

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 351 of 2018
with
CRAN 2 of 2019 (Old CRAN 4035 of 2019)

Jagannath Pal @ Abhijit @ Avi
-Vs-
The State of West Bengal

For the Appellant : Mr. Sabyasachi Mukherjee, Adv.

For the State : Mr. Sudip Ghosh, Adv.
Mr. Bitasok Banerjee, Adv.

Heard on : 6th December, 2022.

Judgment on : 6th December, 2022.

Joymalya Bagchi, J. :-

1. Appeal is directed against the judgment and order dated 05.10.2012 and 06.10.2012 passed by the learned Additional Sessions Judge, F.T.C.-II, Ranaghat, Nadia in Sessions Trial No.60 of May, 2006 arising out of Sessions Case No.123(1) of 2005 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 fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for six months more.

2. Prosecution case as alleged against the appellant is to the effect that appellant was the brother-in-law of one Shyamal Paul. Shyamal was the brother of the de-facto complainant, Bimal Kumar Paul. Appellant was employed in the shop of Shyamal. 7/8 months ago, he had proposed to marry Bina, daughter of Bimal. Bina refused and the appellant was chastised.

3. In the early hours of 14.10.2004, appellant secretly entered the house of Bimal and went to the room of Bina. Bimal and his wife were in the adjoining room. Appellant had locked the said room from outside. Bimal woke up hearing the cries of his daughter. On opening the window between the rooms, he saw the appellant was tying his daughter's hand with an electric wire. He shouted and told his daughter to open the door. His daughter went out into the veranda adjoining her room. Somehow, Bimal came out from the back door into the courtyard of the house. His wife viz., Bharati Paul (PW3) also followed him. Hearing hue and cry, his brother Kamal, his wife Dipali (PW4) and their daughter Bulbuli (PW6) also came to the spot. At that time, appellant assaulted his daughter with a bhojali on her throat, hand and chest. Thereafter, he tried to flee but failed. Perplexed he inflicted injuries on himself. Bimal and others broke the lock of the

veranda. His daughter was taken to the hospital where she was pronounced dead.

4. Bimal lodged written complaint at the police station resulting in registration of Santipur Police Station Case No.325 of 2004 dated 14.10.2004 under Section 302 of the Indian Penal Code. Appellant was arrested and charge sheet was filed against him. Charge was framed under Section 302 of the Indian Penal Code.

5. In course of trial, prosecution examined 14 witnesses. Defence of the appellant was one of innocence and false implication. During his examination under Section 313 of the Code of Criminal Procedure, he stated he was in love with Bina. He had gone to her room and put vermilion on her forehead. Her father, Bimal Kumar Paul (PW2) objected to the match. He tried to assault him. Bina intervened and suffered injuries and died. Appellant, however, did not lead evidence to probabalise such defence.

6. In conclusion of trial, trial Judge by the impugned judgment and order convicted and sentenced the appellant, as aforesaid.

7. Mr. Sabyasachi Mukherjee, learned Advocate for the appellant argues the prosecution case suffers from inherent improbabilities. When appellant entered the room, victim did not raise hue and cry. It is unclear why she went to the veranda. Conduct of PW2 is not above suspicion. In spite of ample opportunity he did not save her daughter.

Presence of other witnesses at the spot is also improbable. Hence, appellant is entitled to the benefit of doubt.

8. Mr. Sudip Ghosh with Mr. Bitasok Banerjee, learned Advocates for the State submits PWs 2, 3, 4 and 6 are eyewitnesses. All the witnesses saw the appellant assaulted Bina on her chest, belly and hand. Their ocular versions is corroborated by the injuries noted by post mortem doctor (PW13). Defence raised by the appellant during his examination under Section 313 of the Code of Criminal Procedure is preposterous. This defence was not even suggested in the course of trial. Prosecution case is proved beyond doubt. Appeal is liable to be dismissed.

9. PWs 2 (Bimal Kumar Paul), PW3 (Bharati Paul), PW4 (Dipali Paul) and PW6 (Bulbuli Paul) are the eyewitnesses.

10. PW2 is the father of the victim and the de-facto complainant. He deposed appellant used to work in the shop of his brother Shyamal Paul. 7/8 months prior to the incident, he proposed to marry Bina. Such proposal was rebuffed and the appellant was chastised. In the night between 13-14.10.2004 he and his wife Bharati went to sleep in their room. His daughter Bina used to sleep in the adjoining room. There is a window between the two rooms. In the early morning around 4.00 AM, he heard screams of his daughter. Opening the window, he found appellant had tied electric wire round his daughter's wrist. He shouted. He tried to open the door and found it was locked from

outside. He told Bina to open the door. Bina rushed to the veranda adjoining her room and cried for help. His brother Kamal, his wife Dipali (PW4) and their daughter Bulbuli (PW6) came to the courtyard. At that time, appellant struck his daughter with a bhojali on the belly, chest and hand. His sons were residing on the first floor of the house. Appellant tried to flee but failed. In desperation, he tried to commit suicide and caused injury on himself. The lock of the veranda was broken. He saw his daughter lying injured in the veranda. His neighbour Prokash Chandra Karmakar (PW10) made phone call to police. Police arrived at the spot. Bhojali, razor and other articles including electric wire and locks were seized from the spot. He lodged written complaint.

11. PW3, Bharati Paul is the mother of the deceased. She has corroborated her husband (PW1). She deposed hearing cries of her daughter they woke up and saw the appellant inside her room tying her daughter's hand with electric wire. Her daughter rushed to the veranda. Her husband went to the courtyard through the back door. She followed him. Her daughter was assaulted by the appellant in the veranda.

12. Hearing cries of PW1, his sister-in-law Dipali Paul (PW4) and her daughter Bulbuli (PW6) came to the courtyard. They also saw the appellant assaulted Bina with a bhojali.

13. PW9, Kalyani Paul is the wife of Shyamal Paul, brother of PW1 and cousin of the appellant. She deposed appellant used to work in the shop of her husband. He had proposed to marry Bina. Such proposal was declined and the appellant was driven out of the house. On the fateful day, she heard appellant had murdered Bina.

14. PW5 (Rabindranath Paul), PW7 (Debesh Paul), PW8 (Subhas Karmakar) and PW10 (Prokash Chandra Karmakar) are the neighbours. They are the post occurrence witnesses. PW10 informed the incident to the police over telephone.

15. PW11 (Dr. Amal Sarkar) is the Medical Officer who examined the victim. He found bleeding injuries. He referred the victim to Krishnanagar Sadar Hospital for treatment. He proved the injury report.

16. PW13 (Dr. Sanjoy Roy Chowdhury) is the post mortem doctor. He found the following injuries:-

“1) One deep cut injury of approximate length of 5”, disposed slight obliquely on the anterior and left latral aspect of neck, slightly just below level of thigroid cartilage and extended on the left approx. 2.c.m. below the left angle of mandible. This cut injury is deep and cutting all the deep structure of the left side of the neck including trachea, carotid seeth, carotid vessels jagular vains and deep muscles.

2) One small cut injury approx. length of 3 c.m. on the anterior aspect of the chest approx. 3 c.m. above the right nipple. On dissection muscles of anterior wall of the chest is cut.

3) One cut injury of approx. length of 2 c.m. on the left side of the chest approx. 3 c.m. below the left nipple. On dissection muscles of anterior wall of the chest is cut.

4) One cut injury of approx. size of 4 c.m. is present, approximately 3 c.m. above right wrist joint in the inner aspect of the fore arm. On dissection tendons are cut and radial artery is cut.

5) Another cut injury of approx. size of 2 c.m. is present, approximately 2 c.m. above the left wrist inner aspect of the left fore arm.

6) Another cut injury of approx. length of 2 c.m. is present in the inner aspect of the fore arm approximately 2 c.m. is present in the inner aspect of the fore arm approximately 2 c.m. below left elbow joint.

7) One deep cut injury of approx. size of 4 c.m. is present in the mid portion of inner aspect of left fore arm."

He opined injuries were caused by a sharp cutting weapon. They were ante mortem in nature.

In cross-examination, he clarified injuries were not self-inflicted.

17. PW14 Rup Kumar Banerjee is the Investigating Officer. He came to the place of occurrence. He prepared rough sketch map with index (Ext 5). He held inquest over the dead body. He prepared inquest report (Ext 6). Body was sent for post mortem examination. He collected post mortem report. He seized various articles including blood stained bhojali, small blade, iron rod and nylon electric wire. He arranged for taking photographs of the place of occurrence by PW 12. He collected post mortem report and submitted charge sheet.

18. From the aforesaid evidence it is clear in the early morning of 14.10.2004 victim Bina suffered injuries in the veranda adjoining her room. Appellant was also found in the veranda with injuries.

19. PWs 2, 3, 4 and 6 have narrated the incident leading to the injuries on the victim and the appellant. PWs 2 and 3 stated in the early morning appellant had stealthily trespassed into the room of Bina. He tied her hands with an electric wire. Bina cried out for help. PW 2 intervened and asked her to come out of the room. Bina rushed to the veranda and was assaulted. Appellant tried to flee but failed. In desperation he inflicted injuries on himself.

20. Learned counsel strenuously argued the depositions of PWs 2 and 3 are improbable. He contended it is unnatural Bina would keep quiet and not raise alarm till her hands were tied. Conduct of PWs 2 and 3 during the incident is also inexplicable.

21. I am unable to accede to such submission. Bina was sleeping in her room with the door ajar. Appellant trespassed into the room while she was asleep. So Bina was unaware of the presence of the appellant till he tied her hands with the help of electric wire. She cried out for help. Hearing her cries, PWs 2 and 3 woke up and saw the incident through the window in between two rooms. Appellant had locked the door of the room of PWs 2 and 3 from outside. As a result, PW 2 could not come out of the room and save his daughter. He told his daughter to open the room. His daughter ran out to the veranda adjoining her room

and appellant followed her. Somehow PWs 2 and 3 came out into the courtyard. From there they saw the incident.

22. The aforesaid narration graphically describes the incident resulting in fatal injuries upon the victim. PWs 2 and 3 are corroborated by their relations PWs 4 and 6.

23. Their ocular versions are supported by the injuries noted in the post mortem report. PW 13 Dr. Sanjoy Roy Chowdhury is the post mortem doctor. He found sharp cutting injuries on the breast, stomach and hand of the deceased.

24. Investigating officer seized blood stained bhojali, razor as well as electric wire from the place of occurrence.

25. These circumstances corroborate the eye-witnesses and establish the prosecution case beyond doubt.

26. In the course of trial, appellant took contradictory defences. During cross examination it was suggested that the victim had suffered self inflicted injuries. But, during his examination under section 313 Cr.P.C appellant took an absurd defence. He claimed PW 2 (father of the victim) had tried to assault the appellant. Bina intervened and she suffered injuries. No suggestion to that effect was put to PW 2 in cross. Number of injuries found on Bina improbabilises the defence. If she had suffered injury in the manner and under circumstances as suggested by the appellant, she would not have suffered so many injuries on her

body. Defence of the appellant runs hollow and I am unwilling to accept the same.

27. Even otherwise, prosecution stands on its own legs through the evidence of eye-witnesses and the medical evidence on record. Hence, I am inclined to uphold the conviction and sentence of the appellant.

28. Appeal is, accordingly, dismissed.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon them in terms of section 428 of the Code of Criminal Procedure.

29. In view of disposal of the appeal, connected applications, if any, also stand disposed of.

30. Lower court records along with copies of this judgment be sent down at once to the learned trial Court as well as the Superintendent of Correctional Home for necessary compliance.

31. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)