

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. 415 of 2004

Chunaram Sardar

-Vs-

State of West Bengal

For the Appellant: Mr. Saryati Datta, Adv.

For the State : Mr. Saswata Gopal Mukherjee .. Ld. Public Prosecutor
Ms. Amita Gaur, Adv.

Heard on : 18.02.2022

Judgment on : 18.02.2022

Joymalya Bagchi, J. :-

The appeal is directed against judgment and order dated 27.11.2003 passed by the learned Additional Sessions Judge, 2nd Court, Bankura in Sessions Trial No. 5(11) of 2001 arising out of Sessions Case No.12(9) of 2001 convicting the appellant for commission of offence punishable under Sections 302/201 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for six months more for the offence punishable under Sections 302/201 of the Indian Penal Code. No separate sentence was awarded for the offence punishable under Section 201 IPC.

The prosecution case as alleged against the appellant is to the effect that on 15.09.1991 the appellant had murdered his elder brother namely, Arun Sardar with a *bonti* at his residence. Thereafter, with the aid of his father they disposed of the dead body in the canal. Immediately after the incident, the appellant went to the residence of one Gurupada Garai (PW 7) and wanted to stay in his house for the night. When Gurupada enquired, the appellant stated that he has done a great blunder and on further questioning divulged that he had murdered his elder brother, Arun. Consequently, Gurupada was unwilling to give refuge to the appellant and the latter left the spot after threatening him not to disclose the incident to anyone. On the next day in the morning, Gurupada disclosed the incident to local villagers. Thereafter, the local villagers went to the residence of the appellant and found the courtyard was being cleaned with mud. When they asked why the courtyard was being cleaned, father of the appellant did not answer. Then, he stated that there was a quarrel between his sons and both of them left. Upon being pressurized, he disclosed that the appellant had murdered his elder brother at 10:00 p.m. on the previous night. Local people requested father of the appellant to lodge complaint but he lodged a false missing diary being GDE No. 273 dated 17.09.1991. On the next day, an unknown dead body was recovered from the main canal of Kangshabati at Piralgora. PW 14, Officer-in-charge of Sarenga Police Station held inquest over the dead body and registered Sarenga Police Station Case No.16 of 1991 dated 17.09.1991 under Sections 302/201 of the Indian Penal Code against unknown accused

persons. Subsequently, a local villager, namely, Samir Kumar Panda (PW 10) identified the same as the body of the victim. On 18.09.1991, PW 1 lodged written complaint against the appellant and his father namely, Rajendra Sardar. Appellant and his father were arrested and on their showing, a blood stained *bonti* was recovered in a bush beside the courtyard. Blood stained *gamcha* and other articles were also recovered. FSL report collected in course of investigation show that the articles bore human blood. Charge-sheet was filed against the appellant, his father namely, Rajendra Sardar and his mother namely, Mithila Sardar. Subsequently, Rajendra Sardar expired. Charges were framed against the appellant and his mother under Sections 302/201/34 of the Indian Penal Code. Accused persons pleaded not guilty and claimed to be tried. In course of trial, prosecution examined 22 witnesses and exhibited a number of documents. Defence of the accused persons was one of innocence and false implication. In conclusion of trial, the learned trial Judge by the judgment and order dated 27.11.2003 convicted and sentenced the appellant, as aforesaid. However, by the selfsame judgment and order, mother of the appellant namely, Mithila Sardar was acquitted of the charges levelled against her.

Mr. Saryati Datta, learned Advocate appearing for the appellant submits that the prosecution case suffers from various lacunae and/or inconsistencies. Though PW 1 claimed that he came to know that the appellant had murdered his brother on the very next day i.e. 16.09.1991, FIR was lodged on 18.09.1991. Such delay militates against the

truthfulness of the prosecution case. Extra-judicial confession made to PW 7 is highly unnatural and does not inspire confidence. Purported statement made by father of the appellant to witnesses is inadmissible. There is no evidence how the appellant had carried the dead body from the place of occurrence to Kangshabati canal. Statement of the appellant leading to recovery of blood stained *bonti* has not been proved. Hence, the appellant is entitled to acquittal.

In reply, Ms. Amita Gaur, learned Advocate appearing for the State argued extra-judicial confession made by the appellant to PW 7 is most natural. After committing the crime, appellant wanted to take refuge at the residence of PW 7 and therefore, disclosed the incident to him. On the very next day, PW 7 disclosed the incident to other witnesses. Initially, father of the appellant namely, Rajendra Sardar made false statement but subsequently he disclosed that the appellant had murdered his brother. He lodged false missing diary at police station. Blood stained earth was recovered from the courtyard establishing the place of occurrence. Blood stained articles including weapon of offence i.e. *bonti* was recovered on the showing of the appellant. Hence, the appeal is liable to be dismissed.

PW 7 (Gurupada Garai) is the most vital witness to whom the appellant made extra-judicial confession. He deposed he was sleeping at his residence when the appellant came to his residence and wanted to stay for the night. He wanted to know the reason for the appellant to make such request. Thereupon the appellant stated that he had made a great blunder and on further query he stated that he had murdered his elder

brother. Under such circumstances, PW 7 was unwilling to give shelter to the appellant whereupon he threatened him and left the spot. On the next day, PW 7 disclosed the incident to other villagers. Thereafter, the villagers assembled in the village Atchala and in the afternoon went to the house of the appellant. Father of the appellant initially stated that his sons were quarrelling and had left the house but on further persuasion divulged that the appellant had murdered his brother. He further deposed he made statement before the Magistrate.

The aforesaid extra-judicial confession narrated by PW 7 is corroborated by other prosecution witnesses.

PW 1 (Amar Sankar Garai) deposed he had heard from local villagers that the appellant had confessed to Gurupada about the murder. Thereafter, they went to the house of the appellant and found the courtyard was being cleaned with cowdung. Appellant's father initially evaded to come out with the truth but subsequently stated that the appellant had murdered the victim. PW 1 lodged the written complaint.

PW 2 (Hrishikesh Garai), PW 3 (Krishnapada Garai), PW 4 (Lularam Murmu), PW 6 (Kartick Garai), PW 8 (Prasanta Murmu) and PW 9 (Arun Kr. Garai) have stated in unison that they were present on the next day in the morning when Gurupada stated about the extra-judicial confession. These prosecution witnesses have also deposed with regard to the statement made by the father of the appellant with regard to the fact that the appellant had murdered his brother. Names of some of the witnesses namely, PWs. 2, 4, 8 & 9 also find place in the FIR as the persons to whom

Gurupada had narrated the extra-judicial confession made by the appellant.

It is argued the extra-judicial confession is unnatural and does not inspire confidence. I have analyzed the evidence of PW 7 in the backdrop of the aforesaid submission. A deeper analysis of his deposition shows the circumstances in which the appellant had made the extra-judicial confession. PW 7 was a local villager and of the same age as the appellant. He was a man in whom the appellant reposed confidence. Hence, it was natural for the appellant to rush to him after committing the crime. The tenor of the extra-judicial confession also points to its truthfulness. Appellant wanted to take shelter in the residence of PW 7. To invoke his sympathy, appellant stated he had committed a great blunder and on further query made the extra-judicial confession. As the witness was unwilling to help the appellant, he left the spot after threatening him. On that very next day, PW 7 divulged the incident to local villagers who have been examined in court. The circumstances in which the appellant reposed trust in the witness and made the extra-judicial confession is proved beyond doubt. There is no circumstance which points to any threat, coercion or undue influence on the appellant at the time when he made such confession. Extra-judicial confession to PW 7 is further corroborated by the evidence of other witnesses namely, PWs. 1, 2, 3, 4, 6, 8 & 9 who unequivocally stated on the very next day the confession was conveyed to them by PW 7. Hence, I am of the opinion the extra-judicial

confession made by the appellant is voluntary, reliable and truthful in nature.

It has been strenuously argued the prosecution case is a concocted one as no complaint was lodged against the appellant soon after the extra-judicial confession came to light. If one examines the FIR along with the deposition of the informant, PW 1 it would be clear that delay has been duly explained. After the extra-judicial confession came to light, PW 1 and others confronted the father of the appellant who after initial hesitation divulged the guilt of his son. Thereupon, they told him to lodge complaint but he registered a false missing diary. Under such circumstances, local villagers waited for sometime but when the dead body of the victim was recovered and identified by PW 10, PW 1 lodged written complaint and set the law into motion. These circumstances have remained unchallenged in course of trial and clearly explain why there was delay in lodging the FIR. Delay had been prompted due to the subterfuge resorted by the father of the appellant in lodging a missing diary based on incorrect facts. Accordingly, I am of the opinion delay in the present case has been duly explained by the prosecution.

With regard to the recovery and identification of the dead body, I find on 17.09.1991 an unknown dead body was recovered from Piralgora canal. PW 14, Officer-in-charge of the jurisdictional police station i.e. Sarenga Police Station held inquest over the dead body and registered Sarenga Police Station Case No. 16 of 1991 under Sections 302/201 IPC against unknown persons. Upon hearing the news of recovery of an

unknown dead body in the canal, PW 10, a local villager, went to the morgue and identified the body as that of the victim. No serious challenge to the identification of the dead body has been thrown by the defence. Thus, the recovery of the dead body of the victim from the Piralgora canal and its identification have duly been proved. Further, upon identification of the dead body and registration of FIR in the present case, Sarenga Police Station Case No.16 of 1991 was clubbed with this case.

PW 17, (Dr. J. N. Dey), post-mortem doctor proved the post-mortem report. He deposed one Dr. Subrata Batabyal, demonstrator of Bankura Medical College & Hospital had conducted the post mortem examination. As per report, following injuries were noted :-

As per report abrasion all over the body, injury 1"/ $\frac{1}{2}$ " above right shoulder joint, $\frac{1}{2}$ "/ $\frac{1}{2}$ " injury over lateral aspect of mid part, 1"/ $\frac{3}{4}$ " over right anterior abdominal wall upper part at mid clavicular line just below right coastal arch, injury 2 $\frac{1}{2}$ "/2 $\frac{1}{2}$ " lateral chest wall 1"/ $\frac{1}{2}$ " left front of chest. Black shade in colour, non-shaped of the incised wound.

Incised wound 10"/ 1" obliquely over front of neck.

Bruise over the body.

One incised wound 11" x 3" x cervical vertebrae obliquely in front of the neck.

One incised wound 10 $\frac{1}{2}$ " x 10" over cervical vertebrae.

He deposed death was homicidal in nature. He further deposed that injuries had irregular edges and may be caused by a *bonti*. Analysis of his evidence would, therefore, show that the victim had died due to ante mortem injuries which could have been caused by a *bonti*.

PW 20 (Binoy Kr. Das), PW 21 (Pranab Kr. Chatterjee) and PW 22 (Chowdhury Nijanur Rahaman) are the Investigating Officers of the case.

PW 20 deposed he commenced investigation upon receipt of FIR. He went to the place of occurrence and prepared sketch map with index. He arrested the appellant and his father namely, Rajendra Sardar. On their showing, one blood stained *bonti* was seized from a bush 20 cubits from the courtyard. Blood stained earth was also seized from the courtyard under a seizure list. One blood stained *gamcha* and *chatai* were also seized on the showing of the appellant and his father. He also collected FSL report in respect of the seized articles. Subsequent investigation was conducted by PW 21 and finally PW 22 submitted charge-sheet. Seizure of blood stained weapon of offence as well as blood stained earth from the place of occurrence is supported by independent witnesses namely, PWs. 8 & 9 who proved their signatures on the seizure list.

It has been argued that the body had been recovered from the Piralgora canal which is 6-7 miles away from the village. Nobody saw the appellant carry the dead body to the said spot. Evidence has come on record there was a canal in the village itself. The village canal is a continuous canal of Kangshabati project and a part of the main canal at Piralgora point. Judged from that perspective, it is evident the appellant after committing the murder of his brother had thrown his body in the village canal and the body had floated away into the main canal. After two days it was recovered at Piralgora point within Sarenga Police Station. Hence, there is no break in the chain of circumstance with regard to the murder of the victim and the recovery of the body from the canal at Piralgora point.

I, however, find substance in the submission of the learned Advocate for the appellant that the statement made by the father of the appellant who was an accused but, subsequently died, to the effect the latter had murdered his brother, cannot be used against him in the trial. However, other evidence on record clearly establish the following circumstances unerringly pointing to the guilt of the appellant:

- (a) *The victim ordinarily used to reside with the appellant in the same residence.;*
- (b) *On the night of occurrence i.e. 15.09.1991, appellant came to the residence of his friend (PW 7) and wanted to take shelter for the night. On being queried he confessed to his friend who, however, refused to help. Thereafter, the appellant left the spot threatening him.*
- (c) *On the next day PW 7 informed the incident to local villagers particularly, PWs. 3, 4, 8 & 9.;*
- (d) *Local villagers went to the residence of the appellant and found that the courtyard was being cleaned with cowdung.;*
- (e) *On query, father of the appellant gave evasive reply. Thereafter, he lodged a false missing diary stating that both his sons went missing from 15.09.1991.;*
- (f) *Appellant was found missing from the village from the night of 15.09.1991 till his arrest on 19.09.1991.;*

- (g) *An unknown dead body was recovered from a canal at Piralgora point which was suspected to be that of the victim. PW10 identified the unknown dead body of that of the victim.;*
- (h) *Post-mortem report shows incised wounds which post-mortem doctor (PW 17) deposed could be caused by bonti.*
- (i) *On the showing of the appellant blood stained bonti i.e. weapon of offence was recovered from a bush near the courtyard. Other articles like blood stained gamcha, chatai etc. were also recovered on the identification of the appellant.;*
- (j) *No explanation is offered by the appellant with regard to his absence from the residence in the night of 15.09.1991 till his arrest in the present case.*

These circumstances have been duly proved and unequivocally establish the guilt of the appellant.

Conviction and sentence imposed upon the appellant is accordingly, upheld.

The appeal is accordingly, dismissed.

Appellant has undergone more than 18 years of imprisonment. Evidence has come on record that the victim was addicted to liquor and led wayward life. Although there is no evidence of sudden and grave provocation by the victim which would justify reduction of conviction to one under Section 304 IPC, the aforesaid extenuating circumstances may be taken to consideration in the event the appellant files an application for pre-mature release under Section 433A of Code of Criminal Procedure

however, subject to other relevant considerations including his conduct in the correctional home.

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 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.)