

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 21 of 2012

Sourav Masanta

**(substituted as appellant in place and stead of
his father *Muruli Masanta, since deceased*)**

-Vs-

The State of West Bengal

For the Appellant: Mr. Fazlur Rahaman, Adv.
Mr. Basudev Rakshit, Adv.

For the State : Mr. Saswata Gopal Mukherjee .. Id. Public Prosecutor
Mr. Parthapratim Das, Adv.
Ms. Amita Gaur, Adv.
Mrs. Manasi Roy, Adv.

Heard on : 06.07.2022

Judgment on : 06.07.2022

Joymalya Bagchi, J. :-

During the pendency of the appeal, the convict viz. Muruli Masanta has died. However, his son viz. Sourav Masanta (on whose evidence the deceased had been convicted) has substituted himself to prosecute the appeal.

The factual matrix leading to the aforesaid paradoxical situation is as follows:-

Muruli Masanta (since deceased) was married to the victim viz. Krishna Pal @ Tulu. Three children were born to the couple i.e. two daughters viz. Bannya Masanta, Bristi Masanta and one son viz. Sourav Masanta (present appellant). Muruli used to torture his wife over various demands. On 07.05.2007 around 2:00 A.M. in the night he throttled his wife to death in front of Sourav. Bannya was sleeping in the house. Hearing the commotion, she woke up and saw the room of her parents closed from inside. She heard her father speaking loudly over mobile phone. Sourav informed her father had throttled their mother to death. She saw her mother lying dead in the bedroom. She informed her maternal uncles. One of the maternal uncle viz. Susanta Pal (PW1) lodged written complaint resulting in registration of Simlapal Police Station Case No.10 of 2007 dated 07.05.2007 under Sections 498A/302/34 of the Indian Penal Code against the husband and in-laws of the victim-housewife. In conclusion of investigation, charge-sheet was filed against the husband and in-laws of the victim-housewife. Charges were framed against them. They pleaded not guilty and claimed to be tried. In course of trial, prosecution examined 19 witnesses including Sourav Masanta (substituted appellant herein as PW11).

In conclusion of trial, the trial Judge by the impugned judgment and order dated 24.11.2011 and 25.11.2011 passed in Sessions Trial No. 2(11) of 2009 arising out Sessions Case No.28(8) of 2007 convicted the husband-Muruli Masanta for commission of offence punishable under Section 302

of the Indian Penal Code and sentenced him to suffer imprisonment for life and to pay a fine of Rs.10,000/-.

Convict viz. Muruli Masanta preferred the instant appeal. During pendency of the appeal, he died and his son viz. Sourav Masanta (PW11) has substituted himself as the appellant.

Mr. Fazlur Rahaman, learned advocate, appearing on behalf of the appellant- Sourav in a volte face argues deposition of his client as an eyewitness ought not to be believed. It is submitted he was barely six years old and did not have sufficient maturity to depose about the incident. His evidence is not corroborated and conviction and sentence is liable to be set aside.

Mr. Parthapratim Das, learned advocate, appearing on behalf of the State submits the appellant is the minor son of the convict. He was present in the room when his father throttled his mother to death. For reasons best known to him, he has been advised to take a contrary stance at the appellate stage. His version is corroborated by his elder sister viz. Bannya (PW12) and the evidence of the post-mortem doctor (PW13). Defence taken by the appellant during his examination under Section 313 of the Code of Criminal Procedure that he had gone to attend a marriage when his wife was murdered is wholly demolished by the evidence of his children. Appeal is liable to be dismissed.

I have gone through the evidence on record to assess the submissions made with regard to the legality and correctness of the judgment and order of conviction.

Appellant was examined as PW11. He was 13-years old at the time of deposition. He stated on 07.05.2007 he was sleeping in the room with his mother. His two elder sisters were also sleeping. Around 2:00 A.M. he heard a groaning sound. He woke up and found his father throttling his mother. He tried to push his father but he was shoved away. Thereafter, he heard his father talk with someone over a mobile phone. He began to cry. His elder sisters came inside the room. He narrated the incident to them. Bannya informed the incident to their maternal uncle over telephone. He further deposed there was a wedding in a neighbouring house. His mother was unable to go. As a result his father had assaulted her. His elder sisters had brought food for her mother but she was unable to take food as his father again quarrelled with her. He was extensively cross-examined but remained unshaken.

It has been contended PW11 was barely six years old at the time of occurrence. He did not have sufficient maturity to understand and narrate the incident. His statement had also not been recorded before Magistrate during investigation.

PW11 is the son of the deceased lady. Incident occurred at midnight and his presence beside his mother is most natural. His deposition finds corroboration from that of his elder sister viz. Bannya who was examined as PW12. She stated on the fateful night they had gone to attend a wedding. Their mother had not accompanied them. She brought food for her mother but her father quarrelled and her mother did not take the food. Bannya was sleeping when she heard a commotion. She woke up and went

to the room of her parents. She found the door closed from inside. Her brother was crying and her father was speaking on the mobile phone. She heard from her brother that her mother was murdered by their father. She found her mother lying in the room. She put water on her face but she was already dead. Her father left the place and she informed her maternal uncle over phone. Her statement was also recorded before Magistrate during investigation.

PW1 (Susanta Pal) is the maternal uncle who received information from Bannya and came to the place of occurrence. They found the body of the victim had already been taken to police station. He went to the police station and lodged written complaint which was treated as FIR.

His deposition is corroborated by his sister viz. Kajal Panja (PW2), brother viz. Prasanta Pal (PW8) and mother viz. Smt. Sandhya Pal (PW14).

PW13 (Dr. Pravash Ch. Chakraborty) is the post mortem doctor. He opined that the victim had died due to manual strangulation ante mortem and homicidal in nature.

PW18 (S.I. Shesh Kumar) and PW19 (Debasish Mazumdar) are the Investigating Officers of the instant case.

From the aforesaid evidence on record I have not doubt in my mind the victim lady suffered homicidal death due to strangulation at the matrimonial home. Her husband and three minor children were present in the house at the dead of night when the incident occurred. Convict sought to evade his complicity by claiming he was at the marriage house when the incident occurred. He had informed the police. No evidence is led to show

that the convict had informed the police. On the other hand, evidence of Bannya (PW12) corroborated that of her brother, PW11 (appellant herein) that father had throttled their mother to death. Though the son Sourav (PW11) was six-years old, Bannya, his elder sister was a teenager at the time of occurrence. Her capacity to understand and narrate the incident cannot be put to question. Moreover, her statement was promptly recorded before Magistrate during investigation. Medical evidence also corroborates the ocular version of the aforesaid witnesses.

In the light of the aforesaid materials on record, I am of the opinion conviction against the convict viz. Murali Masanta was rightly recorded.

In view of the fact that the convict has already died, we modify the sentence and set aside the fine imposed on him which would otherwise be required to be realised from the inherited assets of his legal heirs including the substituted appellant herein.

The appeal is accordingly, disposed of.

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 judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)