IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Ashim Kumar Roy
&
The Hon'ble Justice Ishan Chandra Das

C.R.A.No.110 of 2009
Radha Kanta Sheet
Vs.
The State of West Bengal

For the Appellant:	Mr. Moinak Bakshi.
For the State:	Mr. Manjit Sing, PP
	Mr. Ranadeb Sengupta
Heard on:	15th January, 2015.
Judgment on:	16.02.2015

Ishan Chandra Das, J:-

This appeal assails the judgment and order of conviction dated January 16, 2009 and January 17, 2009 respectively passed by learned Additional Sessions Judge, 1st Court, Tamluk, Purba Medinipur in S.T. No. 5(4) 2006 arising out of S.C. No. 18(8) 2005 wherein the appellant was found guilty of the offence punishable under Section 302 of the Indian Penal Code and was sentenced to suffer imprisonment for life and to pay a fine of rupees 10,000/- id to suffer R.I. for one year.

The background of the instant case was that the appellant was an employer of the victim (Tapan Pramanik) and on the 17th May, 1999 at about 3 P.M. the victim demanded money, due from the appellant and there was an altercation between the two. All on a

sudden the appellant took a 'Hansua' (a Sharp cutting weapon) from the nearby green coconut shop of one Narayan Rana Singha and gave a fatal blow on the left side of his head causing serious bleedings injuries. Seeing such incident, the local people rushed to place of occurrence to save the victim who fell down in a nearby pond. The victim was brought to Moyna P.H.C. The father of the victim was informed about the incident and as the condition of his son was serious; the victim was brought to Tamluk District Hospital and thereafter to P.G. Hospital for better management but said victim ultimately succumbed the injury on the 20th day of January 1999.

The written complaint dated 17th day of May 1999 (Exhibit-1) & the endorsement of the Officer-in-Charge, local police station (Moyna Police Station) in the written complaint (Exhibit-1/1) clearly revealed that the father of the victim (i.e. PW–1) lodged the written complaint at about 20.05 hours on the 17th day of May 1999 before the Officer-in-Charge of Moyna Police Station narrating the incident which took place at village Arang Kiyarana, Police Station Moyna, (Midnapore, now Purba Medinipur). It is revealed from the said written complaint that the appellant hit the victim at the place of occurrence causing grievous injury on his head by a Sharp Cutting Weapon ('Hansua'). On receipt of such written complaint the Officer-in-Charge of the police station concerned a case started against the appellant alleging Commission of the Offence Punishable under Section 326 of the Indian Penal Code but subsequently on the death of the victim, Section 302 of the Indian

Penal Code was added and on completion of investigation, the charge-sheet was submitted against him.

On a critical appreciation of the materials placed before us, the following points are not disputed.

(i) The appellant hit the victim on the 17th day of May, 1999 at about 3 P.M. village Arang Kiyarana, (police station Moyna).

(ii) The victim sustained grievous injury on his head and ultimately succumbed to such injury on the 20th day of May, 1999.

(iii) The incident took place in broad day light (i.e. at about 3 P.M.) in presence of the witnesses (PW-2 Narayan Ranasingha, PW-3 Buddhadeb Pramanik PW-4 Prabir Ranasingha with whom the victim was playing cards at the material time in front of the green coconut shop of the PW-2 and all of them claimed themselves to be the ocular witnesses of the incident.

The evidence of those witnesses clearly established that there was a bit altercation between the appellant and the victim and the appellant instantly hit him (Tapan Pramanik).

The evidence of the ocular witnesses unerringly pointed that the appellant hit the victim all on a sudden and such blow with 'Hansua' was given once only. A careful scrutiny of the oral

testimony of the ocular witnesses overwhelmingly established that the appellant committed such offence on the spur of the moment. From such a momentary impulse on the part of the appellant, it cannot be held that the appellant committed that offence of murder within the meaning of Section 300 of the Indian Penal Code rather it can be construed that the appellant committed the offence with the intention of causing such bodily injury as was likely to cause death, within the meaning of Section 299 of the Indian Penal Code.

We have already observed that the appellant hit the victim on his head once only causing profuse bleeding and he ultimately succumbed to the injury. The incriminating circumstances, as emerging from the facts and circumstances, clearly pointed that the offence was not pre-planned rather it was committed on the spur of the moment and ultimately claimed the life of the victim. Learned Advocate representing the appellant emphatically submitted that the death of the victim was caused by doing an act with the knowledge that it was likely to cause death but without intention to cause death or to cause such bodily injury as was likely to cause death. In this context it would not be improper to bear in mind that the victim was an employee under the appellant and there was an altercation between the two immediately before the unfortunate incident.

Learned Public Prosecutor in course of his impressive argument with all fairness could not deny the same. Hence concurring with the views expressed by learned Advocate for the

appellant and learned Public Prosecutor, we firmly conclude, relying on a decision of the **Hon'ble Apex Court in GURAIN SINGH Versus STATE OF PUNJAB, reported in 1994 Supreme Court Cases (Cri) 1399** that the appellant committed the offence punishable under Section 304 Part II, as pointed out earlier and not the offence punishable under Section 302 of the code. There is no evidence on record to establish that the appellant was a habitual offender or he had any criminal background.

Accordingly we feel inclined to allow the appeal in part.

Learned Advocate for the appellant in course of his argument pointed out that the appellant had been behind the bar for 6 years (i.e. from 16th day of January, 2009 on which the impugned judgment was delivered.) He also submitted that the appellant had to suffer further detention for about one year during trial and the total period of his detention is about 7 years. Hence, taking into consideration the gravity of the offence committed by the appellant and that the appellant evidently having no criminal background, we are of the opinion that some lenient view can be taken and the substantive sentence should be reduced to the period of imprisonment already undergone but the order regarding payment of fine of rupees 10,000/-, as imposed by learned Trial Court, and in default to suffer rigorous imprisonment for one year including the direction to pay that amount to the father of the victim do remain unaltered.

Hence this appeal is allowed in part and the conviction of the appellant is upheld in a modified form, as indicated earlier in the body of the judgment.

A copy of the judgment & the L.C.R. be sent to learned trial court & a copy of the same be sent to the jail authority at once.

Urgent Photostat certified copy of this judgment, if applied for, shall be supplied to the advocates for the parties upon compliance with all formalities.

Ashim Kumar Roy, J. **Ishan Chandra Das, J.**

I agree