

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. 517 of 2014
with
CRAN 3 of 2021

Masiur Rahaman

-Vs-

State of West Bengal

For the Appellant :

Mr. Debabrata Roy, Adv.
Mr. Sajal Kanti Bhattacharyya, Adv.

For the State :

Mr. Madhusudan Sur, learned APP

Heard on :

22.12.2021

Judgment on:

22.12.2021

Joymalya Bagchi, J. :-

Appeal is directed against the judgment and order dated 4th July 2014 and 5th July, 2014 convicting the appellant for commission of offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life, out of which rigorous imprisonment

shall be for a period of four years and rest shall be one of simple imprisonment.

Appellant had been put up for trial along with the in-laws namely Salama Bibi (mother-in-law), Minajur Rahaman (brother-in-law), Kutubuddin Ahamed (father-in-law) and Saifur Rahaman (sister-in-law's husband) to answer the charges under Sections 498A/ 304B/302/34 of the Indian Penal Code for the homicidal death of his wife at her matrimonial home on 16th June, 2004. In the course of trial, Salama Bibi expired. In conclusion of trial, Trial Judge by the impugned judgment and order dated 4th July, 2014 and 5th July 2014 while convicting and sentencing the appellant, as aforesaid, acquitted the other accused persons of the charges levelled against them.

It is the prosecution case that the appellant was married to deceased Aslima, 16 months prior to the incident. Aslima was a divorcee and had been married earlier to one Lutfar. Aslima was subjected to mental and physical torture. Over such issue, she returned to her parental home. On 31.05.2004 a salish was held. On 06.06.2004 she was brought back to her matrimonial home. On 16.06.2004 she was found hanging in her room at the matrimonial home. Her brother, P.W. 1, lodged F.I.R. Magisterial inquest was held over the body of Aslima by P.W. 10 who noted ecchymosis around the neck. He also noted blood stained injury in her nostril. Postmortem was conducted by P.W. 15 who opined that the death was due to strangulation.

Mr. Roy, learned Counsel appearing for the appellant argues that the prosecution has failed to prove the charge of murder beyond doubt. There is no evidence that the appellant was present at the house on the date of occurrence. In this regard he refers to the evidence of P.W. 3 to P.W. 6 in support of his contention. He also refers to the evidence of the neighbours P.Ws. 3 and 4 and strenuously argues that the victim had committed suicide. He submits opinion of postmortem doctor P.W. 15 is inconsistent and unreliable. He accordingly prays for acquittal.

Mr. Sur, learned Counsel appearing for the State submits that the housewife suffered homicidal death at the matrimonial home. In the course of his examination under Section 313 of the Code of Criminal Procedure appellant had not taken any plea that he was not at his residence on the fateful night. P.W. 3 is a hostile witness and his version with regard to absence of the appellant from his residence is clearly hearsay and speculative. On the other hand, evidence on record and other attending circumstances conclusively establish the presence of the appellant at his residence when the incident occurred. Coming to the plea of suicide, it is argued though some of the neighbours were of the erroneous impression that the victim committed suicide, the opinion of the postmortem doctor, P.W. 15 as well as the findings of P.W. 10 as noted in his inquest report with regard to ecchymosis on the neck and blood coming out from the nostril of the deceased support the prosecution case of homicidal death. Hence, the appeal is liable to be dismissed.

P.Ws. 1, 2 and 7 are the relations of the deceased. P.W. 1 is her brother and informant. He deposed Aslima was married to the appellant. She was subjected to ill treatment and took refuge at his residence. Appellant used to doubt her character. A salish was held on 31.05.2004. She returned to her matrimonial home on 06.06.2004. He received information that his sister had died. He went to the place of occurrence and found her lying dead in the matrimonial home. He lodged complaint at the police station which was scribed by P.W. 14. P.W. 17 is the first investigating officer who held inquest over the body. He signed on the inquest report. Executive Magistrate (P.W. 10) also held inquest. In cross-examination, he admitted that the appellant is the second husband of Aslima. P.W. 1 is corroborated by P.W. 2 who is another brother of the deceased, and by P.W. 7, mother of the deceased. P.W 2 and P.W 7 claimed that the appellant had an illicit relation with another lady and cast false aspersion on the character of Aslima. P.W. 8 is a friend of P.W. 1. He is an independent witness. He corroborated the evidence of the relations of the deceased with regard to the torture upon Aslima at her matrimonial home. He also deposed with regard to the salish. He deposed Aslima returned to the matrimonial home after the salish. Hearing of her death, he went to her matrimonial home. Police seized the marriage certificate of the appellant and Aslima. He signed on the seizure list. P.W. 9 is a witness to the salish which was held over the matrimonial dispute between Aslima and her husband. P.W. 11 is the Muslim Marriage Registrar who proved the marriage between the couple as per Muslim Rites and Customs.

From the aforesaid evidence, it appears that the appellant was married to Aslima, a divorcee. There were marital disputes between the couple. Aslima took refuge at the residence of his brother, P.W. 1. On 31.05.2004 a salish was held over the dispute. After 6 days, on 06.06.2004, she returned to her matrimonial home. On 16.06.2004 she died at her matrimonial home. It is contended on behalf of the appellant that there is no evidence that he was present on the fateful night. In support of his evidence he relied on the evidence of P.W. 3, a neighbour who claimed that the appellant was not present on the date of the incident. P.W. 3 was declared hostile and was confronted during cross-examination with his earlier statement to police. He appears to be an untruthful witness. Perusal of his evidence would show that he came to the spot after hearing Aslima had died by hanging. He was not present in the house and, therefore, his claim that the appellant was not at his house at the time of the incident is mere speculation. In fact, P.W. 3 deposed that the appellant had sent one Bishu to Harirampur Police Station for filing a complaint immediately after the incident. It is further contended that the appellant had been with P.W. 4 to the nearby fish tank and not at his residence.

I have analysed the evidence of P.W. 4 in this regard. P.W. 4 merely stated that he had met the appellant around 8.30-8.45p.m. near the fish tank. Subsequently, when he came to the house of the appellant after hearing hue and cry, he found the appellant enter the house. Analysis of his evidence would not give an impression that the appellant was present throughout the night at the tank. Hence, the versions of P.Ws. 3 and 4 do

not establish the plea that the appellant was not at his residence on the fateful night when the incident occurred.

In this regard, it may be pertinent to note the appellant kept mum during examination under Section 313 and did not claim that he was not present at his house on the fateful night. Appellant ordinarily resided with his wife at his residence. Evidence on record shows he was in and around the house before and after the incident. Stray sentences taken from the evidence of a hostile and prevaricating witness, therefore, will not be sufficient to cast down on the prosecution case that the appellant was at his residence when his wife suffered homicidal death. In the light of the aforesaid circumstances, the only irresistible conclusion that a person of ordinary prudence would draw is that the appellant was present at his residence with his wife when she died. No explanation where the appellant spent the night is also forthcoming from the appellant during his examination under Section 313 of the Code of Criminal Procedure. No doubt burden to prove a case lies upon the prosecution. However, when an accused takes a defence that he was not present in his residence where he ordinarily resides, it is incumbent upon him to probabalise the same through cogent and tangible evidence on record.

Exaggerated devotion to the rule of proof beyond reasonable doubt should not lead to nurturing fanciful doubts or lingering suspicion. Prosecution is not required to meet any and every hypothesis put forward by the defense. A reasonable doubt is not an imaginary, trivial or merely possible doubt but a fair doubt based upon reason and common sense.

What is reasonable doubt must be commensurate to the nature of the offence. [see **Chaman And Another vs. State of Uttarakhand**¹]. When the offence occurs in the residence of an accused, his absence therefrom must be found on clear and cogent evidence and not vague hypothesis of speculative witnesses.

Thus I am of the opinion that the prosecution has been able to prove that the appellant was at his residence on the fateful night when the incident occurred.

The other defence raised on behalf of the appellant is that the victim died due to suicidal hanging. I am unable to accept such contention also. P.W. 15 – the Post Mortem Doctor has stated that the victim died due to strangulation. He found the following injuries on the victim.

“On clinical dissection, it was found that the deadbody highly decomposed of female subject, eyeballs, tongue, were protruded, peeling off epidermis at place with bloated appearance of body features. Serosangainous discharged coming out through mouth of nostrils.

Scalp hair 24” long black. Wearing apparels nil. Ligature Mark :- Transversely placed ligature mark of size 14” x 1/2” which started at the point 2” below right angle of mandible, passed on the anterior aspects of neck through a point 2 ½” below the tip of chin, then passed on the left side of neck through a point 1” below left angle of mandible, then 2 ½” below the tip of left mastoid process, then passed over the back of neck through a point 2” below external occipital protuberance and finally terminated on the right side of neck at a point of 2 ½” below the tip of right mastoid process with a border area of size 1” x 1 2/3” on right side of neck. The ligature mark was abraded, contused with evidence of extravasation of blood adjoining its upper and lower margin.

- 1) Diffuse extravasation of blood in the soft tissue of neck over anterior aspects and both side of neck, (2) Sub-luxation of right corneo hyoid bone with evidence of extravasation blood in the surrounding soft tissue. All the injuries showed evidence of vital reactions, no other*

¹ 2016) 12 SCC 76

injury could be detected even after careful dissection and examination. The extravasation were greenish red in colour.”

He proved the postmortem report (Ex-8). He explained, in case of hanging, ligature mark is oblique, non-continuous and high up in the neck but in case of strangulation ligature is continuous and low down in the neck. From the injury noted in the postmortem report, it is clear that the ligature mark is traverse and not oblique. It is also not positioned high up on the neck and shows extravasation of blood on its margins. These are clear indications of strangulating and not suicidal hanging.

In cross-examination, doctor, however, admitted that sub-luxation at hyoid bone which is common in hanging. No impression in connection with involvement of thyroid cartilage and rings of trachea was noted in the postmortem report. On further cross-examination, he clarified all the features of strangulation by ligature are mentioned in the postmortem report but some features were close to hanging by ligature. It is pertinent to note that the post mortem of the victim had been held after three days and the body was decomposed. Hence, absence of impression on the thyroid cartilage and rings of trachea in all probability was due to such decomposition. However, on a totality of the circumstances noted by him, postmortem doctor opined death was homicidal due to strangulation and not by suicidal hanging. Opinion of an expert who is an independent witness requires to be given due credence unless the same is wholly discredited either through ocular evidence or other circumstances. In the present case, the position is otherwise. Opinion of the doctor finds

corroboration from other sources like the Inquest Report (Exhibit 5) prepared by BDO. P.W. 10. BDO noted bruise marks around the neck as well as blood stains in the nostril of the victim. It is argued that Investigating Officer (P.W. – 17), however, did not record such finding. Section 176 of the Code of Criminal Procedure mandates Magisterial inquest in cases of unnatural death of a house wife within seven years of marriage. The purpose of such inquest is to ensure a more detailed and authentic examination of circumstances relating to the cause of death of a housewife. Findings of the BDO with regard to the injury on the neck and blood stains in the nostril of the deceased were due to detailed and meticulous examination by the officer concerned. Such findings cannot be washed away due to remissness of the investigating officer in failing to record said finding. It is also pertinent to note P.Ws. 1 and 7 noted similar injuries on the neck of the deceased. Opinion of the neighbouring witnesses with regard to suicidal hanging are speculative in nature and cannot override the findings of the medical expert which is supported by the injuries noted by B.D.O.- P.W. 10 in the inquest and as well as P.W. 1 and 7 who arrived at the spot soon after the incident. Hence, I am of the view that the prosecution case that the victim suffered homicidal death due to strangulation is clearly established.

In the light of the aforesaid discussion, I am of the opinion that the prosecution has been able to prove that the victim died due to strangulation at her matrimonial home. No plea regarding his absence from his residence was taken during his examination under Section 313 CrPC.

Hence, vague surmise that he may be absent is wholly speculative and does not cast a fair and reasonable doubt on the prosecution case.

On the other hand, attending circumstances show that he was present in an around his residence before and after the incident. These circumstances give rise to the irresistible conclusion that he was present at his residence at the time of the incident and did not offer any explanation with regard to the homicidal death suffered by his wife. Motive to commit the crime is also established. P.Ws. 1, 2 and 8 deposed the appellant suspected the character of his wife. P.W. 5 also spoke of illicit association of the deceased with another man. This prompted the appellant to do away with his wife. In view of the aforesaid facts, conviction of the appellant appears to be founded on unassailable evidence and does not call for interference.

The appeal is, accordingly, dismissed.

In view of dismissal of the appeal, connected application being CRAN 3 of 2021 is also dismissed.

The appellant has already suffered incarceration more than seventeen years. He does not have criminal antecedent. He suspected the character of his wife. P.W. 5 has spoken of illicit relation between the deceased and another man. Though these circumstances do not impact the conviction, they may be taken into consideration in the event the appellant makes an application for premature release before the appropriate authority. Under such circumstances, the authority concerned shall consider his prayer in the light of the aforesaid observations and in the

light of other relevant materials including his conduct in the correctional home.

Copy of the judgment along with lower court records 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.)

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