

Present
Mr. Justice Sheikh Abdul Awal
Criminal Appeal No. 7224 of 2011

Kamini and others.
.....Convict-appellants.
-Versus-
The State.
.....Respondent.

Mr. Md. Sharafatullah, Advocate
.....For the appellants.

Ms. Shahida Khatoon, D.A.G with
Ms. Sabina Perven, A.A.G with
Ms. Kohenoor Akter, A.A.G.
.... For the Sate.

**Heard on 06.03.2024, 11.03.2024,
13.03.2024 and Judgment on 19.03.2024**

Sheikh Abdul Awal, J:

This Criminal Appeal at the instance of convict appellants is directed against the judgment and order of conviction and sentence dated 27.10.2011 passed by the learned Additional Sessions Judge, 2nd Court, Chuadanga in Sessions Case No. 52 of 2004 arising out of G.R. No. 169 of 2003 corresponding to Alamdanga Police Station Case No. 04 dated 17.06.2003 convicting the accused-appellants under section 304 part II of the Penal Code and sentencing the appellant No.3, Beltu thereunder to suffer rigorous imprisonment for a period of 3(three)

years and to pay a fine of Taka 5,000/- (five thousand) in default to suffer R.I. for 3 (three) months more and also sentencing the appellant Nos. 1 and 2, Kamini and Momeni respectively thereunder to suffer rigorous imprisonment for a period of 1(one) year and to pay a fine of Taka 3,000/- (three thousand) in default to suffer R.I. for 2 (two) months more each.

The prosecution case, in short, is that at first Nur Ali son of deceased victim filed UD case on 17.04.2003 stating that on 15.04.2003 at night 8:00 p.m. while quarrel took place between Amir Ali and his wife named Kamini and at one stage Amir Ali gave a slap on the person of his wife Kamini resulting Kamini raised hue and cry and accordingly, Momini, Beltu, Kashed Ali, Atiar Rahman and Jamal rushed there and started to beating Amir Ali and at that point of time his mother Chiaronnesa aged about 65 years rushed there to rescue her son while accused Kamini pushed the victim Chiaronnesa resulting his mother falls to the ground and became senseless and then they took the victim Chiaronnesa to local doctor Shariful Islam, who advised to Nur Ali and others to bring her Kushtia Sador Medical Hospital for better treatment and thereupon, the informant took his mother to Kushtia sadar hospital and during treatment on 16.04.2003 at evening 5.55 p.m.

she died. In this backdrop on 17.06.2003 another son of deceased victim named, Jashim Uddin on getting post mortem report came to know that their mother died due to shock and therefore, he lodged an Ejahar against 6 accused persons stating, inter-alia, that his brother Amir Ali took two wives namely, Kamini and Belu and accordingly, on 15.04.2003 at night 8:00 p.m. quarrel was started between Amir Ali and Kamini in which Amir Ali gave a slap on his wife Kamini when Kamini raised hue and cry and then accused, Momini, Beltu, Kashed Ali, Atiar Rahman and Jamal being armed with lathi rushed to the place of occurrence and started beating his brother Amir Ali when his mother Chiaronnesa (victim) aged about 65 years rushed there to rescue his son and then accused Kamini pulled the victim Chiaronnesa to the ground and also kicked on her belly and chest and thereafter, accused Kamini, Momini also dealt bamboo lathi blows on her chest and shoulder resulting victim Chiaronnesa became senseless. Thereafter, Selim Malitha son of his elder brother, Nuru Malitha came there to rescue the victim while accused persons also beaten on him. Thereafter, the informant party took the victim, Chiaronnesa to local doctor Shariful Islam, who found the condition of the victim is so critical and thus, he advised them to bring her

Kushtia sadar hospital for proper treatment and accordingly, the informant took his mother to Kushtia sadar hospital and during treatment on 16.04.2003 at evening 5.55 p.m. she died. Thereafter, their brother Nur Ali Malitha on 17.04.2003 at 7:45 hours filed a U.D case being UD Case No. 24 of 2003.

Upon the aforesaid First Information Report, Alamdanga Police Station Case No. 4 dated 17.06.2003 under sections 302 of the Penal Code was started against the accused persons.

Police after completion of investigation submitted charge sheet against all the accused persons being charge sheet No. 97 dated 18.12.2003 under sections 143/447/302/114 of the Penal Code.

In usual course, the case record was sent to the Court of learned Sessions Judge, Chuadanga, wherein it was registered as Sessions Case No. 52 of 2004 and the case was subsequently transmitted to the Court of the learned Additional Sessions Judge, 2nd Court, Chuadanga for disposal before whom the accused persons were put on trial to answer a charge under sections 143/447/302/114 of the Penal Code to which the accused persons pleaded not guilty and prayed to be tried stating that they have been falsely implicated in the case.

At the trial, the prosecution side has examined as many as 22 witnesses and produced some documents to prove its case while the defence examined none. The defence case, from the trend of cross-examination of the prosecution witnesses and examination of the accused-appellants under section 342 of the Code of Criminal Procedure appeared to be that the accused- appellants were innocent and they have been falsely implicated in the case.

On conclusion of trial, the learned Additional Sessions Judge, 2nd Court, Chuadanga by his judgment and order dated 27.10.2011 found the accused-appellants guilty under section 304, part II of the Penal Code and sentenced the appellant No.3, Beltu thereunder to suffer rigorous imprisonment for a period of 3(three) years and also to pay a fine of Taka 5,000/- (five thousand) in default to suffer rigorous imprisonment for 3 (three) months more and also sentenced the appellant Nos. 1 and 2, Kamini and Momeni respectively thereunder to suffer rigorous imprisonment for a period of 1(one) year and to pay a fine of Taka 3,000/- (three thousand) in default to suffer rigorous imprisonment for 2 (two) months more each and also acquitted 3 other accused persons from the charge levelled against them.

Being aggrieved by the aforesaid impugned judgment and order of conviction and sentence dated 27.10.2011 passed by the learned Additional Sessions Judge, 2nd Court, Chuadanga the present convict-appellants preferred this appeal.

Mr. Md. Sharafatullah, the learned Advocate appearing for the accused-appellants in the course of argument takes me through the F.I.R, charge sheet, deposition of witnesses and other materials on record including the impugned judgment and order of conviction and sentence dated 27.10.2011 and thereafter, submits that the accused-appellants are out and out innocent, they have been falsely implicated in this case without any legal basis. He adds that in this case total 22 witnesses were examined out of which number of eye witnesses were examined although save and except PW-9, PW-10 and PW-11 none of them testified any single word against the accused appellants implicating with the crime although the trial Court below giving a go-by to such material aspects of the case as well as the facts of the UD case most illegally relied on the doubtful uncorroborative statement of PW-9, PW-10 and PW-11 found that the accused appellants guilty under section 304 part-II of the Penal Code and awarded sentence to the accused-appellants while acquitted 3 other accused

persons on the similar type of allegations. Finally, the learned Advocate submits that the learned Additional Sessions Judge, 2nd Court, Chuadanga has not properly assessed the evidence of the case and failed to consider the gross discrepancies, contradictions and omissions as well as admission of PWs on vital points and as such, it is not safe to maintain order of conviction and sentence on the evidence on record of the case and that, the impugned judgement and order of conviction and sentence is liable to be set-aside.

Ms. Shahida Khatoon, the learned Deputy Attorney-General appearing for the State-opposite party, on the other hand, supports the impugned judgment and order of conviction and sentence, which was according to her just, correct and proper. She submits that in this case UD case was filed on 17.04.2003 by elder son of the deceased victim and thereafter, on knowing the cause of death from the post mortem report another son of victim named Jashim Uddin lodged the first information report against the 6 accused persons and it is on record that PW-9, PW-10, PW-11 in their respective evidence categorically testified that on the date of occurrence accused Beltu and others gave fatal blows on the person of deceased victim resulting she falls to the ground and ultimately she died on 16.04.2003 and the trial Court

below on due consideration of the entire evidence and materials on record justly found the accused-appellants guilty under section 304, part-II of the Penal Code and sentenced the appellant No.3, Beltu thereunder to suffer rigorous imprisonment for a period of 3(three) years and to pay a fine of Taka 5,000/- (five thousand) in default to suffer R.I. for 3 (three) months more and also sentenced the appellant Nos. 1 and 2, Kamini and Momeni respectively thereunder to suffer rigorous imprisonment for a period of 1(one) year and to pay a fine of Taka 3,000/- (three thousand) in default to suffer R.I. for 2 (two) months more each, which should not be disturbed.

Having heard the learned Advocate for the appellants and the learned Deputy Attorney General, perused the record including the first information report, charge sheet, deposition of witnesses, post mortem report and other materials on record. Now, the only question that calls for our consideration in this appeal is whether the trial Court committed any error in finding the accused- appellants guilty of the offence under section 304, 2nd part of the Penal Code.

It appears that the occurrence took place on 15.04.2003 at night 8 p.m. in which UD case was filed on 17.04.2003 by the elder son of the deceased victim and thereafter, on knowing the cause of death from post

mortem report another son of deceased victim named Jashim Uddin lodged an Ejahar on 17.06.2003 with Alamdanga police station against the accused-appellants and 3 others stating that occurrence took place on 15.04.2003 at night 8:00 p.m. his brother Amir Ali took two wives namely, Kamini and Belu and on 15.04.2003 at night 8:00 p.m. quarrel was started between Amir Ali and Kamini and at that point of time Amir Ali gave a slap on his wife Kamini when Kamini raised hue and cry and then accused, Momini, Beltu, Beltu, Kashed Ali, Atiar Rahman and Jamal being armed with lathi rushed to the place of occurrence and started beating his brother Amir Ali when his mother Chiaronnesa (victim) aged about 65 years rushed there to rescue his son and then accused Kamini pulled her (victim) to the ground and also kicked on her belly and chest and thereafter, accused Kamini, Momini also dealt bamboo lathi blows on her chest and shoulder resulting victim Chiaronnesa became senseless. Thereafter, Selim Malitha son of his elder brother, Nuru Malitha came there to rescue the victim while accused persons also beaten on him. Thereafter, the informant party took the victim, Chiaronnesa to local doctor Shariful Islam, who found the condition of victim is so critical and thus, advised them to bring her Kushtia sadar hospital for proper

treatment and accordingly, the informant took his mother to Kushtia sadar hospital and during treatment on 16.04.2003 at evening 5.55 p.m. she died. Police after completion of investigation submitted charge sheet against all 6 accused persons under sections 143/447/302/114 of the Penal Code. It further appears that at the trial the prosecution side examined in all 22 witnesses to prove its case out of which PW-1, Md. Jashim Uddin, informant of the case stated in his deposition that occurrence took place on 15.04.2003 at 8:00 p.m. and thereupon, the accused Kamini , Momini, Beltu, Jashim Uddin beaten her mother (deceased victim) resulting victim became senseless and thereafter the informant took her mother to village doctor, who found the condition of the victim was so critical and thereby advised to take the victim to Kushtia general hospital and thereafter on 16.04.2003 at 7-8 a.m. the informant took the victim to Kushtia sadar hospital and during treatment on 16.04.2003 at 5:55 p.m. victim died. This witness also stated that after the occurrence his elder brother Nur Ali Malitha lodged a UD case. This witness in his cross examination stated that- “আমার উপস্থিতিতে আমার ভ্রাতা নুর আলী কর্তৃক দায়েরকৃত ১৭/৪/২০০৩ ইং তারিখের দরখাস্তে আসামী ১। কামিনি ২। মোমিনি ৩। বেল্টু আতিয়ার ও ৪। জামালের বিরুদ্ধে কোন অভিযোগ উল্লেখ করা হয়নি আসামী কামিনী আমার

ভ্রাতা আমিরের স্ত্রী। ঘটনার তারিখ ও সময়ে আমার ভ্রাতা আমিরুল তার স্ত্রী আসামী কামিনীকে মারধোর করেছিল এবং তখন আমার মাতা ভিকটিম মৃত চিয়ারন নেছা গিয়েছিল।” PW-2, as neighbouring witness stated in his deposition that on 15.04.2003 at night from 7:30-8:00 p.m. occurrence took place. On hearing hue and cry he rushed to the place of occurrence and saw Amir is beating on the person of his wife Kamini. This witness also stated that - চিয়ারনেছা দৌড়ে এসে পথের মধ্যে থাকা ১টি ভ্যানের উপর হুমরি খেয়ে পড়ে অজ্ঞান হয়ে যায়। PW-3, stated in his deposition that- “ঘটনার ১৫/৪/২০০৩ ইং দিনগত রাত অনুমান ৭.৩০/৮:০০ টার সময়ে আমি ইউ পরিষদের সদস্য মজিবর রহমানের বাড়ীতে যাই। তখন হৈচৈ শুনে আমি ঘটনাস্থলের বাড়ীতে গিয়ে দেখতে পাই যে, আমির তার স্ত্রী আসামী কামিনীকে মারধোর করছে এবং তা ফিরাতে আমিরে মাতা ভিকটিম চিয়ারনেছা দৌড়ে আসার সময়ে পথে থাকা ১টি ভ্যানের উপর পড়ে অজ্ঞান হয়ে যায়। তখন ভিকটিম চিয়ারনেছাকে চিকিৎসার জন্য হাসপাতালে নিয়ে যায়। পরে শুনেছি যে, ভিকটিম চিয়ারনেছা হাসপাতালে মারা গেছেন।” PW-4 stated in his deposition that occurrence took place at 7-8 p.m. This witness stated in his evidence that accused Kamini, Momini, Beltu, Jashim Uddin driven out the victim from the house and also beaten on her and thereafter they took the victim to local doctor and thereafter she was shifted to Kushtia general hospital for better treatment. This witness stated in his cross-examination that he did not make any statement before the investigating officer. PW-5 was tendered; PW-6 and

PW-7 were declared hostile by the prosecution. PW-7 stated in his evidence that- “দৌড়ে আসার সময়ে সেখানে থাকা ১টি ভ্যানের সাথে ধাক্কা খেয়ে ভিকটিম চিয়ারন্নেছা মাটিতে পড়ে যায়। উহার ১দিন পরে ভিকটিম চিয়ারন্নেছাকে হাসপাতালে নিয়ে যায় এবং সেখানে ভিকটিম চিয়ারন্নেছা মারা যান।” PW-8, doctor Md. Saidur Rahman stated in his deposition that he submitted post mortem report. This witness in his cross-examination stated that- “কোন মানুষ শক্ত কোন বস্তুর উপর চিৎ হয়ে পড়লে ভিকটিম চিয়ারন্নেছার মত দেহ প্রাপ্ত জখমের অনুরূপ জখম হতে পারে তবে ৫ নং জখমের অনুরূপ জখম সৃষ্টি হতে পারে না।” PW-9 stated in his deposition that victim Chiaronnesa is his mother. Occurrence took place on 15.04.2003 at 8:00 p.m. in-front of him. This witness also stated in his deposition that at the time of occurrence accused Beltu gave a lathi blow on the head of his mother (deceased victim) while she falls to the ground and then the accused Kamini and Momini kicked on her belly while accused Jashim Uddin was present but he did not give any blow on the person of the deceased victim. After the occurrence victim was taken to local doctor and thereafter she was shifted to Kushtia general hospital and next day she died in hospital. PW-10, stated in his deposition that occurrence took place on 15.04.2003, accused Beltu dealt a lathi blow on the person of the victim resulting she falls to the ground. PW-11, Mofiz Uddin Malitha stated in his deposition

that accused Beltu gave lathi blow on the head of the deceased victim resulting she falls to the ground and at that point of time accused Kamini, Momini, Jamal Uddin conjointly smashed the victim by their foots. PW-12, stated in his deposition that he put his signature in the inquest report. PW-13, PW-14, PW-15 were tendered. PW-16, S.I. Anwar Hossain investigated the case, who after completion of investigation submitted charge sheet against all 6 accused persons. This witness stated in his deposition that during investigation he examined the witnesses under section 161 of the Code of Criminal Procedure. He proved the seizure list and his signature thereon as “Ext.-1/2 and index, sketch-map and his signature thereon as “Ext. Nos. 5, 5/1, 6, and 6/1”. This witness in his cross-examination stated that- “ঐ এজাহারে কোথাও নুর বলেনি যে, তার মায়ের মাথায় আসামী বেল্টু লাঠি দিয়ে মেরেছে। কাছের ধাক্কা দিয়ে তার মাকে ফেলে দেয়ার কথা বলা আছে।” PW-17, Constable, Md. Amzad Hossain stated in his deposition that on 17.04.2003 he brought the dead body of victim through a van to Chuadanga hospital morgue. PW-18 proved the inquest report and his signature thereon as “Ext.-3/2”. PW-19 investigated the address of the accused persons. PW-20, village doctor Islam. This witness stated in his deposition that he examined the victim and found her senseless condition. PW-21 was

tendered. PW-22, Kosimuddin stated in his deposition that- “ভিকটিম মৃত্তা আমার মা। ভিকটিম এর Heart এর সমস্যা ছিল। তাহাকে কুষ্টিয়া নেই। সে হসপিটালে মারা যায়। পুলিশ সুরতহাল রিপোর্ট তৈরী করে। আমি টিপ দেই।”

On a close scrutiny of the above quoted evidence, it appears that the elder son of victim Nur Ali Malitha lodged the UD case on 17.04.2003 stating nothing against the accused persons that they dealt any kind of blows on the person of the deceased victim and subsequently on getting post mortem report of the deceased victim, her another son named Jashim Uddin lodged the FIR on 17.06.2003 at 15:35 p.m. stating, inter-alia, that accused persons being armed with lathi dealt blows on the person of the deceased victim and at one stage victim falls to the ground and then the accused persons smashed her by their foots although the reasons best known to him that as to why he kept silent on seeing such occurrence for a long time. It further appears that neighbouring witness PW-2 stated in his evidence that- “ঘটনাস্থলে বাড়ীর পাশেই আমার বাড়ী। ঘটনার ১৫/৪/২০০৩ ইং দিনগত রাত অননুমান ৭.৩০/৮:০০ টার সময় আমি আমার বাড়ীতে থাকা অবস্থায় ঘটনাস্থলের শোর চিৎকার শুনে আমি ঘটনাস্থলে গিয়ে দেখতে পাই যে, আমার তার স্ত্রী আসামী কামিনীকে মারধোর করছে এবং তখন আমার মাতা ভিকটিম চিয়ারুন্নেছা দৌড়ে এসে পথের মধ্যে থাকা ১টি ভ্যানের উপর হুমরি খেয়ে পড়ে অজ্ঞান হয়ে যায়। ভিকটিম চিয়ারুন্নেছার

মাথায় পানি ঢেলে চিকিৎসার জন্য কুষ্টিয়া সদর হাসপাতালে নিয়ে যায় এবং সেখানে ভিকটিম চিয়ারুলেছা মারা যায়। ঘটনার সময় ভিকটিম চিয়ারুলেছার বয়স ছিল অনুমান ৬০/৬৫ বৎসর।” PW-3 also stated similar type of deposition like PW-2. PW-4 did not depose an specific allegation against the accused Beltu. PW-5, PW-13, PW-14 and PW-15 were tendered. PW-6 and PW-7 were declared hostile, PW-8 doctor, PW-9 elder son of deceased victim, who after the occurrence as eye witness filed the UD case stating- “ইং ১৫/৪/০৩ তাং রাত অনুমান ৮:০০ টার সময় আমার ছোট ভাই আমির আলী ও তার স্ত্রী কামিনী তহাদের ঘরে সংসার কাজ কর্ম নিয়া ঝগড়া করে। এক পর্যায়ে আমির আলী তাহার স্ত্রীকে চর মারে। তখন কামিনী চিৎকার করিলে ১। মোমিনি স্বামী উম্মাদ আলী ২। বেল্টু পিতা উল্লাদ আলী ৩। কাছেদ আলী পিতা মোনছের সর্ব সাং ছত্রপাড়া ৪। আতিয়ার পিতা অজ্ঞাত সাং বলিয়ারপুর সর্ব থানা আলমডাঙ্গা জেলা চুয়াডাঙ্গা ৫। জামাল পিতা মনি মুন্সি সাং চরপাড়া থানা- ইবি জেলা- কুষ্টিয়া গণ দৌড়াইয়া আসিয়া আমার ভাই আমির আলীকে মারিতে থাকে। তখন আমার মা চিয়ারন নেছা (৬৫) স্বামী মোঃ মফিজ উদ্দিন ঠেকাইতে আসিলে কাছেদ আমার মাকে ধাক্কা দিয়া ফেলিয়া দেয়। তখন আমার মা অজ্ঞান হইয়া যায়। আমরা সংগে সংগে স্থানীয় ডাঃ শরিফুল ইসলামকে দেখাইলে অবস্থা খারাপ দেখিয়া ডাঃ শরিফুল কুষ্টিয়া নিয়া যাওয়ার পরামর্শ দেয়। আমরা কুষ্টিয়া সদর হাসপাতালে নিয়া যায় এবং চিকিৎসাধীন অবস্থায় ইং ১৬/৪/০৩ তাং বিকাল অনুমান ৫:৫৫ মিঃ সময় মৃত্যুবরণ করেন। অতএব বিষয়টি আপনার থানায় অপমৃত মামলা রুজু করিয়া আইনগত ব্যবস্থা গ্রহণ করিতে মর্জি হয়।” PW-10, stated in his deposition that accused persons dealt blows on the person of the deceased victim and accused

Beltu dealt lathi blow on the head of the deceased victim but this witness in his cross-examination stated that- “তদন্তকালে তদন্তকারী কর্মকর্তা আমাকে ঘটনার বিষয়ে কোন প্রকার জিজ্ঞাসাবাদ করেননি এবং আমিও তদন্তকারী কর্মকর্তার নিকট ঘটনার বিষয়ে কোন জবানবন্দি প্রদান করিনি।” PW-11 stated in his deposition that accused persons beaten his grandmother and accused Beltu dealt lathi blow on the head of deceased victim. This witness stated in his cross-examination that- “আমির আলী জীবিত আছে কিন্তু তাকে অত্র মোকদ্দমায় সাক্ষী করা হয়নি।” PW-12 stated nothing against the accused-appellants. PW-16, investigating officer, who submitted charge sheet against the accused persons. PW-17, sent the dead body of victim in the morgue. PW-18, prepared sketch-map, PW-19, checked the name and address of the accused persons, PW-20, village doctor simply examined the victim, he stated nothing against the accused-appellants and PW-21, was tendered. PW-22, daughter of deceased victim stated nothing against the accused-appellants rather she stated that her old aged mother was patient of heart disease.

Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that there are sharp contradictions in the prosecution witnesses on material points. From the judgment of the trial court it is found that the learned

Additional Sessions Judge, 2nd Court, Chuadanga has not properly assessed the evidence of the case and failed to consider the gross discrepancies, contradictions and omissions as well as admission of PWs on vital points.

As discussed above, there are so many limps and gaps as well as doubts about the existence of the facts as well as circumstance. In that light, it creates a doubt in the case of the prosecution about the accused being involved in the alleged crime. It is trite law that if any benefit of doubt arises, then the benefit should be given to accused. In that light, the trial Court ought to have acquitted the accused-appellants by giving the benefit of doubt. In that light, the judgment of the trial Court is to be interfered with.

In view of my discussion made in the foregoing paragraphs it is by now clear that the instant appeal must succeed.

In the result, the appeal is allowed, the impugned judgment and order of conviction and sentence dated 27.10.2011 passed by the learned Additional Sessions Judge, 2nd Court, Chuadanga in Sessions Case No. 52 of 2004 arising out of G.R. No. 169 of 2003 corresponding to Alamdanga Police Station Case No. 04 dated 17.06.2003 against accused appellants is set-aside and

the convict appellants, 1. Kamini, 2. Momini alias Meme and 3. Beltu are acquitted of the charge levelled against them.

The bail bonds of the appellants, who were ordered to be released on bail, shall stand discharged.

Send down the lower Court records at once.