

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. 154 of 2014

Sri Indrajit Paul

-Vs-

State of West Bengal

For the Appellant : Mr. Kusal Kumar Mukherjee, Adv.

For the State : Mr. Partha Pratim Das, Adv.
Mrs. Manasi Roy, Adv.

Heard on : 24.08.2022

Judgment on : 24.08.2022.

Joymalya Bagchi, J. :-

Appellant has assailed judgment and order dated 27.08.2013 and 30.08.2013 passed by the learned Additional District and Sessions Judge, 3rd Court, Barrackpore, North 24 Parganas, in Sessions Case No. 315 of 2011 arising out of Sessions Trial No. 7(4) of 2012 convicting the appellant for commission of offence 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.

Prosecution case as alleged against the appellant is to the effect that the appellant was married to one Mousumi Das (Paul) 15 years ago. A daughter and son were born to the couple. Few years after the marriage, Mousumi was subjected to physical torture by the appellant. Due to such torture Mousumi used to take refuge at her parental home. On 02.05.2011, appellant again assaulted Mousumi. She took refuge in the house of another person. Thereafter she came to the residence of her father, Ganesh Chandra Das (P.W. 1). On the next day appellant came to his father-in-law's house and begged forgiveness for his misbehaviour. On 06.05.2011 appellant again came to his father-in-law's house and took Mousumi away. He took Mousumi along with their children to his elder sister's house at Vivekananda Park. On that day around 10.30 A.M. appellant with the assistance of his sister and others murdered Mousumi. Hearing the news her father went to Ghola Hospital where he found his daughter lying dead. He lodged written complaint at the police station resulting in registration of Ghola Police Station Case No. 169 of 2011 dated 06.05.2011 under Sections 498A/302/120B/34 of the Indian Penal Code against the appellant, his sister, namely, Jhuma Pal, her husband Ranjit Pal and their two sons namely Chiranjit Pal and Prosenjit Pal.

In conclusion of investigation, charge-sheet was filed against the appellant and the said accused persons. Charges were framed under Sections 498A/302 of the Indian Penal Code against the appellant and under Sections 302/120B of the Indian Penal Code against the other accused persons. They pleaded not guilty and claimed to be tried.

In the course of trial prosecution examined 12 witnesses and exhibited a number of documents. Defence of the accused persons was one of innocence and false implication.

In conclusion of trial, learned trial Judge by the impugned judgment and order convicted and sentenced the appellant, as aforesaid. By the selfsame judgment and order learned Trial Judge acquitted the other accused persons of the charges levelled against them.

Mr. Mukherjee, learned Counsel for the appellant submits sole eye-witness (P.W. 7) is unreliable. Her deposition suffers from various contradictions and/or inconsistencies. Post-mortem doctor (P.W. 8) does not corroborate the deposition of P.W. 7. Appellant was acquitted under section 498A IPC. Motive of crime has not been proved. Hence, appellant is entitled to an order of acquittal.

On the other hand, Mr. Das, learned Counsel for the State submits P.W. 7 is the daughter of the couple. She was present at the place of occurrence. She unequivocally stated how her father i.e. the

appellant had assaulted the victim resulting in her death. Her deposition is corroborated by other witnesses as well as post-mortem doctor, P.W. 8. Hence, appeal is liable to be dismissed.

Star witness for the prosecution is Shrabani Pal, daughter of the deceased, Mousumi. She was examined as P.W. 7. She deposed on 06.05.2011 her father had taken her and her younger brother to her aunt's house at Sodepur. Thereafter they went to her maternal uncle's house at Sodepur Nilachal Pally. Her mother was present in the said house. Her father took her mother to her aunt's house at Vivekananda Park where her father assaulted her mother in the first floor of the house and thereafter took her inside the room and locked it. She requested her aunt and her brothers to save her mother but they did not help. Her mother shouted "bachchao bachchao". She went upstairs and noticed blood coming out from the gap of the door of that room. She knocked at the door. After some time her father opened the door. Her father had pierced a part of scissors into the eye of her mother. She also noticed the UPS in the room was in blood stained condition. She made statement before learned Magistrate as well as police. She remained unshaken during cross-examination.

Her deposition is corroborated by post-mortem doctor, Dr. Dulal Krishna Das (P.W. 8). He found 16 injuries on the body of the victim. He noted the following injuries:

- “1. Triangular lacerated wound $2\frac{1}{2}$ inch X ($\frac{1}{2}$ X 2) inch bone on the right side of the forehead touching the mid line and hair line above right eye brow.
2. One abrasion one and $\frac{1}{2}$ X 1 inch on the right zygomatic area.
3. One bruise 3 inch X 2 inch on the right side of face in front of the right ear touching the tragus.
4. One lacerated wound $\frac{1}{2}$ inch X $\frac{1}{4}$ inch bone on the middle of the nose having fracture of nasal bone.
5. One lacerated wound 1 inch X $\frac{1}{2}$ inch bone deep in the upper part of the left forehead touching the mid line and $1\frac{3}{4}$ inch above the left eye brow.
6. One bruise $1\frac{1}{2}$ X 1 inch on the left upper eye lid.
7. One bruise $2\frac{1}{2}$ inch X $2\frac{1}{2}$ inch on the left chick having three lacerated wounds $\frac{1}{4}$ inch X $\frac{1}{4}$ inch X skin, $\frac{3}{4}$ X $\frac{1}{4}$ X bone and $\frac{1}{4}$ inch X $\frac{1}{4}$ inch skin on it.
8. $1\frac{1}{2}$ inch X $\frac{1}{2}$ inch bone in the interio posterio on the lower part of the left parital region.
9. One lacerated wound $1\frac{1}{2}$ X $\frac{1}{2}$ X bone $\frac{1}{2}$ inch below and behind the injury no. 8.
10. One lacerated wound $2\frac{1}{2}$ inch X 1 inch bone on the left side of the back of the head from above downwords touching the posterior mid line.

11. Three punctured wound $\frac{1}{4}$ inch X $\frac{1}{4}$ inch muscle on the back of the lower part of the neck.
12. Seven punctured wounds $\frac{1}{4}$ inch X $\frac{1}{4}$ inch muscle on the back of the right upper chest.
13. One abrasion 1 inch X $\frac{1}{4}$ inch on the back of the forearm 2 inch above the wrist.
14. One bruise $2\frac{1}{2}$ inch X 2 inch on the right upper aspect 4 inch above the right elbow.
15. Two punctured wounds $\frac{1}{4}$ inch X 1 inch muscle on the back of the right palm.
16. One lacerated wound $1\frac{1}{2}$ inch X $\frac{1}{2}$ inch muscle on the chin.”

He opined that the death was due to the effects of above noted injuries, ante mortem and homicidal in nature. In cross-examination, he stated that he found multiple punctured wounds which were due to stabbing.

Mr. Mukherjee argued that the opinion of post-mortem doctor (P.W. 8) does not support the manner of assault as narrated by P.W. 7. P.W. 7 stated her father had assaulted with scissors and UPS. Post-mortem doctor (P.W. 8) stated punctured wound was due to stabbing. Pair of scissors have a pointed tip and may be used for stabbing. Hence, opinion of the post-mortem doctor with regard to

the nature of injuries corroborate the manner of assault as narrated by P.W. 7.

P.W. 12 (Joydeb Dey) is the investigating officer. He went to the place of occurrence and seized blood stained UPS, one cord, one blood stained pillow cover, one blood stained full shirt and one pair of blood stained scissors and one gold coloured ear ring and two pieces of blood stained pala (red bangle) and sample of blood on the floor and sample of dust from the house of sister of the appellant at Vivekananda Park under a seizure list marked as Exbt.-11. Articles were sent for FSL examination.

P.W. 10 (Dr. Sipra Ray), Assistant Director, Biology Division, State Forensic Department, Belgachhia, deposed she detected blood on the UPS, Cord, Pillow cover, Full sleeved shirt, Scissors, Broken bangle pieces, Dark brown stained cotton wool, hair, nails, wearing apparels of the deceased and the sample collected from the floor. Serologist report noted presence of human blood in some of those articles but no opinion could be given with regard to other articles due to disintegration.

These circumstances read along with opinion of the post-mortem doctor corroborate the version of the eye-witness, P.W. 7.

Other evidence on record also supports the prosecution case. P.W. 1 is the father of the deceased and defacto complainant. He deposed appellant used to subject his daughter Mousumi to physical

and mental torture. On 02.05.2011 she took refuge at his house. On 03.05.2011 appellant came to his house and begged forgiveness. On 06.05.2011 appellant again came to the house and took away Mousumi. Thereafter he received information that Mousumi had been murdered at the sister's house of the appellant at Vivekananda Park. He went to Ghola Hospital and found his daughter had died. He lodged written complaint scribed by P.W. 3. He also signed on the inquest report at the Ghola Hospital.

P.W.2, Sima Das and P.W.4, Dipak Das are sister-in-law and brother of Mousumi respectively. They also corroborated the prosecution case that Mousumi had been assaulted by the appellant on 6.5.2011 at the residence of her sister at Vivekananda Park. They saw the dead body of Mousumi at Ghola Hospital.

P.W.4 is a signatory to the seizure of various articles including the UPS and scissors from the place of occurrence.

P.W. 6 is a neighbour of the sister of the appellant. He is a post occurrence witness. He saw the dead body on the first floor of the house. He is also a signatory to the seizure list prepared at the spot.

The aforesaid pieces of evidence corroborate the prosecution case and lend credence to the version of the eyewitness, PW7. She is the daughter of the couple. Her presence at the place of occurrence is fully established and I have no reason to disbelieve her truthful version which is corroborated by the aforesaid evidence on record.

When prosecution case is fully established through the credible evidence of an eye-witness and other evidence on record, failure to prove motive shall not be a ground to disbelieve.

Hence, conviction and sentence of the appellant is upheld.

Accordingly, 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 copy of this judgment be sent down at once to the learned trial court 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.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)