

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Mr. Justice Joymalya Bagchi

And

The Hon'ble Mr. Justice Bivas Pattanayak

C.R.A. 32 of 2013
With
CRAN 2 of 2014 (CRAN 2308 of 2014)

Paban Kumar Gupta @ Pawan Kumar Gupta
VS
The State of West Bengal

For the Appellant : Mr. Soubhik Mitter, Adv.
Mr. Arindam Jana, Adv.
Mr. S. Das, Adv.
Mr. Saket Sharma, Adv.

For the State : Mr. Madhusudan Sur, learned APP
Mr. Dipankar Pramanik, Adv.

Heard on : 22.02.2022 & 01.03.2022

Judgment on : 01.03.2022

Joymalya Bagchi, J. :-

The Appeal is directed against judgement and order dated 10.12.2012 and 11.12.2012 passed by learned Additional Sessions Judge, Barrackpore, North 24 Parganas, in Sessions Trial No. 1(5) of 2012 arising out of Sessions Case No. 76 of 2012 convicting the appellant for commission of offences punishable under Section 302 of the

Indian Penal Code and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs.5,000/-, in default to suffer rigorous imprisonment for six months more.

The prosecution case, as alleged, against the appellant is to the effect that the appellant was married to one Archana Gupta in the year, 1996. The couple did not have any issue. Subsequently, they adopted a male child, Harsh. There were disputes between the couple and the appellant used to assault his wife off and on. Three months prior to the incident, the appellant had assaulted Archana with a wooden block and one of the tenants had saved her. On 15.11.2011 at 2.30p.m., Prakash Chandra Tulsian, father of the deceased, (P.W. 1) received telephonic information from the appellant that her daughter Archana had died at the residence and his grandson died at the hospital. He rushed to the place of occurrence and found his daughter lying dead on the floor. His grandson also expired at the hospital. He lodged written complaint at the police station which was registered as Jagaddal Police Station Case No. 620 of 2011 dated 15.11.2011 under Sections 302/120B of the Indian Penal Code. In the course of investigation on his leading statement two broken wooden frames with blood stains and other personal belongings including valuables of the appellant were seized. In conclusion of investigation charge-sheet was filed against the appellant and charges were framed under Sections 498A/302 of the Indian Penal Code. He pleaded not guilty and claimed to be tried. Prosecution examined seven

witnesses in support of its case and exhibited a number of documents. In conclusion of trial, learned trial Judge by the impugned judgment and order dated 10.12.2012 and 11.12.2012, while acquitting the appellant of the charge under Section 498A of the Indian Penal Code, convicted and sentenced him for commission of offence under Section 302 of the Indian Penal Code. Hence the present appeal.

Mr. Mitter, learned Counsel with Mr. Jana appearing for the appellant submits that there is no eye-witness to the incident. P.W. 1, the informant, turned hostile and did not support the prosecution case. The appellant was seen carrying the injured son to the hospital which belies motive to commit the crime. Possibility of murder by an outsider cannot be ruled out. Forensic report with regard to the seized articles were not placed on record and post mortem doctor also did not opine the seized broken wooden frames could be the weapon of offence. Hence, the prosecution has failed to prove the case beyond reasonable doubt.

Mr. Sur, learned Counsel appearing for the State submits that the housewife and her minor child were brutally murdered at the matrimonial home. Appellant was present in the house as would be evident from the evidence of neighbours who saw him to take the injured child to the hospital. No alibi was taken by the appellant in the course of trial. Neither did he offer explanation how his wife and son had been assaulted and murdered at his residence. Post mortem doctor (P.W. 4) opined Archana and her child had suffered homicidal death due to

strangulation. On the leading statement of the appellant, weapon of offence i.e. broken portion of wooden frame was recovered. Hence, the prosecution case has been proved beyond doubt.

P.W. 1, Prakash Chandra Tulsian is the father of the deceased lady. Though he was declared hostile, he deposed his daughter Archana and grandson Harsh @ Ankit Gupta were murdered at the residence of the appellant. He received phone call from his son-in-law that his daughter and grandson were unwell. Receiving such news he went to the house of Naresh Agarwal and informed the matter. Thereafter, he came to the Jagaddal Police Station where he signed on a blank paper. He proved his signature on the F.I.R. He also signed on the inquest report. In cross-examination, he admitted he saw injury on the head of his daughter when he took her from hospital. He claimed Harsh Gupta @ Ankit Gupta was the natural child of the couple and relation between the couple was good.

P.W. 2 (Durgi Devi), P.W. 3 (Binod Shaw) and P.W. 5 (Joy Prakash Show) are the neighbours. They deposed Archana and Harsh were murdered at the residence of Pawan on 15th November, 2011 around 2.30 p.m. P.W. 2 deposed hearing hue and cry she came out and saw Pawan carrying his son, Harsh on his lap who had bleeding injuries. Soon father-in-law of Archana came to the spot and shouted Pawan had murdered his daughter. He found Archana was lying with bleeding injuries on the floor.

P.W. 3 and 5 substantially corroborated deposition of P.W. 2.

P.W 5 was also a signatory to the inquest report. He also witnessed seizure of one wooden batten and other articles from the place of occurrence.

From the aforesaid evidence on record it is clear Archana, wife of the appellant and their son Ankit had suffered bleeding injuries at the matrimonial home in the afternoon of 15th November, 2011. Soon after the incident appellant had telephoned his father-in-law and intimated that his wife and his son were unwell. He was seen running out of his house with the injured child who was hospitalised. Subsequently, the child expired. These facts unequivocally establish the presence of the appellant at his residence when the incident occurred. The appellant did not raise any alibi in the course of trial. Thus, prosecution has been able to prove that the appellant was present at the place of occurrence i.e. his residence when the victims suffered brutal injuries and died.

P.W. 4, Dr. Abhijit Ghosal, post mortem doctor, has proved cause of death. He deposed on 16.11.2011 he held post mortem over the body of Archana Gupta and found the following injuries :

- “1. A bruise 2½”x 1½”on the dorsal aspect of the left hand.
2. A bruise 2”x 2’on the dorsal aspect of the right hand with fracture of the distal phalanx of the right ring finger.
3. An abrasion 2½”x ½”encircling each right and left breast.
4. A bruise ½”x ½”on the dorsal aspect of right index finger.

5. Abrasion 1"x ½"on the right fore arm.
 6. A bruise 4"x 2"on the upper and medial quadrant of the right breast.
 7. A bruise 5"x 2"on the upper and medial aspect of the left breast.
 8. Presence of black eyes bilateral.
 9. A lacerated wound 1½"x ½"on the tissues overlying the right base on the mandible x wound with fracture of the right base of the mandible.
 10. A bruise 6" x 3" on the right half of the face.
 11. A bruise 3" x 2" extending from the left mastoid process to the left angle of the mandible.
 12. A bruise 2" x ½"on the left side of forehead.
 13. A lacerated wound 2" x 1" on the right frontal area of the scalp.
 14. A lacerated wound 2" x 1½"on the vault of the scalp.
 15. A lacerated wound 3"x 1"on the right occipital area of the scalp.
- On dissection (1) a bruise 2"x 1" on the left side of the neck in the deeper tissues, 1"to the left of the anterior midline 1½" below the left breast of the mandible. (2) A bruise 1½"x 1" 1 ½"to the right of the anterior midline of the neck. 1½" below the right base of the mandible in the deeper tissues of the neck. (3) Fracture of the left cornu of the hyoid bone in ward compression in type with extravasation of blood in the surrounding tissues of the neck. (4) diffuse scamp haematoma involving the entire scalp. (5) diffuse

subdural haemorrhage involving all the lobes of the brain. (6) fracture of the occipital and frontal bone depressed communised in type with extravasation of blood.”

He deposed cause of death was due to strangulation on the neck, ante mortem and homicidal in nature. However, other injuries were result of scuffle. He proved the report as Exhibit- 5.

He also held post mortem over the body of Harsh Gupta and found the following injuries :

- “1 A lacerated injury 1”x1/2”into bone on the vault of the scamp.
2. A bruise 1 ½”x ½”on the right side of the forehead.
3. A contused laceration 1 ½”x ½”on the left eye brow.
4. A bruise 5”x3”extending from the left forehead is the left cheek.
5. A bruise 2”x1”on the left shoulder.”

He deposed death was caused due to strangulation which is ante mortem and homicidal in nature. Post-mortem report was exhibited as Exhibit -5/1. He clarified other injuries were due to assaulting. In cross-examination, he stated he did not find crescent nail marks on the body of the deceased persons. He did not find any oblique mark on the throat of the bodies or any non-continuous ligature mark on the bodies. He denied the suggestion that the cause of death was not due to strangulation.

P.W. 7, Tarun Guha Neogi, is the investigating officer of the case. He deposed that he came to the place of occurrence and found dead body of a female with bleeding injuries. He examined Prakash Chand Tulsian and

others. He proved the inquest report. He seized blood stained printed bed cover, some broken conch with blood stains, one white and red printed pillow cover from the place of the incident. He came to know that the son of the deceased had died at the hospital. He went to the hospital and prepared inquest report in respect of the body of Harsh Gupta in the presence of complainant and other witnesses. He went to the place of occurrence and could not find the accused person. On 16.11.2011 he arrested the accused. He sent the dead bodies for post-mortem examination. On the statement of the accused he recovered two broken portions of wooden frame with blood stains measuring about 21 ½ inch and 8 ½ inch in length respectively. He also recovered other articles including shirt, pant, one white coloured gangi and one jute bag with blood stains. He prepared seizure list which was signed by P.W. 5 and one Jobbar Ansari. On 19.11.2011 he seized various valuable belongings including gold and silver articles belonging to the appellant under seizure list, marked as Exhibit- 6/1.

Evidence of the investigating officer and that of P.W. 5 show on the leading statement of the appellant, two wooden frames of 21 ½” and 8 1/2” in length respectively were recovered.

It is argued no FSL report with regard to wooden frame was obtained and post mortem doctor has not opined that they are the weapon of offence. It is also argued motive to commit the crime has not been proved.

Analysis of the evidence on record show that the incident occurred at the residence of the appellant. He was seen at his residence immediately after the incident. He had also informed the incident to his father in law (P.W. 1) over telephone. As discussed earlier, these clinching pieces of evidence establish that the appellant was present at the place of occurrence i.e his residence when the incident occurred.

P.W. 4, post mortem doctor proved victims died due to strangulation which is ante mortem and homicidal in nature. In cross examination, he stated there was no oblique or non-continuing ligature mark on the neck of the deceased ruling out a case of suicidal hanging. Apart from the injury in the neck due to strangulation, multiple injuries on the face and body of the victims were noted which clearly establish assault upon them prior to strangulation. All these circumstances unerringly point to the irresistible conclusion that the victims had been murdered at the residence of the appellant. From the evidence on record it is clear appellant was present at the residence when the incident occurred. He did not offer any explanation how his wife and minor son had suffered homicidal death due to strangulation. No plea of alibi was raised by the appellant during trial. These circumstances clearly establish it was the appellant and the appellant alone who had assaulted his wife and minor son and thereafter strangled them to death.

Furthermore, the aforesaid circumstances are fortified by the subsequent recovery on the showing of the appellant is, of two broken

portions of wooden frame which were used for strangulation by force. It is true no FSL report or opinion of post mortem doctor with regard to weapon of offence was obtained. However, such remissness in the process of investigation does not water down the prosecution case which is squarely established against the appellant in the light of the other circumstances on record. No doubt, motive to commit the crime is an essential factor when a case is based on circumstantial evidence. However, failure to prove motive to commit the crime by itself is not a fatal defect where the circumstances proved show that the housewife and his child were assaulted and strangled to death at the matrimonial home by the appellant (see ***Mulakh Raj And Others vs. Satish Kumar And Others***¹). Post occurrence conduct on the part of the appellant in carrying his injured son to the hospital also does not absolve his guilt. After the brutal attack resulting in death of his wife and brutal injuries upon his son, appellant may have had a pang of remorse and made a bid to save his son. Such circumstance does not create a breach in the chain which points to his guilt but may be considered as a relevant factor in the event he seeks remission of his sentence in terms of section 433A Cr. P.C.

Lastly it is argued the incident occurred without premeditation and on the spur of the moment. Hence, the conviction may be altered to one under section 304 IPC.

¹ (1992) 3 SCC 43

The appellant had brutally assaulted and murdered his wife and minor son. Apart from the injuries on the neck due to strangulation, multiple injuries owing to assault were noted by post mortem doctor. Hence, his intention to murder the defenceless victims one of whom was a 3½ old child is clearly established. There is nothing on record to show that the victims had caused any sudden and grave provocation to the appellant. Under such circumstance, I am unable to accede to the plea that the offence be converted from one under section 302 I.P.C. to 304 I.P.C.

The appeal is, accordingly, dismissed.

In view of disposal of the appeal, connected applications, if any, also stand disposed of.

Before parting with, I note that the trial Judge had directed all the seized alamats to be destroyed. I find a large number of personal valuables of the appellant were seized by investigating officer (P.W. 7) under seizure list, Exhibit- 6/1. These items were taken in safe custody as the appellant had been arrested. None of the seized items relate to the crime and are of substantial value. Right to property of an individual including a convict is a constitutional right and cannot be taken away except by procedure established by law. As the aforesaid articles seized are not proceeds of crime nor are they prohibited items, destruction of the said items is clearly contrary to law. In the event the direction has not been carried out, in exercise of inherent powers, I direct the articles

referred to in Exhibit- 6/1 shall not be destroyed. Trial Court shall hand over the said articles to its lawful owner in accordance with law.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellant in terms of Section 428 of the Code of Criminal Procedure.

Lower Court records along with copies of this judgment be sent down at once to the learned trial court as well as the Superintendent of Correctional Home for necessary compliance.

Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)