

HIGH COURT OF TRIPURA
AGARTALA
Crl. A (J) 18/2021

Jashim Ahmed

son of late Manjir Ali, resident of West Irani, Ward No. 2,
P.S. Irani, District- Unakoti, Tripura

----Appellant

Versus

The State of Tripura

----Respondent

For Appellant(s) : Mr. PK Biswas, Sr. Advocate
Mr. P. Majumder, Advocate

For Respondent(s) : Mr. Ratan Datta, PP
Mr. S. Debnath, Addl. PP

Date of hearing and delivery of
Judgment & Order : **09.03.2023**

Whether fit for reporting : **Yes / No**

HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH
JUDGMENT (ORAL)

(Amarnath Goud, ACJ)

Heard Mr. PK Biswas, learned senior counsel assisted by Mr. P. Majumder, learned counsel appearing for the appellant as well as Mr. Ratan Datta, learned PP assisted by Mr. S. Debnath, learned Additional PP appearing on behalf of the respondent.

2. This appeal arises out of the judgment and order of conviction and sentence dated 02.09.2021 passed in connection with case No. S.T. 17 (UK) of 2019 by the learned Sessions Judge, Unakoti District, Kailasahar, whereby and whereunder the learned Sessions Judge had convicted the appellant for the offence punishable under Section 302 IPC, and sentenced him to suffer R.I. for life with default stipulation.

3. The case of the prosecution, in brief, is that, on 15.07.18 at about 10-30 AM the informant and his brother Jashim Ahmed, the appellant herein had gathered in the house of their uncle Jahur Ali and therein the appellant demanded their uncle to amicably partition their ancestral property. Jahur Ali told the appellant that it will be done later on. In the mean time tea was served to all the parties. Suddenly the appellant brought out a knife from his waist and started hitting the informant with it. The informant jumped over to the road to save himself and the appellant chasing him started hitting him again with the knife. The informant was saved at the intervention of their uncle Jahur Ali. The appellant then escaped from the spot towards the house of the informant following him. At that point of time, wife of the informant, namely, Jyotsna Begum was standing in the verendah of the house. The appellant started to hit Jyotsna Begum with the knife and when she tried to flee, she was held back by Halima Bibi, wife of the appellant. Jyotsna Begum fell down and the appellant ran away towards the jungle. Local people shifted the informant and his wife to the hospital where the Doctors declared that Jyotsna Begum was brought dead. The informant was also admitted to the hospital where police came and recorded his complaint. He was referred to GBP hospital, Agartala for better treatment but on his own accord, he went to Silchar.

4. The said complaint was registered as Irani PS case no. 45 of 2018 under Sections 120(B)/448/326/302/34 of the IPC. The matter was investigated by the investigating officer, and after completion of investigation submitted

charge-sheet against the convict appellant under Sections 447/326/307/506 of the IPC. At the commencement of trial, the learned Sessions Judge had framed charges against the convict appellant and his wife, Halima Bibi under Section 120(B) IPC and again framed charges against the convict appellant under Sections 448/326/302 of the IPC to which they pleaded not guilty and claimed to be tried.

5. During trial, the prosecution to establish the charges had adduced 19 (nineteen) witnesses and exhibited some documents. After closure of recording evidences, the convict appellant and his wife were examined under Section 313 Cr.P.C. wherein they denied all the allegations levelled against them by the prosecution witnesses and also denied to adduce any evidence on their behalf. After hearing arguments and on examining the evidences and materials on record, the learned Sessions Judge had acquitted Halima Bibi from the charges levelled against her, but convicted and sentenced the appellant for committing offence punishable under Section 302 IPC. Hence, this appeal before this court.

6. Mr. PK Biswas, learned senior counsel for the appellant has submitted that the prosecution has miserably failed to establish the charges levelled against the convict-appellant. Mr. Biswas, learned counsel has further argued that according to the complainant, Jahur Ali had saved him from the hand of the appellant, but said Jahur Ali was not cited as a witness. Further, Mr. Biswas, learned senior counsel has argued that the mother-in-law of the victim

i.e. PW-16 is a chance witness whose deposition has not been supported by any of the prosecution witnesses. Mr. Biswas, learned senior counsel has also argued that since there is no eye witness to the alleged incident, the order of conviction of the appellant cannot sustain. Further, Mr. Biswas has submitted that PW 10 had deposed that the miscreants were wearing masks around their face. Learned senior counsel also has submitted that there are many contradictions between the deposition of the witnesses. Lastly, learned senior counsel has urged this court to set aside the judgment and order as passed by the learned trial court and release the appellant.

7. On the other hand, Mr. Ratan Datta, learned PP has supported the findings of the learned trial court while convicting the accused. Mr. Datta, learned PP has also submitted that if the evidences of prosecution witnesses are read conjointly, it could safely be presumed that the convict appellant had committed the alleged offence. Hence, learned PP has submitted to maintain the findings of the learned trial court.

8. We have considered the submissions for learned counsel appearing for the parties. We have also perused the evidences and materials on record and the judgment passed by the learned Sessions Judge. For purpose of appreciating the submissions of learned counsel, it would be pertinent for us to revisit the evidences let in by the prosecution witnesses.

PW 1 Sri Abdul Mukim, the complainant-cum-victim of this case deposed that on 15-07-18 at about 10.30 am he was in the house of his

uncle Jahur Ali. His younger brother Jasim also went to that house and asked his uncle for amicable partition of their ancestral property and then his uncle told him that he will do that at later stage and in the mean time tea was offered to all of them. All of a sudden his brother took out knife from his waist and started hitting him and then he in order to save himself jumped over the road and his brother Jasim also chased him and again started hitting him with knife and then their uncle Jahur Ali saved him from his hand. Then, his brother escaped from the spot towards his house and the appellant also followed him towards their house. He found that his wife at the relevant time came out from home and was standing in the veranda and in the meantime his brother Jasim started hitting his wife Jyotsna Begam with knife and when his wife tried to escape from the place, the wife of his brother, Halima Bibi detained his wife and then again his brother Jasim started hitting his wife with the knife. In the result, his wife fell down and his brother Jasim ran away from that place towards the jungle. Local people rushed to the spot and shifted his wife to Bhagabannagar hospital but doctor declared her brought dead. He was also admitted in the hospital and during his admission police went to the hospital and recorded his complaint.

PW 2, Prasenjit Paul, deposed that on 16-07-2018 police seized one DVD cassette being handed over by him and prepared seizure list which

was marked as Ext 2. Nothing material has been elicited from his cross-examination.

PW 3, Surman Ali, deposed that on 15-7-18 he went to Bhagabannagar hospital, Kailashahar and there Darogababu prepared inquest report over the dead body of one Jyotsna Begam in presence of him and others. Witness identified his signature in the inquest report and the same was marked as Ext 3. Nothing material has been elicited from his cross-examination.

PW 4, Rajan Malakar, deposed that on 17-7-18 he was in Maa studio, Kailashahar town and in his presence police seized one DVD cassette preparing seizure list which was marked as Ext. 2/1. Nothing material has been elicited from his cross-examination.

PW 5, Tamjid Ali deposed that on 18-07-2018 being asked by police personnel of Irani PS he escorted them at the place in the bank of Irani stream and there Jashim Ahmed went down the stream and recovered one knife and then the same was seized by police taking his signature in the seizure list which was marked as Ext. 4. The witness identified a knife produced in the court as being the one which had been seized in his presence and the same was marked as Ext M.O.1. In cross examination he stated that he saw one side of knife was blunt and another side was sharp. Jashim Ahmed went to the stream along with police personnel.

PW 6, Abdul Basid was tendered by the prosecution. In cross examination he deposed that he knew Jashim Ahmed as well Tamjid Ali. Once in the last year Jashim Ahmed went along with police and thereafter he found one knife in the hand of Jashim but he cannot say from where he got that knife.

PW 7, Iqbal Ahmed, deposed that on 18-7-18 being asked by police of Irani PS he went to the PS and thereafter police, himself, Jashim Ahmed and others went to Irani stream and thereafter Jashim recovered one knife from the stream and the said process was video graphed by him and then he made CD from said videography and the same was handed over to police. Witness identified one CD and claimed the same was made by him and handed over to police. Nothing material has been elicited from his cross-examination.

PW 8, Musaraf Ali, deposed that on 15-07-18 at noon time all on a sudden he received one phone call with an information that Jashim Ahmed stabbed his sister Jyotsna and her husband Abdul Mukim with a knife and having heard the same, he went to the house of his sister and found that local people were shifting his sister and her husband towards hospital by an auto rickshaw and then he also accompanied them to Bhagabannagar hospital but on the very night doctor declared his sister as dead and his brother-in-law Abdul Mukim remained under treatment at hospital. After the death of his sister Darogababu prepared inquest report

over the dead body in his presence and others and during examination of dead body he found stab injury over the stomach/belly and back side of her body. Nothing material has been elicited from his cross-examination.

P.W. 9, Majmun Islam, P.W.10, Hasirun Nessa and P.W.11, Abdul Sukur were tendered by prosecution.

PW 12, Dr. Sekhar Sarkar is the Doctor who conducted the postmortem of the victim. On 15-7-18 he was posted as Medical Officer at Bhagaban Nagar hospital, Kailashahar. On that day IO of the case placed dead body of one Jyotsna Begam along with dead body challan and inquest report of the deceased for the purpose of P.M. examination and then being endorsed by MS of the hospital he conducted P.M examination over the dead body of the deceased observing proper formalities. After examination he prepared report in details and opined that the cause of death is shock and hemorrhage resulting from injury caused by impact of double edged long bladed sharp cutting weapon. He collected and preserved viscera. As per his opinion the injury sustained with double edged long bladed sharp cutting weapon.

PW 13, Swapan kumar Dhar, is a seizure witness.

PW 14, Bishnu Suklabaidya deposed that on 15-7-2018 at about 11-30 at noon being asked by people of locality he went to the house of Abdul Mukim and then shifted Abdul Mukim and his wife being injured to

Bhagabannagar hospital for treatment. Cross examination of this witness was declined by the defence.

PW 15, Saktisadhan Jamatia, is the investigating officer who on completion of the investigation and having found prima facie case furnished charge sheet.

PW 16, Nabija Bibi deposed that victim Jyotsna was her daughter and she was married to Abdul Mukim of Irani. About one year prior to the date of deposition she went to her daughter's matrimonial home because she was pregnant at that time. During that time she found Jasim, Abdul Mukim and Halima Bibi were quarreling among them, and thereafter, Jasim went to the house of Jahur Ali and thereafter she heard hue and cry in the house of Jahur Ali and she came out at the court yard and found that Jasim came to the court yard with knife in hand and stabbed her daughter Jyotsna with knife and then Halima Bibi caught hold Jyotsna and again Jasim gave second stab on the back side of Jyotsna and then she fell down and thereafter she tried to save her daughter Jyotsna, but by that time she already lost her sense and witness also fainted. Thereafter she could not see anything but later on she found that she was already shifted to hospital. She also found her daughter Jyotsna already dead in the hospital. She identified Accused Jasim and Halima Bibi in the court. During cross-examination she told that her daughter Jyotsna was married about 3 years back. Jasim had four brothers and they live in the same complex. Abdul

Mukim is brother of Jasim and he also lives in the same house. Nothing material has been elucidated from her cross-examination.

PW 17, Md. Abdullah, deposed that on 15-7-18 he was posted at Irani PS, Kailashahar as SI of police. On that day he visited Kailashahar District hospital and there he found Abdul Mukim was admitted and he gave oral complaint to him and the same was recorded by him as per his version and thereafter the said complaint was forwarded to OC PS for necessary action.

PW-18, S.I Jatish chandra Das, deposed that in course of his investigation he collected PM report of the deceased and arrested accused Jashim Uddin and also recorded his discloser statement in presence of Executive Magistrate and other witnesses. Thereafter as per his discloser and being indicated by Jashim Uddin, witness recovered one sharp knife in a stream and then seized the same in presence of the witnesses. He also examined available witnesses and recorded their statements and arranged examination of blood collected from the P.O by forensic teams and it was found that the blood was of deceased Rushna Begam. He also collected blood sample of injured Abdul Mukim through doctor. He seized one T-shirt of accused Jashim Ahmed. He sent the blood sample collected from PO from injured Abdul Mukim and the recovered and seized knife to SFSL for examination. Witness also seized one DVD playing cassette. During cross-examination witness deposed that at the time of recording

discloser statement of the accused, one Ikbal Ahmed, the videographer was present and no other local witnesses were there.

PW 19, S.I. Sanesh Debbarma deposed that on 01-09-2018 he was endorsed with a case for completion of the investigation and also handed over the case record. After receiving the case docket and on perusal of the same he found that the previous I.O Jatish Chandra Das had almost completed the investigation. During investigation he re-examined all the witnesses previously examined by his predecessor, but did not record their statement having found corroborative in nature. He collected injury report of Abdul Mukim from hospital, also collected SFSL report of exhibit already sent by previous I.O. At last on 30-12-2018 on completion of the investigation and having found prima facie case he furnished charge-sheet against accused Jashim Ahmed and absconding accused Halima Bibi. During cross examination witness deposed that he collected injury report of Abdul Mukim from Silchar Medical Collage & Hospital. As per injury report of Abdul Mukim, the injury sustained by him was simple and was caused by blunt object.

9. On scrutiny and scanning of prosecution evidence and other materials as well as the defence evidences and facts and circumstances on record keeping them in juxtaposition, it transpires clearly that initially there was an altercation between the accused-appellant and the victim and the appellant had stabbed the victim and his wife with a knife. PW-1, the complainant in his

complaint had stated that *all of a sudden his brother took out knife from his waist and started hitting him and then he to save himself jumped over the road and his brother Jasim also chased him and again started hitting him with knife and then their uncle Jahur Ali saved him from his hand.* He in his complaint has also stated that *he found that his wife at the relevant time came out from home and was standing in the veranda and in the mean time his brother Jasim started hitting his wife Jyotsna Begam with knife and when his wife tried to escape from the place the wife of his brother Halima Bibi detained his wife and then again his brother Jasim started hitting his wife with the knife.* In course of his cross-examination, the complainant did not turn down from his previous statement and reiterated that *he stated to police officer who recorded his complaint that immediate after being separated by his uncle his brother Jasim ran towards his house and he also followed and thereafter he started hitting his wife with knife and while his wife tried to escape from the spot the wife of Jasim obstructed her.* PW-16, also in her evidence had deposed that *after the first stab by the appellant when victim tried to flee the wife of the appellant caught of the victim and prevented her from escaping allowing the appellant to stab her the second time.* Thus, the deposition of the complainant and PW-16 does corroborate to each other and there is no discrepancies in their statement to hold that the appellant had caused the murder of the wife of the victim.

10. From the inquest report (Exhibit 3) it transpires that there is one deep injury mark measuring around 2 ½ x 1 ½ inch on the chest of the deceased which seems like an injury by sharp knife. It also transpires from Exhibit-3 that one deep injury is there on the back of the deceased measuring 2 ½ x 1 ½ inch which seems like an injury by a sharp knife. From the post mortem report (Exhibit-5) it would transpire that there is injury on the chest and back of the victim which would be the impact of double edged long sharp cutting weapon. Thus, the inquest report evidently supports the post mortem report and also the statement of the complainant made in the FIR that the appellant had stabbed his wife with a double sided knife.

11. From the disclosure statement (Exhibit 10) of the accused-appellant, it becomes apparent that the appellant first went to the house of Johur Ali and dealt blows on hand and shoulder of the complainant, Abdul makim with one knife and thereafter came running to his own house and dealt blows with the knife on the chest and back of wife of the complainant, who had sustained fatal injuries. Further, the appellant had led to the spot for discovery of the weapon of offence i.e. Irani stream, from where the weapon of offence i.e. the knife which is sharp at one end and blunt at other end, was recovered by the investigating officer in presence of local witnesses.

12. The nature of the complaint is supported by the evidence of PW-1 and PW-16 and also by the medical reports i.e. the inquest report and the post mortem report. PW-1 sustained injury inflicted by the appellant by a knife

(sharp at one end and blunt at other end) and also that the victim i.e. wife of PW-1 also sustained fatal injury and the same is established from the post-mortem report and the inquest report. As per the complainant and PW-16, the victim was stabbed with a knife which was recovered at the instance of the appellant himself. The forensic report also indicates that the blood stains on the knife are of human origin.

13. Having considered thus, we come to this conclusion that the injuries disclosed by post-mortem notes and the inquest report are clearly consistent with the deposition of PW-1 and PW-16. Having carefully considered the said evidence, we find no reason to differ from the conclusion arrived at by the learned trial Judge that the incident took place as has been deposed by the prosecution witnesses and that establishes that the appellant used a knife (one side sharp and other side blunt) aggressively and thus committed the offence of murder of the victim. Accordingly, this court is of the view that the trial court has rightly convicted the appellant based on material evidence produced by the prosecution and there is no infirmity in the impugned findings regarding conviction.

14. In view of foregoing analysis, in our view, the learned trial court has appreciated the evidence on permissible legal parameters and reached to a plausible conclusion. The prosecution could establish its case beyond reasonable doubt. Thus, we find no reason to interfere in the

impugned judgment as passed by the learned trial court convicting the appellant to suffer rigorous imprisonment for life.

15. Accordingly, the appeal fails and the same is hereby dismissed.

Send down the LCRs.

Pending application(s), if any, also stands disposed.

JUDGE

CHIEF JUSTICE (ACTING)

Saikat

