

**(2014) 09 CAL CK 0157**

**Calcutta High Court**

**Case No:** C.R.A. 161 of 2005

Ainal Mondal

APPELLANT

Vs

The State of West Bengal

RESPONDENT

**Date of Decision:** Sept. 26, 2014

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 235(1)
- Penal Code, 1860 (IPC) - Section 302, 34

**Hon'ble Judges:** S. Chatterjee, J; Nishita Mhatre, J

**Bench:** Division Bench

**Advocate:** Siladitya Sanyal and A. Jana, Advocate for the Appellant; Manjit Singh, Public Prosecutor and Pawan Kumar Gupta, Advocate for the Respondent

**Judgement**

Samapti Chatterjee, J.

The instant appeal is directed against the Judgment and Order of conviction passed in Sessions Trial No. 9(1) 2003 and Sessions Case No. 40(7) 2002 passed by the learned Additional Sessions Judge, 4th Court Nadia on 29th day of January, 2005 holding the appellants/accused persons guilty of offence punishable under Section 302/ 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life and also to pay a fine of Rs. 2000/- each, in default to suffer Rigorous Imprisonment for 6 months for commission of offence punishable under Section 302/ 34 of the Indian Penal Code.

2. Put in a short frame the prosecution case runs as under:

3. On 23.12.2001 one Afiya Bibi, wife of Atar Ali Sheikh, of village Gopal Nagar under P.S. Thanapara, lodged a written complaint to the Officer-in-Charge of Thanapara stating that on that very date at about 7:30 A.M. her husband along with her youngest son Sentu Sheikh had been to Lasarer Math in order to irrigate the land through shallow pump. After some time her husband came back home and informed that the machine is not properly operating and hearing the same her

eldest son Mantu Sheikh went to the field in order to repair the pump. At that time few persons were discussing amongst themselves in the house of Saban Mollah neighbour of this defacto-complainant, and thereafter she noticed that Saiful, Halim, Ichhu, Arfatul, Sirfatul, Ainal, Doat, Ali Hossain and Chhattar Mollah, all of same locality, were going through the front side of the house of defacto complainant and seeing some of them being armed with sharp cutting hensua, dao, etc, the defacto complainant followed them and after going few steps she heard Doat Mollah, Ali Hossain and Chhattar Mollah to tell the rest of the assailants to return after finishing Mantu Sheikh. Hearing the same from those Saiful, Halim, Ainal, Sirfatul, Ichhu and Arfatul Mollah who were proceeding towards the field of Atar Ali Sheikh being armed with weapons and Doat, Ali Hossain and Chhattar did not proceed further. The defacto-complainant thereafter followed those miscreants speedily and she tried to alert her sons and husband raising alarm, but they could not hear the same. In the meantime those miscreants already reached their land and encircled her sons and husband. Ichhu at first struck on the head of Mantu by hansua and thereafter Mantu fell on the ground. While the husband and youngest son of defacto complainant went to resist them, they threatened to kill them. Then the miscreants chopped Mantu on his entire person at random. In spite of repeated prayers of the defacto-complainant to save the life of her son, the accused persons did not care for the same. They inflicted severe injuries, even the guts came out of the belly of Mantu and thereafter the accused persons fled away to the river's side.

4. Pursuant to said written complaint, Thanarpara P.S. Case No. 97/01 dated 23.12.2001 under Section 302/ 34 of the Indian Penal Code, was initiated against the present accused persons and also against Doat Mollah, Halim sheikh and Ichhu Sheikh. On completion of investigation, charge sheet was submitted against all those six accused persons under Section 302/ 34 of the Indian Penal Code. Accordingly trial started and after completion of trial learned Additional Sessions Judge 4th Court, Nadia held the 4 accused persons namely Ainal Mondal, Saiful Mondal, Sirfatul Mondal and Arfatul Mondal guilty for the offence punishable under Section 302/ 34 of the Indian Penal Code and convicted them as aforesaid.

5. The accused Chhattar Mondal and Ali Hossain Mondal being found not guilty of the offence under Section 302/ 34 of the Indian Penal Code were acquitted under Section 235(1) Cr.P.C. by the learned Additional Sessions Judge, 4th Court, Nadia.

6. There were all total six accused persons. Two were acquitted by the learned Trial Judge.

7. P.W.1 was the eye witness, mother of the deceased and the defacto complainant. In her evidence she stated that on 23rd December, 2001 at about 7:30 A.M. her husband, and her youngest son went to irrigate their laserer field. Since the shallow pump machine was not functioning therefore her husband took Montu (since deceased) their eldest son with them. When the P.W.1 was standing on the road she saw that the accused Sattar Ali Doyat, Ichhu, Ainal, Saiful, Halim Arfatul and Sirfatul

came out of the house of Saban Mollh being armed with Hansua and other deadly weapons and went away crossing her. After proceeding a short distance the accused Ali Hossain, Sattar and Doyat were talking that they would finish Montu Sheikh. Hearing that the P.W.1 rushed to the field to save her son and the six accused persons were running ahead of her to kill her eldest son Montu. The P.W.1 was also running after them praying for life of her son Montu but they did not pay any heed to her prayer and the accused Ichhu at first hit Montu (deceased) with a Hansua on his head causing bleeding injury and thereafter all those six accused persons began to hit Montu at random with their respective weapons. They inflicted injuries over the whole body of Montu causing instantaneous death. She further deposed that such occurrence took place in their land where their shallow pump machine was installed. After assaulting Montu the accused persons left the scene of offence and went towards the river. Many villagers came to the place of occurrence thereafter. She further deposed that Bamarul Sheikh, her son-in-law (Bhasurpo), wrote the FIR as per her direction sitting at the place of occurrence. Thereafter she put her left thumb impression on it and handed over the same to the police. She further deposed that previously the daughter of accused Doyat was murdered and in that murder case her husband and two sons Montu and Sentu were falsely implicated. Apprehending arrest Montu (since deceased) absconded for some time. He returned home on Saturday night and the incident took place on the following morning i.e. Sunday.

8. P.W.2 was the Autopsy Surgeon who prepared post mortem report over the deadbody of Mantu Sheikh. On examination he found following injuries on the dead body of the deceased :-

1. Sharp cut injury on right parietal region of head 3"x1" bone deep-bone cut.
2. Sharp cut injury on right parietal region extended upto vault of skull 1" behind injury no. 1 5"x4" x bone deep.
3. Sharp cut injury on left parietal region 2"x1".
4. Sharp cut injury on midline of occipital region 2"x1" x bone deep.
5. Sharp cut injury transversely on nape of neck 2"x1"x muscle deep.
6. Sharp cut injury on right scapular region on back 2" x 1" x muscle deep.
7. Sharp penetrating cut injury on left lateral side of abdomen extending upto back of abdomen transversely and colla of small intestine with omentum coming out of the wound 4" x 2" x abdominal cavity deep.
8. Sharp cut injury 2" x 1/2" x abdominal cavity deep.
9. Sharp cut injury on back of abdomen lower part on right side 2" x 1" x abdominal cavity deep.

10. Sharp cut penetrating injury on right lateral side of abdomen two in number 2" x 1" x abdominal cavity deep (each).
11. Sharp cut injury on lower part of front of right thigh 3" x 1" x muscle deep.
12. Sharp cut injury on upper third of right leg in front obliquely 5" x 3" x bone deep.
13. Two sharp cut injuries on dorsum of right hand 1 1/2" x 1" x bone deep (each).
14. Sharp cut penetrating injury on right side of upper part of chest in front 1/2" below right clavicle on middle part 1" x 1/2" x chest cavity deep.
15. Right lung punctured.

He opined that death was caused due to shock and hemorrhage ante mortem and homicidal in nature.

9. P.W.3 was the police man who carried the dead body to the hospital for post mortem examination.
10. P.W.4 brought the dead body of the deceased from Gopal Nagar to Shantinagar Hospital.
11. P.W.5 was declared hostile by the prosecution who heard from P.W.1 that men of Doyat had murdered Mantu and fled away.
12. P.W.6, cousin brother of the deceased, first time disclosed before the Court and he was not examined by the police under Section 161 Cr.P.C. before that. In his deposition he stated that the accused persons murdered Mantu. He further deposed that when the previous night Mantu returned home they tried to conceal the presence of Mantu from the villagers.
13. P.W.7 resident of Gopal Nagar is the nephew of deceased Mantu and was examined by the Investigating Officer after one month of the incident. He saw on that day Doyat, Ichhu, Arfatul, Sirfatul, Ainal and others were going towards the field and that Ainal, Aratul were armed with Hansua and P.W.1 Mantu's mother followed them.
14. P.W.8 is a hearsay witness and a resident of that locale.
15. P.W.9 cousin brother of the deceased and signatories of the seizure list was also a hearsay witness who heard the incident from the P.W.1.
16. P.W.10 cousin brother and also hearsay witness and was the signatory of inquest report.
17. P.W.11 was the police man who received written complaint for Afiya Bibi, P.W.1 through Constable Gopal Indra.
18. P.W.12, the father of deceased Mantu was an eye witness. He deposed that on 23RD December, 2001 at about 7 to 7:30 A.M. while he and his youngest son went to

their laserer field for irrigating the wheat plants their shallow pump machine became non-junctional therefore he returned home and took Mantu with him for repairing the shallow pump machine. At that point of time the P.W.1 his wife running and shouting "Flee away otherwise they will kill you". Suddenly accused Ichhu, Ainal, Sirfatul, Arfatul, Saiful, Halim came there and encircled them. At first accused Ichhu assaulted Mantu with a Hansua on his head causing bleeding injury. Thereafter all the remaining accused persons began to hit Mantu with Hansua at random. He and P.W.1 and his youngest son begged before the accused persons for life of Mantu but they did not listen to them and they kept Mantu on the side of mustered field of Akhtar Biswas and thereafter they fled away towards the river side. Mantu died instantly. He further deposed that previously Doyat Molla started a false case against him, Mantu and Sentu on the allegation of murder of his daughter. He was arrested and was taken to custody. Mantu left the village and began to reside in his relation's house at different place. Mantu returned home at night on the previous day of occurrence.

19. P.W.13, brother of the deceased was an eye witness. For the first time in court he deposed. Investigating Officer did not take his statement under Section 161 Cr.P.C. during investigation. In his evidence he stated that when P.W.1 shouted "Mantu flee away" then he turned his head and found that accused Ichhu, Saiful, Arfatul, Halim, Saiful and Ainal had encircled them. At first Ichhu assaulted Mantu on his head with a Hansua. Thereafter the remaining five accused persons assaulted Mantu also with Hansua at random and fled away as a result Mantu Sheikh died instantly.

20. P.W.14 was the Investigating Officer of this case who received information of the incident. He conducted search at the scene of offence and found one knife and chopped up head skin with hair of about 1 1/2" diameter and he also seized blood stained earth and prepared the seizure list in presence of witnesses (Exbt. 5/1). He made inquest and prepared a report in presence of witnesses. He then examined P.W.1, Akhtar Aki, Sentu Sheikh and others at the place of occurrence and recorded their statement under Section 161 Cr.P.C. He tired to arrest the accused persons but failed to do so. On 3rd January, 2002 he arrested 4 accused persons and thereafter he arrested other two accused persons. He on 7th March, 2003 submitted charge-sheet against accused persons namely Saiful, Halim, Ichhu Ainal, Araful, Sirfatul, Sattar Ali Hossain and Doyat Molla under Section 302/ 34 of the Indian Penal Code. He also examined one Tazil Sheikh who told him that he saw accused Ichhu Ainal, Halim assaulted Mantu with Hansua near the wheat field and kept him there and thereafter they fled away towards the river. P.W.14 in his cross examination stated that he did not see any shallow pump machine or its scattered accessories or any tool near the scene of offence. He further deposed that P.W.5 Tazil Sk. did not state before him that he heard a shout from P.W.1 that "Mantu flee away, flee away".

P.W.10 did not state before him that he heard from P.W.1 that accused persons murdered Mantu and fled away.

21. Mr. Sanyal representing the appellants submitted that the entire prosecution case is full of discrepancies and contradictions as the P.W.1 deposed that she handed over the formal FIR at the place of occurrence but it is evident that the formal FIR was received by the police at the police camp and not at the place of occurrence.

22. He further contended that it is absurd to believe by an ordinary prudent person that when Mantu was wanted in some other case and he returned home at night just before the date of occurrence and on the date of occurrence in broad day light he came to the laserer field with his father and younger brother to repair the shallow pump when he was assaulted by the accused persons with Hansua.

23. He further contended that it is not believable when the P.W.1, P.W.12, and P.W.13, mother, father and younger brother of the deceased respectively were surrounded by the accused persons and only the deceased was assaulted but the P.W.1, P.W.12 and P.W.13 did not sustain any injury. Therefore, it is very much doubtful whether they were real eye witnesses of the said offence or not.

24. Learned Counsel submitted that the P.W.13 claimed himself as an eye witness but did not disclose anything before the Investigating Officer and for the first time he deposed before the Court which is absurd and not believable. In the Inquest Report none of the eye witnesses were witnesses to the Inquest Report.

25. P.W.6 cousin of the deceased deposed that they suspected that Mantu was murdered by the men of Doyat Sk. Mr. Sanyal submitted that only on the basis of suspicion conviction cannot be imposed.

26. He further contended that Investigating Officer in his evidence stated that he did not find any shallow pump machine or any machinery for repairing such shallow pump over the scene of offence. In support of his contention Mr. Sanyal relied on a Division Bench decision of this Court reported in [Mobarak Sk. @ Mobarak Hossain and Others Vs. The State of West Bengal,](#); this decision however has no manner of application in the present case.

27. On the other hand Mr. Pawan Kumar Gupta appearing for the State after supporting the prosecution case submitted that on the testimonies of eye witnesses i.e. P.W.1 mother, P.W.5 adjacent land owner, P.W.12 father and P.W.13 younger brother corroborated with each other which proved that the accused persons had a motive to kill the deceased as the deceased Mantu was indicted in other case for which he was absconding. He further contended that testimonies of the eye witnesses corroborated with the post mortem report. Furthermore, there is no iota of doubt to disbelieve the evidence of eye witnesses.

28. He further pointed out that there was no delay to lodge the FIR and he also contended that the evidence of the witnesses first time deposed before the Court should be taken into consideration when it corroborated with the others. In respect of witnesses of the Inquest Report Mr. Gupta submitted that the P.W.8, P.W.9, P.W.10 were the witnesses to the Inquest Report.

29. He concluded his argument that the assailants/accused persons were with motive and killed the deceased which was witnessed by mother (P.W.1), adjacent land owner (P.W.5), father (P.W.12) and brother (P.W.13). Therefore, the conviction should be upheld by the Court.

30. There cannot be any dispute that the deceased Mantu Sheikh died a homicidal death. Now the question is whether the prosecution has been able to connect the present accused persons with the alleged crime.

31. On a close and critical analysis of the evidence both oral as well as documentary with meticulous care we find from the testimonies of eye witnesses that the P.W.1 (mother), P.W.5 (the adjacent land owner), P.W.12 (father) and P.W.13 (younger brother) were corroborating with other as everyone in their evidence stated that they saw the accused persons assaulted the deceased Mantu with Hansua in the laserer field and thereafter fled away towards the river side. Therefore there is no scope to disbelieve the testimonies of eye witnesses.

32. We further find from the deposition of P.W.2 the Autopsy Surgeon who prepared the post mortem report that all total there were 15 injuries and all are grievous and severe in nature and the Doctor P.W.2 opined that the cause of death was due to shock and hemorrhage as a result of ante-mortem injury mentioned in the post mortem report which were homicidal in nature.

33. It is proved from the testimonies of eye witnesses that since the deceased Mantu was inflicted in some other case therefore he was absconding and when at night on the eve of occurrence he returned to his home and on the next morning to repair the shallow pump with his father P.W.12 and his younger brother P.W.13 went to the laserer field then the accused persons, men of Doyat Sheikh surrounded him with the intention/motive to kill him and assaulted him several times with Hansua. Therefore, we find no reason to disbelieve the testimonies of eye witnesses which corroborated with the evidence of P.W.2 the Autopsy Surgeon and F.I.R.

34. We therefore, have no hesitation to hold that the prosecution has been able to prove the guilt against the accused persons to the hilt and the Learned Trial Court has rightly held that the guilt is proved against the appellants.

35. The sum total of the above discussion is that the Trial Court has properly appreciated the evidence on record and has held the appellants guilty.

36. We do not find any merit in the appeal.

37. No inference is called for in exercise of our appellate powers.

38. The appeal must fail and stands dismissed.

39. The office is directed to send Lower Court Record at once.