09.10.2026

Item No.1&2
Court No. 8

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

CRA (DB) 226 of 2022

SUSANTA MALLA
VS.
THE STATE OF WEST BENGAL AND ANR.
WITH
CRA (DB) 71 OF 2023
PRASANTA MALLA @ LORE
VS.
STATE OF WEST BENGAL

For the Appellants :
Mr. Gunjan Kumar Singh,
Mr. Prakash Mishra,
Ms. Rashmi Choudhary
Mr. Vikas Kumar Rupsha
.....Advocates

For the State :
Mr. Krishnendu Bhattacharya, APP,
Mr. Rima Banerjee

.....Advocates

Dictated by Apurba Sinha Ray, J.

In Re: CRA(DB) 226 of 2022

1. The judgment and order of conviction dated 28.09.2022 and 29.09.2022 passed by the learned Additional Sessions Judge, Bishnupur in Sessions Trial No. 02 (04) of 2011 arising out of Sessions Case no. 19 (4) of 2009 convicting the appellants under Sections 302/34 of the Indian Penal Code is challenged by the appellants on the ground that the evidence on record was not properly

assessed by the learned Trial Judge. Although, none saw the appellants to commit the crime, they were convicted on surmise and conjecture. No dying declaration was recorded. Neither there is any convincing evidence to show that the victim narrated the names of these appellants as her assailants nor any incriminating article was received from the custody of any of the appellants. There is an allegation that the victim suffered a cut throat injury and she was unable to speak. Then how could such a victim narrate the names of the present appellants. The victim died after 47 days of the incident. No effort was made by the Investigating Officer to record the statement of the victim with the help and assistance of her parents or anybody else.

2. Learned Counsel for the petitioner has drawn the attention of this Court to the depositions of witnesses which according to learned Counsel are full of anomalies and cannot be the basis of a judgment of conviction.

3. Learned counsel for the State submits on the other hand that there are sufficient incriminating materials against the appellants. Furthermore, the learned Trial Judge has very emphatically discussed as to why the place of occurrence was not identified and no attempt was carried out to collect any incriminating materials from the place of occurrence. In this regard, he has drawn the attention of this Court to the specific observation of the learned Trial Judge which is quoted hereinbelow:-

> *"Defence has also raised that place of occurrence is not ascertained and blood stained earth is not seized, then how court will believe the prosecution story that any incident at all occurred as per narration of prosecution witnesses. We should not forget that in this case there is no direct evidence and this case is based on circumstances.*
> *Injured was also not found from any particular place, but soon after the incident the injured was moved to the Patrasayer BPHC by the assistance of PW2, PW3 and other witnesses and then she was shifted to BSMCH, Bankura and ultimately to SSKM Hospital, Kolkata and she was in the hospital from the very date of incident till her death for a considerable period of 41 days and during this period she got no scope to return home and to give company to the investigation officer to ascertain the place of occurrence and therefore, question of search and seizure of blood stained earth from the place of occurrence does not arise. Prosecution (Sic.) has raised the question that the offending weapon has not been seized, this question is not relevant so far the present case is concerned. Moreover, there is no hard and fast rule in criminal law that weapon must be discovered to prove the prosecution case and if not discovered prosecution case will fail. Defence has raised that no dying declaration has been recorded and then how far they will believe the prosecution story that the accused persons are involved with the alleged offence. It is true that no dying declaration is recorded while the injured was admitted in BSMCH, Bankura and SSKM, Kolkata. It is latches on the part of the investigating officer, but for that lacuna entire prosecution case cannot be disbelieved as because name of the accused persons are revealing within 3/4 hours of the incident, i.e., when written complaint was lodged and statement was made before the Medical Officer and on the following day of the alleged incident accused persons were intercepted and that factum has been corroborated by PW3, PW4 and PW5 and other witnesses."*

4. Learned counsel for the State has further submitted that learned Trial Judge was convinced about the complicity of the present appellants in committing the crime. Since the victim herself narrated the same to her

parents, there was nothing on record to disbelieve such dying declaration of the victim through her parents.

Court's view:

5. The brief facts of the prosecution case, which are highly pertinent to note, are that on **10.04.2008**, the victim (aged about 18 years) was going to the house of Jamal Sk. at Kushadip village. At that time, she was forcibly detained and abducted by the present appellants, who took her to the local forest of Kushadip. Thereafter, they attempted to rape her; however, when the victim resisted, the appellants attempted to murder her by slitting her respiratory tract (trachea). She temporarily lost consciousness at the place of occurrence.

6. Jamal Sk., a resident of Kushadip, found her lying injured and brought her to Pandua Hospital. The victim was treated there, after which the de facto complainant was informed. She was subsequently shifted to Patrasayer and thereafter to Bankura Hospital. She eventually succumbed to her injuries after 47 days.

7. The prosecution examined 15 witnesses, including the parents of the victim and Jallal Sk. (PW 2), who allegedly saw the injured victim first in point of time. It is admitted that no eyewitness saw the present appellants abduct the victim and carry her to the local forest. While the victim would have been the best witness of the incident, she unfortunately passed away. It is further unfortunate that she suffered a speech disability following

the attack, raising the critical question of how she narrated the incident to her parents and other witnesses.

8. A conviction based on circumstantial evidence can only be sustained if the chain of events is complete. PW 2, Jallal Sk., who allegedly saw the victim immediately after the attack, deposed as hereinunder:

> *" I am resident of village Saurabani under P.S. Patrasayer. I knew Argina Khatun daughter of Jamal Khan. They are my relatives. They used to visit our house. Argina died about four years back. I was not present at the time of incident. Arjima arrived at my house with bleeding injury on her throat by a knife. Arjina did not state me about her injury though I asked her. Then I took her at their house Thereafter I left their house.*
> *Thereafter I did not take any information and also did not visit their house. I heard it that Susanta and Prasanta kidnapped her from the road. I heard it from the mother of Arjina after 2/3 days of the incident that Arjina was taken to the forest by Susanta and Prasanta. That apart I did not hear anything."*

9. PW 3, the father of the victim, stated that after regaining consciousness, the victim went to the house of Jallal Sk. (PW 2), who then took her to PW 3's residence on a bicycle, where she allegedly narrated the incident to them. Thereafter, they took her to Pandua Hospital, from where she was referred to Patrasayer Police Station and subsequently to Patrasayer Hospital, where PW 3 affixed his Left Thumb Impression (LTI) in the presence of the doctor. The patient was then referred to Bankura Hospital, where PW 3 again affixed his LTI on the medical report.

10. However, PW 4, the mother of the victim, stated otherwise. According to her, when her daughter was going

on foot towards Jallal Sk.'s house at Sheoraphuli, she was intercepted by the appellants, who attempted to commit rape upon her. Upon resistance, they stabbed her in the throat with a knife. In that condition, PW 2 Jallal Sk., who was visiting his nearby land, found her, picked her up, and directly took her to Pandua Hospital along with several villagers, at which point the victim allegedly narrated the incident to them. PW 5, Mavia Bibi (sister-in-law of the de facto complainant), supported PW 4 by stating that PW 2 brought the victim from the place of occurrence to Pandua Hospital, where the victim narrated the incident with great difficulty.

11. PW 9, Arif Sk., stated that he saw the injured victim at Patrasayer Hospital, but she was unable to speak to him. He overheard her parents stating that Susanta Malla and Prasanta Malla had committed the offence, though he could not clarify the source of their information. PW 10, an Associate Professor of Surgery at Bankura Sadar Medical College & Hospital who examined the victim on the date of occurrence (10.04.2008), observed a 4*cm* cut wound on the upper part of her neck and recorded that she was unable to talk; it was her mother who named Susanta Malla and Prasanta Malla as the assailants.

12. PW 12, Dr. Subhankar Banerjee, Medical Officer at Patrasayar BPHC, examined the victim at about 3:50 PM. On examination, he noted bleeding and a cut injury over the throat region, alongside speech disability. While he recorded that the patient attributed the injury to an

assault by Prasanta Malla and Susanta Malla with a knife around 12:00 noon, he explicitly admitted during cross-examination that he did not mention in the injury report who actually provided these names to him, nor did he record whether the patient was in a conscious or fit mental state to make a statement.

13. The Investigating Officer (IO), Inspector Dipankar Bhattacharya (PW 15), admitted in cross-examination that the case was registered at 15:25 hours on 10.04.2008. He first saw the victim at Patrasayar BPHC but could not record her statement because she was incapable of speaking due to the severe cut-throat injury. PW 15 further clarified that PW 5 (Mavia Bibi) never stated to him during the investigation that the victim had narrated the incident to her. Instead, PW 15 volunteered that PW 5 claimed the victim had disclosed the names to a treating staff nurse, Ms. Kanchanlata Mondal, upon inquiry. Although PW 15 examined and recorded the statement of Ms. Kanchanlata Mondal under Section 161 Cr.P.C., she was conspicuously omitted as a witness in the charge-sheet.

14. A critical analysis of the depositions reveals irreconcilable contradictions as to who initially rescued and transported the victim. While PW 4 and PW 5 asserted that PW 2 took the victim directly to Pandua Hospital, PW 3 claimed that the victim first fled to PW 2's house, from where PW 2 brought her to PW 3's residence. Most glaringly, PW 2 himself deposed that the victim arrived at

his house bleeding from the throat and remained completely silent despite his queries, after which he dropped her at her parents' residence and left. Thus, PW 2—the very first person to meet the victim—categorically refuted having transported her to the hospital or having received any oral statement from her.

15. The evidence overwhelmingly demonstrates that the victim suffered an immediate loss of speech owing to the severe cut-throat injury. When the medical evidence from PW 10, PW 12, and the IO (PW 15) consistently proves her physical incapacity to speak from the very inception, the claim of oral dying declarations allegedly made to her parents and relatives becomes wholly unconvincing and legally unsafe to rely upon. The learned Trial Judge failed to appreciate this fundamental infirmity. Furthermore, the non-examination of staff nurse Kanchanlata Mondal—the sole independent person to whom a disclosure was allegedly made—strikes a fatal blow to the prosecution case, drawing a strong adverse inference under Section 114(g) of the Indian Evidence Act.

16. Where the prosecution case rests on circumstantial evidence, the chain of circumstances must be complete and point unequivocally to the guilt of the accused. Given the serious inconsistencies surrounding the alleged oral dying declaration and the identification of the assailants, a grave shadow of doubt is cast upon the prosecution story. It is well settled that suspicion, howsoever strong, cannot take the place of legal proof.

17. Consequently, as we are not satisfied that the appellants were reliably named or identified by the victim, the benefit of doubt must go in their favour. The appeals being **CRA (DB) 226 of 2022 with CRA (DB) 71 of 2023** are hereby **allowed**. The judgment of conviction and order of sentence passed by the learned Trial Court are set aside, and the appellants are acquitted of all charges. The appellants shall be set at liberty forthwith, if not required in connection with any other case. All pending applications, if any, stand disposed of.

18. All parties shall act in terms of the server copy of this judgment downloaded from the official website of this Court.

19. Urgent photostat certified copies of this Order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)