

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. 167 of 2009

Matalu Oraon

-Vs-

State of West Bengal

For the Appellant : Mr. Subir Banerjee, Adv.
Mr. Sandip Bandyopadhyay, Adv.
Mrs. Ruxmini Basu Roy, Adv.

For the State : Mr. Parthapratim Das, Adv.
Mr. Pratick Bose, Adv.

Heard on : 19th April, 2022

Judgment on : 19th April, 2022

Joymalya Bagchi, J. :-

The appellant has assailed the impugned judgment and order dated 20.01.2009 and 21.01.2009 passed by the learned Additional Sessions Judge, 1st Court, Siliguri, in Sessions Trial No. 54 of 2001 arising out of Sessions Case No. 24(1) of 2000 convicting the appellant for commission of offence punishable under Section 302 of the Indian Penal Code and directing him to suffer rigorous imprisonment for life

and also to pay fine of Rs. 2,000/-, in default, to suffer further rigorous imprisonment for a period of one year more.

Prosecution case as alleged against the appellant is to the effect that on 16.06.1999 at 05.30 p.m. while Premika Toppo was at her residence with her four children including Laxmi Tirkey (P.W. 5) and Hema Tirkey (P.W. 6) the appellant came to the house and struck Premika repeatedly with an axe resulting in her death. Saniya Tirkey (P.W. 7), husband of the victim, returned home and was informed about the incident by her daughter, Laxmi. Immediately he lodged written complaint which was registered as Matigara Police Station Case No. 100 of 1999 dated 16.06.1999 under Section 302 of the Indian Penal Code. In the course of investigation police seized weapon of offence i.e. axe from the place of occurrence, arrested the appellant and filed charge-sheet. Charges were framed under Sections 302/201 of the Indian Penal Code. Appellant pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined nine witnesses and exhibited a number of documents. In conclusion of trial, learned trial Judge by the impugned judgment and order dated 20.01.2009 and 21.01.2009 convicted and sentenced the appellant, as aforesaid. He, however, acquitted the appellant of the charge levelled against him under Section 201 of the Indian Penal Code.

Mr. Bandyopadhyay, learned Counsel appearing for the appellant argues P.Ws. 5 and 6 were minor at that time of occurrence. It was unsafe to solely rely on their depositions to come to a finding of guilt.

There is every possibility that the said witnesses were tutored to implicate the appellant. It is also submitted local people namely Emere was not examined. No motive to commit the crime was also proved in the instant case. Hence, the appellant is entitled to an order of acquittal.

On the other hand, Mr. Das, learned Counsel appearing for the State, submits P.W. 5 was the eldest daughter and was aged around 9 years at the time of the incident. She has graphically described the assault on her mother. She reported the matter to the local people as well as her father. She is corroborated by her younger sister (P.W. 6). Immediately after the incident, F.I.R. was lodged by husband of the deceased (P.W. 7). Post mortem doctor (P.W. 8) corroborated the deposition of the eye-witnesses. Hence, prosecution case is proved beyond doubt.

Prosecution case essentially hinges on the version of P.Ws. 5 and 6 who were minors at the time of occurrence. It is trite law evidence of a minor witness has to be examined with due care and circumspection. A child of tender years is amenable to various influences including tutoring.

I have borne in mind the aforesaid principles while assessing the evidence of P.Ws. 5 and 6. Going through the evidence of P.Ws. 5 and 6, I note the trial Judge had put preliminary questions to P.Ws. 5 and 6 to examine their mental faculties and capacity to depose. Upon being satisfied, their evidence was recorded.

P.W. 5 (Laxmi Tirkey) stated on 16.06.1999 at 8.00 p.m. her mother was suckling her youngest brother in the courtyard. At that time the appellant came and hit her mother on the head with an axe. Thereafter the appellant fled away throwing the axe at the spot. Her younger sister Hema Tirkey (P.W. 6) and another brother Babulal were also present in the verandah. They raised hue and cry but no one came to the spot. Thereafter, she took the baby from the lap of her mother and went to the residence of their neighbour, Emere. P.W 5 then went to the residence of Krishna, the master of her father. She narrated the incident to him and asked him to inform the matter to her father. Her father returned from work and was informed of the incident. Police also came and took the body of her mother for post mortem. Her father accompanied the police. Police also seized the axe from the place of occurrence. She made statement before the learned Magistrate. In the course of cross-examination she was extensively cross-examined. She replied to the questions intelligently and remained wholly unshakable.

P.W 6 (Hema Tirkey) was also examined. She corroborated P.W. 5. She however, was unable to state the number of times her mother was assaulted.

Analysis of the evidence of the aforesaid witnesses particularly P.W 5 shows she was mature enough to comprehend the brutal assault on her mother. She has graphically narrated the same which finds corroboration from her younger sister. Soon after the incident her father (P.W. 7) arrived at the spot. Krishna informed him that his wife had been

murdered. He saw the dead body of his wife in the courtyard. Her daughters also informed him that the appellant had killed his wife. Police came to the spot and seized the axe. He signed on the seizure list. Police prepared inquest over the dead body of his wife. He lodged written complaint marked as "Exhibit-2".

P.W. 8 (Dr. Saibal Gupta), post mortem doctor, found following injuries on the body of the deceased :

"1)Lacerated wound found 4"x 3" x bone deep over left parietal region with extra-vascular clotted blood all over skull with sub dural hemorrhage all over left cerebral hemisphere.

2)Lacerated wound over left hand 3" x 4" x bone deep over forearm with compound comminuted fracture both bones left fore arms."

He opined death was due to the effect of the above noted injuries ante mortem and homicidal in nature.

P.W. 9 (C.D. Thapar) is the investigating officer. He opined on 16.06.1999 he was posted at Sukna OP as SI of police. On that date at about 21.25 hours Officer-in-Charge, Matigara Police Station informed him over telephone that one Matalu murdered a woman and had surrendered at Matigara Police Station. He was instructed to go to the place of occurrence. After reaching the place of occurrence, he found Officer-in-Charge and other force along with the accused was present. Officer-in-Charge instructed him to investigate the case. During investigation he interrogated the accused. He prepared rough sketch map of the place of occurrence. He examined witnesses. He held inquest over the dead body. He sent the dead body for post mortem examination.

He seized blood stained earth. He seized one axe from the place of occurrence. He sent seized blood stained earth and sample of blood for chemical examination. He collected the report. He submitted charge-sheet.

Evidence of the minor witnesses unequivocally establish the appellant had committed murder of their mother at the residence on the fateful evening. Thereafter, the appellant ran from the spot and surrendered at the police station. Soon thereafter husband of the deceased returned from work and was informed of the incident. He lodged F.I.R. wherein he stated he heard the incident from his eldest daughter, Laxmi (P.W. 5). Injuries noted in the inquest report as well as post mortem report corroborate the ocular versions of P.W. 5 and 6. The said witnesses were interrogated by the trial court and upon due satisfaction with regard to their competence, their depositions were recorded. In spite of extensive cross-examination, they remained unshaken. Thus, I have no reason to disbelieve the aforesaid witnesses who were present at the home when their mother was murdered. Nothing is forthcoming why the witnesses would falsely implicate the appellant. As the aforesaid witnesses appear to be truthful and convincing, non-examination of the neighbours like Emere cannot cast doubt on the prosecution case.

In view of clear, unequivocal ocular version of P.Ws.5 and 6 which is corroborated by medical evidence, failure to prove motive also does not affect the credibility of the prosecution case.

In view of the aforesaid discussion, I am inclined to uphold the conviction and sentence of the appellant.

Hence, the appeal is dismissed.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon him 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 for necessary compliance.

I note appellant does not have any criminal antecedent. Motive for commission of crime has not been proved. In view of the aforesaid facts, in the event appellant makes an application for remission of sentence upon completion of 14 years of actual imprisonment in terms of Section 433A of the Code of Criminal Procedure, the appropriate authority shall consider the same keeping in mind the aforesaid circumstances and other relevant factors including his conduct in the correctional home.

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.)