

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

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Krishna Rao

C.R.A. 624 of 2015

***Chandan Boyra @ Chandan Baira
-Vs-
State of West Bengal***

For the Appellant :

Mr. N. K. Ghosh, Adv.
Mr. J. I. Hossain, Adv.
Mr. Sujoy Sarkar, Adv.

For the State :

Ms. Zareen N. Khan, Adv.
Ms. Amita Gaur, Adv.

Heard on :

01.12.2021

Judgment on:

01.12.2021

Joymalya Bagchi, J. :-

The appeal is directed against the judgment and order dated 14.08.2015 and 17.08.2015 passed by the learned Additional District and

Sessions Judge, Bolpur, Birbhum, in connection with Sessions Trial No. 2(June)/2015 corresponding to Sessions Case No. 23 of 2015 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.10,000/-.

Prosecution case was set into motion on the basis of a written complaint lodged by Binayak Chandra Das (P.W. 1) with the police alleging that the appellant who was a married man had developed an amorous relation with his unmarried sister Rina Das @ Baby. He had struck a friendship with Rina Das @ Baby on the promise of marriage and they used to mix freely. On 23.10.2013 at about 5.30p.m. Rina Das @ Baby had left with the appellant in a motorcycle. Subsequently, he received information that his sister had been murdered. Dead body had been recovered by the police and had been taken to Bolpur SD Hospital. On the basis of the aforesaid written complaint, Bolpur Police Station Case No. 373 of 2013 dated 24.10.2013 was registered against the appellant. It may be pertinent to note that in the night of 23.10.2013 the appellant had also been admitted to Bolpur SD Hospital after having ingested poison. At the time of admission, the appellant informed the attending doctor Dr. Bhavaranjan Sikdar that he had killed Rina Das @ Baby with a knife. In the course of investigation, investigating officer arrested the appellant and on his showing seized the offending knife and submitted charge-sheet. Charge was framed against the appellant under Section 302 of the Indian Penal Code. Appellant

pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined ten witnesses. In order to arrive a just decision in the case, trial court invoked its power under Section 311 of the Code of Criminal Procedure and examined the doctor Dr. Bhavaranjan Sikdar as C.W. 01 to prove the extra-judicial confession of the appellant and ASI, Dipak Banerjee as C.W. 02 in order to exhibit the general diary regarding the recovery of the victim from the place of occurrence. Defence of the appellant was of innocence and false implication. It was his specific defence that upon consuming poison he was unconscious in the hospital and did not make any confession to the doctor. Upon analysis of the aforesaid evidence on record, learned trial judge by the impugned judgment and order convicted and sentenced the appellant, as aforesaid.

Mr. Hossain, learned Counsel appearing with Mr. Sarkar, argues that there is no direct evidence that the appellant had murdered the deceased. Last seen theory has not been proved. Seizure of the offending weapon is not supported by the independent witnesses. The said weapon was also not produced before the Court and the finger prints on the seizure knife were compared with that of the appellant. It is also argued that the appellant was unconscious and the so-called extra-judicial confession is a concocted one. It is further argued that the appellant had been arrested in the hospital even prior to the information lodged by P.W. 1. Hence, such information cannot be treated as first information report in the present case. Thus, the appellant is entitled to an order of acquittal.

Ms. Khan, learned Counsel appearing for the State argues that the evidence of P.W. 1 shows that the appellant and the victim had left together in the evening of 23.10.2013 in a motorcycle and soon thereafter her dead body of the victim was recovered behind the administrative building at Purvapally in Santiniketan. It is further argued that the confession made by the appellant before the doctor (C.W. 01) clearly establishes that he had murdered the victim and thereafter consumed poison. Thus, the appeal may be dismissed.

P.W. 1 is the brother of the deceased and first informant in the present case. He deposed that on 23.10.2013 at 5.30p.m. his sister Rina Das @ Baby had left the house with the appellant in his motorcycle. At 6.30p.m. he received a phone call from Bikash Dutta, who stated that he was informed by the police that his sister met with an accident. He asked Bikash to talk with the appellant. Bikash, thereafter, told him that the appellant had disclosed that he committed murder of Rina Das @ Baby as she was insisting Bikash to marry her. Thereafter he went to Bolpur SD Hospital. At the hospital he came to know that Rina Das @ Baby had been murdered. On the next day, he lodged F.I.R. which was scribed by Shir Himadri Sekhar Singh. He put his signature on the paper (Exhibit-1). He signed on the inquest report. He also made statement before the learned Magistrate. He was extensively cross-examined but his evidence remained unshaken with regard to the fact that his sister had left the residence with the appellant on a motorcycle on the fateful day at about 5.30p.m. Other witnesses viz. P.W.

5 and P.W. 7 who made statements before police that the victim leaving with the appellant in a motorcycle in the evening of the fateful day, however, turned hostile and rescinded from their earlier statements in court. Hence, they appear to be unreliable witnesses.

Even if their evidence does not come to the aid of the prosecution, I am of the opinion P.W. 1 is the most natural witness with regard to the circumstances that the victim left her residence in a motorcycle with the appellant in the evening of 23.10.2013. His evidence is reliable and inspires confidence. Evidence has also come on record from the deposition of P.W.1 as well as the other witnesses viz., P.Ws.5, 6 and 7 that the victim was known to the appellant and used to move around together. This fact probabalise the version of PW 1 that she had left with the appellant on the evening of 23.10.2013. Hence, I am of the opinion, aforesaid circumstance has been proved by the prosecution beyond doubt.

Soon thereafter the dead body of the victim was recovered from a place behind the administrative building at Purvapally in Santiniketan.

This fact is proved through the evidence of C.W.2, ASI, Dipak Banerjee who produced the General Diary Entry No.649 which was recorded at the police station on 23.10.2013 at 20.05 hours. In the G.D. it is noted that information has been received from a passerby that an injured lady was lying with blood behind the Administrative Building of Purvapally. The General Diary was marked as Ext.II.

P. W. 8, Dr. Swati Mukherjee who has attached to Bolpur S.D. Hospital conducted post mortem examination on the body of the deceased and found multiple external and internal injuries on her body particularly one cut injury below right angle of mandible measuring about 2 ½ inch X 1 inch X 4 inch (depth). He opined that the death was due to effect of blood loss and haemorrhage along with injury to the vital structures of the neck resulting from cut injury of the neck which was ante mortem and homicidal in nature. He further opined that the injuries on the structure of neck was sufficient to cause death. He proved the post mortem report.

From the aforesaid evidence, it is clear that the victim had left with the appellant in the evening of 23.10.2013 and soon thereafter met an untimely with a cut throat injury which was ante mortem and homicidal in nature.

In addition to the aforesaid circumstances, evidence has come on record that in the night of 23.10.2013, the appellant had been admitted at Bolpur S. D. Hospital after ingesting pesticide.

C.W.1, Dr. Bhavarajan Sikdar had treated him in the emergency department while P.W.10, Dr. Debashis Sarkar treated him after admission. C.W.1 deposed on 23.10.2013 at 8.35 P.M. the appellant had come to the emergency department while he was discharging duty as Medical Officer in the emergency department with history of insecticide poisoning as narrated by him. The appellant confessed that he had killed Baby Das with a knife.

C.W. 1 proved the emergency ticket, Ext.I wherein the aforesaid confession of the appellant is endorsed.

P.W.10, Dr. Debashis Sarkar treated the appellant upon admission and proved the bed head ticket, Ext.8. He stated that the patient was conscious and oriented when he examined him at 10.59 p.m. on 23.10.2013. On the next day, he was referred to a Surgeon. He was finally discharged on 27.10.2013.

In cross-examination, he stated that during his treatment he never found the patient in a state of hallucination, restlessness or loss of self-control.

Evidence of the aforesaid Doctors viz., C.W.1, Dr. Bhavarajan Sikdar and P.W.10, Dr. Debashis Sarkar prove that the appellant had come to the hospital in a conscious and oriented state and was not suffering from any hallucination or loss of sense. In a fit and competent state of mind, he had made statement before the emergency Doctor, C.W.1 that he killed the victim with a knife. The statement was contemporaneously recorded by C.W.1 in the emergency ticket marked ext.1 and, therefore, it may be treated as confession of the appellant of his guilt. It is trite law that a truthful confession voluntarily made by an accused in a fit state of mind can be the sole basis of conviction.

In the present case, both the doctors deposed that the patient was conscious and fit to make a statement. They are independent medical witnesses and their opinion with regard to the fit state of mind of the

appellant, in my opinion, is unimpeachable. The witnesses also do not have any enmity or hostility towards the appellant which may prompt them to falsely implicate him in the crime. Moreover, no coercion or threat or intimidation is evident from the facts of the case which may give an impression that the confession is an in-voluntary one. The sole defence taken by the appellant to improbabilise the confession is that he was unconscious after ingestion of poison and came to the senses on the next day. The evidence of medical witnesses wholly ruled out such possibility and render the defence improbable.

Thus, I am inclined to hold the confession recorded by C.W.1 in Ext.1 is a voluntary and truthful one. Appellant was fit to make such confession which clearly establishes his guilt. Truthfulness of the confession is further fortified by the corroboration it receives from the post mortem doctor who stated that the victim died due to a cut throat injury. Hence, confession recorded in the present case does not suffer from any infirmity and may be safely relied upon.

The other issues which have been argued before this Court with regard to the arrest of the appellant prior to registration of First Information Report, failure to prove the recovery of the offending weapon also do not affect the truthfulness of the prosecution case. In his deposition, the Investigating Officer (P.W.9) explained away the anomaly with regard to arrest and stated that the arrest of the appellant was made on 24.10.2013. His earlier statement with regard to arrest on 23.10.2013 at 8.35 p.m.

appears to be a slip of tongue as the appellant had been admitted to the hospital at that time and was arrested on the next day i.e. on 24.10.2013 after the registration of the First Information Report. P.W.9 further deposed that the appellant was released from the hospital on 26.10.2013 and thereafter produced before the Court and remanded to police custody. Pursuant to interrogation in police custody, on 28.10.2013 the appellant led the IO to Purvapally, Santiniketan and showed him the offending knife which seized in presence of witnesses. The seized knife was sent for SFSL, Calcutta. However, P.Ws. 2 and 3, witnesses of the seizure of the knife, though admitting the signatures on the seizure list have not supported the prosecution case. Neither the knife nor any FSL report has been produced in Court.

In view of the overwhelming evidence on record, lack of support of the independent witnesses to the seizure of the knife or the remissness of the investigating officer to collect the FSL or take finger prints from the knife would not affect the truthfulness of the prosecution case.

The case is substantially proved through the other evidence on record on the basis of the following circumstances;

- 1) There was a close relationship between the appellant and the victim. They used to move around together;
- 2) On the fateful evening at around 5.30 p.m., the victim left with the appellant in a motor cycle;

- 3) At 8.05 p.m., information was received by police that the victim was lying with injuries on the lane behind the administrative building at Purvapally, Santiniketan;
- 4) P.W.8 conducted post mortem over the body of the victim and held that she suffered from cut throat injury which is ante mortem and homicidal in nature;
- 5) On 23.10.2013 at 8.35 p.m., the appellant was admitted at Bolpur S. D. Hospital after having ingested poison. He confessed before the doctor (C.W. 1) that he murdered the victim with a knife;
- 6) The appellant was arrested on 24.10.2013 and upon his release from the hospital on 26.10.2013, he was taken into police custody;

The aforesaid circumstances, particularly, the confession made by the appellant unerringly point to the guilt of the appellant. Thus, conviction and sentence of the appellant is upheld.

Accordingly, the appeal is dismissed.

From the evidence on record, it appears immediately after commission of the offence, the appellant out of remorse ingested poison and confessed his guilt.

In view of the aforesaid fact, I opine that in the event the appellant makes an application for pre-mature release under Section 433A of the Code of Criminal Procedure upon completion of 14 years of actual imprisonment,

the appropriate authorities shall consider such application in the light of the aforesaid circumstances and other attending factors including the conduct of the appellant in the correctional home.

Let a copy of this judgment along with the lower court records be forthwith sent down to the trial court at once.

Photostat certified copy of this judgment, if applied for, shall be made available to the appellant within a week from the date of putting in the requisites.

I agree.

(Krishna Rao, J.)

(Joymalya Bagchi, J.)