

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. 119 of 2009

Bimal Banerjee

-Vs-

State of West Bengal

For the Appellant : Mr. Partha Pratim Das, Adv.

For the State : Mrs. Manasi Roy, Adv.

Heard on : 19.04.2022

Judgment on : 19.04.2022

Joymalya Bagchi, J. :-

Appellant has been charged with the offence of matricide. Charge leveled against the appellant is as follows :

“That the appellant on or about 09.09.89 at about 10.15 a.m. at village Paltagarh, PS Singur committed murder of Jogmaya Banerjee by intentionally causing her death by inflicting injury with ‘dao’ and thereby committed an offence punishable under section 302 of the Indian Penal Code and within the cognizance of court of sessions.”

In the course of trial, prosecution primarily relied on the eye-witness version of PWs 5 and 6 namely Rekha Goswami and Amal Banerjee, siblings of the appellant who claimed they had witnessed the murder. Relying on their evidence and rebutting the defence plea of insanity the trial court arrived at a finding of guilt against the appellant and sentenced him to life imprisonment.

Nobody appears for the appellant.

Mr. Das, learned advocate empanelled with the High Court Legal Services Authority, is requested to appear on his behalf. Secretary, High Court Legal Services Authority, shall regularize his service.

Mrs. Roy is requested to appear on behalf of the State.

PW 5 is the sister of the appellant. She deposed incident occurred in her father's house. She was present in the house at the time of occurrence. Her younger brother Amal Banerjee (PW 6) was also in the house. Appellant inflicted injury with a 'katan' at the entrance of the house of Gokul Majhi. Appellant assaulted his mother on the heel. Thereafter he inflicted 2/3 blows on her throat. As a result she died. Appellant was totally mad three days prior to the incident.

PW 6 Amal Banerjee was a student of class VI. He also saw the incident and corroborated her elder sister, PW 5. He, however, could not state how many times appellant assaulted the deceased.

PW 8, Dr. P. G Bhattacharya, post mortem doctor found lacerated injuries on the neck, right shoulder and left arm of the deceased. He

stated death was due to aforesaid injuries, ante mortem, homicidal in nature.

PW 12 is the investigating officer of the case. He came to the place of occurrence, prepared sketch map and inquest report (Exhibit 5). He seized a 'ramda' from the house of the appellant which is 100 ft from the place of occurrence. He identified the 'ramda' in court. He collected post mortem report. He sent articles for chemical examination. He obtained FSL report which was produced in Court. He submitted charge-sheet.

From the aforesaid evidence on record it is clear the appellant on the fateful day had given repeated blows with a 'ramda' on the body of his mother. Ocular version as narrated by PW 5 and 6 finds support from the notings in the inquest report (Exhibit 5) as well as the post mortem doctor.

However, Mr. Das draws my attention to the fact the appellant was suffering from insanity at the time of occurrence. He submits PW 5 deposed the appellant was completely mad for three days prior to the incident. Trial judge appears to have discounted the deposition of PW 5 on the ground no contemporaneous document with regard to the mental ailment had been placed on record. I am unable to subscribe such view of the trial judge. PW 5 is the sister of the appellant. Both of them used to stay in the same house. In view of such fact, she had full knowledge with regard to the behaviour and temperament of the appellant on or

before the incident. Hence, her deposition with regard to mental state of the appellant is relevant ought not to have been discarded.

I am further emboldened to come to such conclusion as the appellant had immediately after his arrest on 10.09.1989 exhibited signs of mental illness. In the impugned judgment, the trial Judge noted the appellant had been produced before the magistrate for recording his statement under section 164 Cr.P.C on 12.09.1989. Order dated 12.09.1989 shows that the learned Magistrate observed the appellant had a vacant look and did not respond to questions put to him. This contemporaneous finding appearing from the records of the case corroborate the version of PW 5 that at the time of occurrence appellant was suffering from mental ailments. Moreover, upon commitment of the case, by order dated 13.06.1994 medical opinion with regard to mental condition of the appellant was called for. Report of Dr. Satyajit Kali, Psychiatrist submitted before the trial court and noted in the order dated 16.07.94 reads as follows :

“O/E; patient resistive. Did not communicate at all. Time span of examination was 30 minutes. Please arrange to transfer this person to Dum Dum Central Jail for continuous (in-patient) observations for days to needful investigations to clinch the diagnosis”

Thereafter, the appellant remained under treatment and only in 2007 he was certified fit to be tried vide report dated 06.04.2007 of the medical officer concerned.

These materials on record leave no doubt in one's mind that the appellant was suffering from mental illness at the time of occurrence and thereafter. In ***Devidas Loka Rathod Vs. State of Maharashtra***¹ the Apex Court observed as follows:-

“13. If from the materials placed on record, a reasonable doubt is created in the mind of Court with regard to the mental condition of the accused at time of occurrence, he shall be entitled to the benefit of the reasonable doubt and consequent acquittal, as observed in Vijayee Singh v. State of U.P.”

The aforesaid proposition of law applies with full force to the facts of the case.

These circumstances have been ignored by the trial Judge who erroneously came to a finding that from arrest till commitment, judicial record is devoid of any finding which may prima facie show unsoundness of mind.

In the light of the aforesaid discussion, I am of the opinion evidence of PW 5 which is corroborated by notings of the magistrate on 12.09.1989 that the appellant exhibited a blank look and was unable to give reply clearly establish that he was suffering from unsoundness of mind and unable to comprehend the consequence of his own conduct at the time of occurrence. He is, therefore, entitled to the benefit under the general exception embodied in section 84 of the IPC.

Conviction and sentence of the appellant is set aside.

¹ (2018) 7 SCC 718

Appellant Bimal Banerjee shall be forthwith released from custody, if not wanted in any other case upon executing a bond to the satisfaction of the trial Court which shall remain in force for a period of six months in terms of Section 437A Cr.P.C.

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.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)

Tkm/PA