

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. 316 of 2001

Sudhir Bera

-Vs-

State of West Bengal

For the Appellant : Mr. Mainak Bakshi, Adv.

For the State : Ms. Zareen N Khan, Adv.
Ms. Amita Gaur, Adv.

Heard on : 05.04.2022

Judgment on : 05.04.2022

Joymalya Bagchi, J. :-

Appellant has been accused of committing one of the most horrible crimes, i.e outraging the modesty of his own mother and committing patricide.

On 03.04.1999 around 10 p.m. the appellant sexually attacked his mother Khuku Bera, P.W. 1. When she raised hue and cry at such abominable behavior, his father Nagen Bera, the deceased, his brother Aditya, P.W. 4 and his sister Amari Bera, P.W. 8 intervened. Nagen assaulted the appellant who left the house. Thereafter, the inmates of

the house again retired for the night. Nagen slept in the veranda of the house. Suddenly, the appellant returned and hit Nagen with a 'khuta' on his head. As a result, the latter expired. Aditya caught the appellant. Aditya also informed Aswini Dey P.W. 7, a local leader who telephoned the police. Police came to the spot and on the written complaint lodged by P.W. 1, Sankrail P.S. Case No. 15 of 1999 dated 04.04.1999 under section 354/302 IPC was registered for investigation.

In the course of investigation, appellant made a confession before the Judicial Magistrate, P.W. 13. He was charged under section 354/302 IPC. Appellant pleaded not guilty and claimed to be tried. In the course of trial, prosecution examined 14 witnesses and exhibited a number of documents. Defence of the appellant was one of innocence and false implication. It was his specific defence that there was a land dispute between him and other family members. As a result, he has been falsely implicated.

In conclusion of trial, learned trial Judge by the impugned judgment and order dated 15.06.2001 convicted the appellant for commission of offence punishable under Section 354 and 302 of the Indian Penal Code and sentenced him to suffer imprisonment for one year for the offence punishable under section 354 IPC and to suffer rigorous imprisonment for life and pay a fine of Rs. 2000/, in default, to suffer rigorous imprisonment for one year more for the offence punishable under section 302 IPC. Both the sentences to run concurrently.

Mr. Bakshi, learned Counsel appearing for the appellant submits that the prosecution case is not corroborated by independent witnesses. He also submits prosecution witnesses have not proved the case beyond doubt. Without prejudice to the aforesaid submissions, learned Counsel argues conduct of the appellant, even if believed, would show he was not in a proper mental state. Hence, he ought to be acquitted.

Ms. Khan, learned Counsel appearing for the State submits P.Ws. 1, 4 and 8 have proved the case beyond reasonable doubt. Post mortem doctor (P.W. 9) corroborates their ocular version. Defence of the appellant of false implication or of mental illness as argued before this Court is not probalised from the materials on record. Hence the appeal is liable to be dismissed.

P.Ws. 1, 4 and 8 are the eye-witnesses.

P.W. 1 is the mother of the appellant. She deposed on the date of incident, she along with her daughter was sleeping in the veranda of the pucca house. Her husband was sleeping under the thatched roof by the side of the pucca house. His eldest son and his wife were sleeping in their room in the pucca house. Appellant suddenly attempted to rape her. He was naked at that time. She raised alarm and called her eldest son. Her daughter also raised alarm. Her eldest son Aditya came to the spot and dragged the appellant away. Her husband also came to the spot and beat him. Appellant left the spot. Thereafter, her husband slept in the veranda while she and her daughter went inside the room. Suddenly she heard a sound and coming out of the room found the

appellant hitting her husband with a 'khuta'. Her husband suffered bleeding injuries. Her eldest son caught the appellant. As a result of the assault, her husband died. Police came to the spot. They held inquest over the body of the appellant.

P.W. 4 Aditya is the brother of the appellant while P.W. 8 Amari Bera is his sister. Both the siblings have corroborated their mother P.W. 1 with regard to the incident. They were extensively cross-examined and remained unshaken. Depositions of the aforesaid eye-witnesses find corroboration from the evidence of the scribe P.W. 2 who proved the written complaint lodged by P.W. 1 (Exhibit-1).

P.W. 3, Sakti Bera, another brother of the appellant and P.W. 5 Dayal Nayek, a neighbour are post occurrence witnesses. They corroborate the evidence of P.Ws. 1, 4 and 8. In addition, P.W. 5 claimed appellant made an extra judicial confession before him.

P.W. 7, a local political leader deposed P.W. 4 came to his house and disclosed the incident to him. He informed the police over telephone.

Ocular version of the eye witnesses also receives corroboration from P.W. 9 who found grievous injuries on the head of the deceased and deposed that he had died due to head injuries which is ante mortem and homicidal in nature.

In addition thereto, P.W. 13, Judicial Magistrate recorded confession of the appellant (Exhibit-8).

From the aforesaid pieces of evidence there cannot be any shadow of doubt that the appellant on the fateful night had misbehaved with his own mother. Upon resistance, he left the spot. Thereafter, he returned and assaulted his father on the head resulting in his death.

Mr. Bakshi argues conduct of the appellant is unnatural and gives an impression he was suffering from unsoundness of mind.

I have scanned the evidence on record with reference to such plea. Apart from a suggestion made to P.W. 8 that the appellant had been treated by a psychiatrist, nothing appears from record to show that the appellant was suffering from unsoundness of mind. Gross perversity in the conduct of the appellant by itself cannot be a ground to infer mental illness. On the other hand appellant had effectively defended himself in the course of trial and even gave suggestion of false implication over a land dispute between himself and other family members. The tenor of such defence during trial rules out any possibility of the appellant committing the crime during a bout of mental illness.

In the light of the aforesaid discussion, I am of the opinion conviction and sentence of the appellant are liable to be upheld.

Appeal is accordingly dismissed.

The period of detention suffered by appellant during investigation, enquiry or trial shall be set off under Section 428 of the Code of Criminal Procedure.

Copy of the judgment along with LCR be sent down to the trial court at once for necessary compliance.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)