

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

C.R.A.63 of 2016

with

CRAN 3 of 2020 (old No. CRAN 4728 of 2020)

with

CRAN 4 of 2020 (old No. CRAN 4729 of 2020)

Md. Sultan

-Vs-

State of West Bengal

For the Appellant : Mr. Arka Chakraborty, Adv.
Mr. Debasis Kar, Adv.

For the State : Mr. Saibal Bapuli, learned APP
Mr. Bibaswan Bhattacharya, Adv.

Heard on : 26th November, 2021

Judgment on : 26th November, 2021

Joymalya Bagchi, J.:-

We find that the paper books are ready and the appeal is ripe for hearing.

As a consequence, learned counsel appearing for the appellant does not want to press the application for suspension of sentence but prays for hearing of the appeal.

Accordingly, application for suspension of sentence being CRAN 3 of 2020 (Old No. CRAN 4728/2020) is dismissed as not pressed.

With the consent of the learned Counsels appearing for the parties, the appeal is taken up for hearing.

The appeal is directed against the judgment and order dated 07.12.2015 and 08.12.2015 passed by the learned Additional Sessions Judge, Fast Track 2nd Court, Barrackpore, North 24-Parganas in Sessions Trial Case No. 2(12) of 2012 arising out of Sessions Case No. 364 of 2011 convicting the appellant for commission of offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay a fine of Rs.5,000/-, in default to suffer further simple imprisonment for a period of six months more.

Prosecution case, as alleged, against the appellant is to the effect that seventeen years ago the appellant was married to the deceased. The couple had three daughters and a son. They were residing as tenants at 167, MNK Road North in the house of one Md. Islam at the time of the incident. In the night of 05.05.2010 the appellant came to the house in a drunken condition and had quarreled with his wife. In the course of the quarrel he hit his wife with a 'patharer shil' on the head. As a result, his wife died. First information report was lodged by brother of the deceased (P.W. 1) being Baranagar Police Station Case No. 178 dated 06.05.2010 under Sections 498A/302 of the Indian Penal Code. In conclusion of investigation, charge sheet was filed and the case was committed to the Court of learned Additional Sessions Judge, Barrackpore,

North 24-Parganas and transferred to the Court of the Additional Sessions Judge, Fast Track 2nd Court, Barrackpore, North 24-Parganas for trial and disposal. Charges were framed against the appellant under Sections 498A/302 of the Indian Penal Code. The appellant pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined seven witnesses including one Sabnam Khatun @ Lalo (P.W. 5), daughter of the appellant/accused. Upon analysis of the evidence on record, the trial court convicted and sentenced the appellant, as aforesaid.

Learned Counsel appearing for the appellant argues that the appellant did not have intention to murder his wife. Evidence has come on record that the relationship between the couple was good. On the fateful night, appellant was drunk and in the course of altercation, in a fit of rage, he had dealt a single blow. As a result, his wife died. Hence, conviction under section 302 Indian Penal Code to be altered to one under section 304 Indian Penal Code.

Learned Counsel appearing for the State submits that the evidence of the eye-witness (P.W. 5) as well as the postmortem doctor (P.W. 6) unequivocally establishes the prosecution case that the appellant had hit on the head of the victim with a stone and, therefore, the conviction under Section 302 of the Indian Penal Code ought to remain undisturbed.

I have considered the materials on record.

PW5, Sabnam Khatun @ Lalo is the star witness. She is the daughter of the couple and was present in the room when the incident occurred. She deposed on the night of 5th May, 2010, she had fallen asleep when his father came home in a drunken condition and a quarrel ensued between the couple.

Her mother asked them to go to bed and they fell asleep. Again around 2:30 A.M. she heard a hue and cry and found that her father had killed her mother by hitting her on the head with the help of '*patherer sil*' and had left the spot. On hearing hue and cry the landlord and others came to the spot.

In cross-examination, she stated that her parents were quarrelling and her father had stated that he would kill her mother. She did not remember what reply her mother had given.

PW1, Md. Murad, brother of the deceased is a reported witness and had lodged the FIR. He proved the FIR (Exhibit-1).

PW3, Hasna Banu is the wife of the landlord of the premises where the couple resided. PW2, Samsuddin Mollah and PW4, Amina Bibi are the co-tenants in the house. They are post-occurrence witnesses and deposed on hearing hue and cry they came to the spot and found Jahida lying dead on the floor and blood was coming out of her head. However, PW2 stated that there was good relationship between the couple. PW3 corroborated her and stated that there was no quarrel between Jahida and Sultan.

PW6, Dr. Parag Baran Paul is the post-mortem doctor. He proved the post-mortem report (Exhibit-2). He opined that death was due to head injuries, ante mortem and homicidal in nature.

PW7, SI Joydeb Mondal is the Investigating Officer of the case.

Analysis of the evidence of PW5 would show in the night of 5th May, 2010 her father had come home drunk and a quarrel ensued between the parents. Her mother put her to bed and she slept. At about 2:30 A.M. she again heard a hue and cry and found that her father had killed her mother with the help of one

'patherer sil' and left the spot. She also stated that her father had exhorted to kill her mother in the course of quarrel.

Learned trial Judge on an examination her evidence had doubted whether the said witness had seen the assault or not. However, in view of the prosecution evidence, the court enumerated the following incriminating circumstances:-

- “(i) the accused, deceased along with their three daughters were residing together in a rented house;
- (ii) in the night of the incident accused was present in the house and he slept with the deceased in the verandah and the children were inside the room. Immediate before the incident, there was a quarrel between the accused and the deceased;
- (iii) in the early morning of the next day the deceased was found dead lying in the verandah in the pool with head injury besides a nora.
- (iv) in the next morning accused was found absent;
- (v) the whereabouts of the accused were not known after the incident and he could be arrested from Bihar only on 30.09.2011 after a lapse of more than one year from the date of incident;
- (vi) the accused has failed to give any explanation regarding his abscondment for about a year immediate after the incident in his examination under Section 313 CrPC.”

Relying on these circumstances, the court recorded a finding of guilt against the appellant.

From the aforesaid factual backdrop, I am of the opinion it is unclear whether the minor had woken up prior to the assault made by her father on her mother. It appears upon hearing the hue and cry, she had woken up immediately after the incident. However, it is evident from her evidence that there was a quarrel between the couple in the night immediately prior to the incident. After the incident, the appellant went missing.

In view of the aforesaid facts which remain unrebutted, there is no escape from the conclusion that the appellant was responsible for the death of his wife.

It has been argued before this court that the incident occurred in the course of a quarrel and in a fit of passion. Hence, the conviction of the appellant may be altered from Section 302 IPC to Section 304 IPC.

On the other hand, learned Additional Public Prosecutor submits that the assault was on a vital part of the body and the appellant had exhorted to kill the deceased.

I have given my anxious consideration to the rival submissions, PWs2 and 3 deposed that there was good relationship between the couple. In fact, charge under Section 498A IPC had failed. Hence, I note that there is no intention or motive on the part of the appellant to commit the murder.

On the other hand, evidence of PW5 show that there was a quarrel between her parents on the fateful night and the incident occurred in the course of a quarrel. No doubt, she also deposed her father had threatened to kill her mother. However, I do not find corroboration of this circumstance from other witnesses. It appears PW5 had come out with this version for the first time in court and had not narrated such fact either to the post-occurrence witnesses namely, PWs2 & 4 or PW1 who lodged the FIR soon after the incident. Hence, the case of alleged exhortation appears to be an afterthought and I am not inclined to rely on the same to come to a conclusion that the appellant had intended to murder his wife.

On the other hand, it is more probable that the appellant had acted in a fit of passion in the course of quarrel and dealt a single blow on his wife. Thereafter being perplexed by his action, he ran away.

In this backdrop, I am of the opinion that it may be prudent to convert the conviction of the appellant from one under Section 302 IPC to one under Section 304 Part I of the Indian Penal Code.

In view of the aforesaid alteration in conviction, sentence imposed on the appellant is correspondingly modified.

Accordingly, appellant is directed to suffer rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- (Five thousand only), in default, to suffer simple imprisonment for six months more.

The appeal is allowed to the aforesaid extent.

In view of disposal of the appeal, the connected applications, if any, also stand disposed of.

Period of detention, if any, undergone by the appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon him in terms of Section 428 of the Code of Criminal Procedure.

Lower court records along with a copy of this judgment be sent down at once to the learned trial court for necessary action.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)