

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. 724 of 2019

Swapan Barman

-vs-

The State of West Bengal

For the Appellant(s) : Ms Sreyashee Biswas, Adv.

For the State : Mr. Madhusudan Sur, Adv.
Mr. Manoranjan Mahata, Adv.

Heard on : 02.12.2021

Judgment on : 02.12.2021

Joymalya Bagchi, J.:

The appellant was married to Mala, eight years prior to the incident. On 27.8.2015 around 11 p.m over a petty issue, a quarrel ensued. In the course of quarrel, the appellant had dragged Mala into a room and pressed her neck. She fell unconscious and upon being shifted to hospital was declared dead. PW 1, Faguni Barman, mother of the deceased reported the

incident to Matigara PS resulting in registration of Matigara PS case no. 537 of 2015 dated 28.8.2015 under section 498A/302 IPC. In conclusion of investigation, charge sheet was filed in the instant case and the case was committed to the court of sessions and transferred to the court of learned Additional Sessions Judge, 1st court, Siliguri for trial and disposal.

Charges were framed under sections 498A/302 IPC. The appellant pleaded not guilty and claimed to be tried.

In the course of trial, the prosecution examined 8 witnesses to establish its case and exhibited a number of documents.

The defence of the appellant was one of innocence and false implication.

In conclusion of trial, the trial court by the impugned judgment and order dated 7.2.19 and 8.2.2019 while acquitting the appellant of the charge under section 498A, convicted the appellant for the offence punishable under section 302 IPC and sentenced him to suffer rigorous imprisonment for life and to pay fine of Rs.50,000/-. In default, to suffer further rigorous imprisonment for six months more.

Ms. Biswas, learned counsel appearing for the appellant argues that torture upon the housewife has not been believed by the trial court. Evidence of PW 1 is not corroborated by other independent witnesses and is contradictory to the medical evidence on record. Incident occurred in the course of a sudden quarrel and the appellant did not have intention to kill his wife.

On the other hand Mr. Sur, learned counsel appearing on behalf of the State submits that the medical evidence shows that the victim died due to ante mortem asphyxia which was not due to hanging. There is ample evidence that appellant pressed the neck of his wife resulting in asphyxial death. There is no inconsistency between the ocular version and medical evidence. Hence, appeal is liable to be dismissed.

PW 1 is the mother of the deceased and informant in the instant case. She deposed the couple was married eight years ago and used to stay with her. Appellant was addicted of liquor and misbehaved with the victim. On the date of incident, quarrel took place between her daughter and the appellant over television and electric fan. Appellant dragged Mala into their room and tried to assault her. He also pressed the neck of Mala. Local people came to the spot and took her daughter to the North Bengal Medical College and Hospital where she was declared dead. She lodged complaint which was drafted by Nirmalya Basak, PW 8. Her evidence is corroborated by PW 2, Sunita Roy and PW 3, Dulai Roy, other daughters as well as neighbours PWs 4 and 5 all of whom are post-occurrence witnesses. PW 1 narrated the incident to them.

PW 6 is the post mortem doctor who found following injuries on the victim :

“One oblique brownish abraded area measuring 5” x 1”, present at front of the neck crosses Rt. to Lt. from following points, 1” below the Rt. angle of mandible, 2 ½ “ below the chin, 3 ½ “ below the Lt. angle of mandible. O/D the sub-cutaneous tissue is whitened, hardened and

parchmentised without any evidences of extravasations of blood in and around the abraded area (23) ABR ½" x ½" just 1" below and behind the Rt angle of mandible at Rt lateral surface of neck. The injuries are fresh showing evidence of vital reactions. No other injury could have been detected even after careful examination and dissection"

He opined death is due to effect of ante mortem asphyxia caused by constriction of neck with ligature material. He proved the post mortem report (Ext 1). He stated it is not the case of hanging. However, in cross examination he admitted no internal injury was found at the time post mortem.

PW 7 is the investigating officer in the case.

It is argued the evidence of PW 1 is contradictory to the medical evidence. PW 1 claimed that appellant pressed the neck of the deceased. However, doctor stated that death was due to asphyxia caused by constriction of neck with ligature material. A greater scrutiny of evidence of PW 1 would show that the incident occurred in the course of a quarrel between the couple. During the quarrel, the appellant had dragged his wife into a room. Thereupon, the victim was found senseless. As the appellant had dragged the victim into the room, it is possible that PW 1 though being present in the house at the time of occurrence may not have seen the entire incident. However, it is clear from her version that the appellant had tried to press the neck of his wife. It is trite law only when medical opinion wholly improbabilise ocular version, prosecution case may be disbelieved. In the present scenario, version of PW 1 clearly portrays pressing of neck of the

deceased in the course of a quarrel which is corroborated by the asphyxial ante mortem death noted by doctor. It is also relevant to note the doctor has ruled out any possibility of hanging. This probabilises case of asphyxial death through hostile hands.

As discussed above, incident occurred in the bed room of the couple. Hence, PW 1 may have failed to notice that the appellant had used a ligature to press the neck of his wife. Viewed from such perspective, I am inclined to hold evidence of PW 1 is substantially corroborated by medical evidence on record and the prosecution case is accordingly established. However, I find force in the argument of the learned advocate for the appellant that the appellant did not have intention to commit murder. Post mortem doctor did not find internal injuries during post mortem examination. Hence, it appears that the appellant had not used excessive force while he had pressed the neck of the deceased with a ligature. Incident occurred on the spur of the moment in the course of a quarrel. Unfortunately, the deceased died. There was also no motive or pre-mediation to commit murder.

In view of the aforesaid extenuating circumstances, I am inclined to hold that the instant case falls within exception 5 of Section 300 of the Indian Penal Code and conviction of the appellant may be altered from Section 302 to one under Section 304 Part I of the Indian Penal Code. Sentence of the appellant is accordingly converted from life imprisonment to rigorous imprisonment for ten years along with a fine of Rs.50,000/-, in default, to suffer further imprisonment for six months more for the offence under Section 304 of the Indian Penal Code.

The appeal is allowed to the aforesaid extent.

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.

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.)