to injuries sustained particularly the head injury. After completing investigation the final report came to be filed against the accused persons 1 to 4. In order to prove its case the prosecution examined PW1 to PW19 and marked documents. No evidence was let in on the side of the defence. The Trial Court found accused nos.1 to 4 guilty of the charge of murder and sentenced them as narrated above. On appeal the conviction and sentence imposed

on accused nos.1 and 3 were confirmed. Challenging the same they preferred appeal and this Court by order dated 19.10.2012 issued notice on the question of the nature of offence and sentence only.

6. During the occurrence appellants herein/accused nos.1 and 3 along with two other accused beat Sukumar Ray with iron rod and lathi is established by the testimonies of the eye witnesses namely PW1 to PW4, PW9 and PW12. Sukumar Ray died of injuries sustained during the occurrence is also proved by the medical evidence let in by the prosecution in the case.

7. The learned counsel for the appellants contended that the occurrence took place on account of sudden provocation and the act was committed by the appellants without premeditation and it would fall under First Exception to Section 300 IPC and the first appellant is 80 years old and the second appellant is 76 years old. Per contra the learned counsel appearing for the respondent

State submitted that the conviction and sentence imposed on the appellants are proper.

8. It is not in dispute that there was a love affair between Bandana Panchal and Sukumar Ray and it was not liked by the family members of Bandana Panchal. On the occurrence night at about 8.00 p.m. Sukumar Ray went to the house of Bandana Panchal to meet her. Annoyed by the presence of Sukumar Ray in the night in their house the appellants and other accused persons beat Sukumar Ray and dragged him from the first floor to the ground floor through wooden staircase which resulted in injuries. Nobody would tolerate such an intruder into their house in the night hours. By no means, can it be held to be a case of premeditation and it was a case of grave and sudden provocation and would come under the First Exception to Section 300 IPC. The fact situation bears great similarity to that in the decisions in *Mangesh vs. State of Maharashtra* (2011) 2 SCC 123 and *State of Punjab vs. Jagtar Singh & Ors.* (2011) 14 SCC 678.

9. Looking at the nature of injuries sustained by the deceased and the circumstances as enumerated above it can be concluded that the death was caused by the acts of the appellants/accused done with the intention of causing such bodily injury as is likely to cause death and therefore the offence would squarely come within the first part of Section 304 IPC and the appellants would be liable to be convicted for the said offence. The conviction of the appellants/accused nos.1 and 3 under Section 302 read with Section 34 IPC is liable to be set aside.

10. We are of the considered view that imposition of seven years rigorous imprisonment on each of the appellants for the conviction under Section 304 Part I IPC would meet the ends of justice.

11. In the result the Criminal Appeal is partly allowed and the conviction of the appellants for the offence under Section 302

read with Section 34 IPC and the sentence of life imprisonment each imposed on them are set aside and -instead they are convicted for the offence under Section 304 Part I read with Section 34 IPC and sentenced to undergo seven years rigorous imprisonment each.

.....J.
(T.S. Thakur)

.....J.
(C. Nagappan)

New Delhi;
April 03, 2014

JUDGMENT