

Form No. J(1)

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

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

C.R.A. 606 of 2018

Sk. Alimuddin & Anr.

-Vs-

State of West Bengal

For the Appellant : Mr. Mainak Bakshi, Adv.

For the State : Mrs. Amita Gour, Adv.

Heard on : 30.11.2021

Judgment on : 30.11.2021

Joymalya Bagchi, J. :-

The appellants had been convicted for murder of a seven year old girl, Ashmina Khatun. Ashmina was the daughter of the 1st appellant and the 2nd appellant was her step-mother. She used to reside with the couple at the residence of the 1st appellant in village Kishorechak P.S. Kolaghat. On

07.05.2014 at around 5p.m. it is alleged that the appellants by putting a pillow on her face smothered her to death. Her mother, Asiran Bibi (P.W. 1), divorced wife of the first appellant received information over telephone and rushed to the residence of the appellants on the next date. She lodged first information report resulting in registration of first information report being Kolaghat P.S. Case No. 187 of 2014 dated 08.05.2014 under Sections 302/201/34 of the Indian Penal Code and was also present during inquest over the dead body of the deceased. It is alleged soon after the incident the appellants had confessed to the villagers about their guilt. During investigation police seized a pillow which was used to commit the crime. In conclusion of investigation, charge-sheet was filed and the case was committed to the Court of Sessions and transferred to the Court of the Additional Sessions Judge, F.T.C.-II, Tamluk, Purba Medinipur for trial and disposal of the case. Charges were framed under Sections 302/201/34 of the Indian Penal Code and the appellants pleaded not guilty and claimed to be tried. In course of trial prosecution examined thirteen witnesses and exhibited a number of documents. The defence of the appellants was one of innocence and false implication. In conclusion of trial learned trial judge by judgment and order dated 21.08.2018 and 23.08.2018 convicted and sentenced the appellants, as aforesaid.

Mr. Bakshi, learned Counsel appearing for the appellants argues that the prosecution case is based on extra-judicial confessions of the appellants

which are not worthy of credence. This vital circumstance is not reflected in the first information report lodged by P.W. 1 and the evidence of other witnesses with regard to the so-called extra-judicial confession suffer from infirmities and/or embellishments. He also submits that the pillow seized by the police had not been sent for FSL examination. Hence, it cannot be said with certainty that the pillow was used to commit the crime. He accordingly prayed for acquittal of the appellants.

On the other hand, Mrs. Gour, learned Counsel appearing for the State submits that the young child was in the house with the appellants when she suffered homicidal death. No explanation is forthcoming from the appellants with regard to the manner and circumstances in which the victim suffered homicidal death. Explanation offered by the appellant no. 1 with regard to cause of death is wholly improbabilised by medical evidence (P.W. 11). She prays for dismissal of the appeal.

P.W. 1 is the mother of the deceased. She deposed that the first appellant was her former husband. He was residing with his second wife i.e. the second appellant and the minor child. On 07.05.2014 at 4p.m. her daughter was killed by the appellants by pressing pillow on her mouth. Her brother informed her about the incident. On the next date she went to the residence of the appellants and found the body of her daughter. She lodged complaint with the police which was treated as F.I.R. She signed on the

inquest report as well as on the seizure lists relating to seizure of articles including the pillow.

P.W. 3 is the cousin of P.W. 1. He has corroborated her evidence. In addition thereto, he deposed that the appellants confessed their guilty before him in front of local people.

P.W 5 is the sister of P.W. 1. She corroborated the evidence of P.Ws. 1 and 3. She also claimed that she heard that the appellants had killed the victim by pressing pillow on her mouth. She was a signatory to the inquest report as well as on the seizure list prepared in connection with seizure of the pillow from the house of the appellants.

P.Ws. 6,7,8 and 9 are the neighbours. All of them deposed that the appellants resided with the child and were present on the fateful night.

PW 6 stated that he heard that the appellant had confessed their guilt.

PW 7 was another signatory to the inquest report.

PW 8 deposed that initially the appellants blamed one another over the murder but on the next day they admitted that they had murdered the victim together.

PW 9 initially deposed that he heard that appellant had confessed their guilt. Subsequently, he claimed that the confessions were made in his presence.

PW 11 is the post mortem doctor who held post mortem over the body of the victim. He noted the injuries on her body and opined that cause of death was due to the effects of smothering, ante mortem and homicidal in nature.

PW 12 is the scribe.

PW 13 is the investigating officer of the case.

From the evidence on record, I find that the prosecution has relied on extra judicial confession made by the appellants that they had pressed pillow on the face of the deceased victim and smothered her to death. However, on an analysis of the evidence, I find it difficult to rely on so-called extra judicial confession for the following reasons.

PW 1, mother of the deceased who had arrived at the spot on the next day is completely silent with regard to the so-called extra judicial confession both in her FIR as well as the deposition in court. Evidence of PWs 3 and 9 with regard to extra judicial confession are embellishments as they have not stated of such fact during interrogation by the investigating officer, PW 13. Evidence of PW 6 (a neighbour) in this regard is hearsay. Moreover, version of PW 8 with regard to so-called confession is a contradictory one. Initially, PW 8 states that the appellants made exculpatory confessions but subsequently they admitted that they had killed the victim together. Extra judicial confession is a vital piece of information with regard to the death of the child, hence its absence in the FIR lodged by her mother is a significant

omission which renders this circumstance improbable. Moreover, embellished version of the witnesses particularly PW 3 and 9 also does not inspire confidence. For the aforesaid reasons, I do not choose to rely on the extra judicial confession as a reliable piece of evidence to implicate the appellant.

However, even discounting the extra judicial confession, I am of the opinion the prosecution case is fully established by the fact that there is ample evidence on record to show that the appellants were present in the house when the victim girl was murdered. Evidence of doctor, PW 11 discloses extensive external and internal injuries in and around the mouth of the victim. He opined that the death was due to the effects of smothering, ante mortem and homicidal in nature. In the face of such evidence disclosing homicidal of a seven year old child it was incumbent on the appellants to explain the circumstance leading to such ghastly end. In order to discharge such onus, appellant no. 1 gave a wholly improbable explanation that the child had died due to epilepsy. Such explanation is squarely ruled out by the medical evidence of PW 11, as aforesaid. Appellants were present with the victim child in the house on the fateful day i.e. on 7.5.2014 at 4 p.m. when the minor suffered homicidal death. No other person was present in the house at that time. Explanation offered with regard to the cause of death of the child by appellant no. 1, namely, epilepsy is a false and incredible one.

These circumstances unerringly point to the guilt of the appellants as the perpetrators of the crime.

In the light of the aforesaid discussion, I uphold the conviction and sentence recorded against the appellants.

The appeal is, accordingly, dismissed.

The period of detention suffered by appellant during investigation, enquiry or trial shall be set off under Section 428 of the Code of Criminal Procedure.

Copy of the judgment along with LCR be sent down to the trial court at once for necessary compliance.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)