

**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. 260 of 2013
with
CRAN 2 of 2014 (Old No. CRAN 3846 of 2014)**

**Liku Biswas
-Vs-
State of West Bengal**

For the Appellant : Mr. Swapan Kumar Mallick, Adv.
Mr. Kazi M. Rahaman, Adv.
Ms. Sudeshna Das, Adv.
Mr. Arun Kumar Jana, Adv.

For the State : Mr. Bidyut Kumar Roy, Adv.
Ms. Rita Datta, Adv.

Heard on : 30.06.2022

Judgment on : 30.06.2022

Joymalya Bagchi, J. :-

Appeal is directed against the judgement and order dated 12.09.2012 and 13.09.2012 passed by the learned Additional District & Sessions Judge, Fast Track 1st Court, Malda, in Sessions Trial Case No. 15(6)2010 arising out of Sessions Case No. 97 of 2012 convicting the appellant for commission of offence punishable under Sections

302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default to suffer further rigorous imprisonment for six months more for the offence punishable under Section 302 of the Indian Penal Code.

Prosecution case as alleged against the appellant is to the effect that the victim housewife Kashmira Bibi was married to the appellant according to Muslim rites and customs. Appellant being abetted by other in-laws subjected the housewife to torture. Two male children were born from the wedlock. Subsequently, appellant started threatening that he would divorce his wife, Kashmira Bibi. On the fateful day i.e. 07.09.2011 at around 3.30 P.M. appellant informed Kurdush Sk. (P.W. 1), father of the deceased, that he would divorce his daughter and asked him to come to his residence with Morol Sardar. Mother of the appellant also abused father of the deceased over telephone. Hearing the news Kurdush Sk. (P.W. 1) along with his wife, Hasina Bibi (P.W. 7) went to the matrimonial home of their daughter. After reaching her matrimonial home, they received information that at around 4.30 P.M. appellant had murdered their daughter in front of their bedroom by firing at her left eye. They found their daughter lying dead with bleeding injury on the floor of the bedroom. Kurdush Sk. (P.W. 1) lodged written complaint against the appellant and other in-laws resulting in registration of Kaliachak

Police Station Case No. 456 of 2011 dated 07.09.2011 under Sections 498A/302/34 of the Indian Penal Code.

In conclusion of investigation charge sheet was filed against the accused persons and charges were framed under Sections 498A/34 of the Indian Penal Code against the in-laws of the deceased and under Sections 498A/302 of the Indian Penal Code and under Section 27 of the Arms Act against the appellant. Accused persons pleaded not guilty and claim to be tried.

In the course of trial, prosecution examined 16 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 appellant and co-accuseds were acquitted from the charge under Section 498A of the Indian Penal Code.

Mr. Mallick, learned Counsel appearing for the appellant submits prosecution case suffers from various contradictions and/or inconsistencies. Evidence of the relations of the deceased is not corroborated by independent witnesses. Their evidence with regard to phone call to the father of the deceased immediately prior to the incident is untrustworthy. Nobody saw the appellant fire at the deceased. Motive to commit crime is not proved. Alternatively, it is contended that the incident occurred in the course of a quarrel and

appellant had no intention to murder the deceased. Hence, conviction may be altered from Section 302 of the Indian Penal Code to Section 304 of the Indian Penal Code.

Mr. Roy, learned Counsel appearing for the State submits evidence of the de facto complainant and other relations of the deceased unequivocally show immediately prior to the incident appellant had telephoned P.W. 1 and threatened to divorce his daughter. When P.W. 1 and his wife rushed to her matrimonial home they found her lying dead with gunshot injury in the left eye. Medical evidence supports the ocular version of the witnesses. Appellant and the deceased used to stay alone in the room and no explanation is forthcoming from the appellant how his wife suffered gunshot injury. These circumstances unequivocally establish the guilt of the appellant.

P.Ws 1, 2, 6 and 7 are the relations of the deceased, Kashmira Bibi.

P.W. 1(Kurdush Sk.) is father of the deceased and de facto complainant. He deposed his daughter was married to the appellant seven years ago. Two children were born from the wedlock. On the fateful day he received telephone call from the appellant who told him to take back his daughter. Subsequently, mother of the appellant gave similar direction. He and his wife rushed to the matrimonial home of her daughter. After reaching there they heard that the appellant had

fired at her daughter resulting her death. He found his daughter lying dead in the house. He lodged written complaint which was scribed by P.W. 16 (Kishore Saha).

In cross-examination he stated that appellant and his wife used to live separately from other in-laws.

P.W. 7 (Hasina Bibi) is the mother of the deceased. She corroborated deposition of her husband, P.W. 1. She stated that at 3.30. P.M. the appellant had made a telephone call calling upon them to take their daughter back. His mother also gave similar direction. When they reached the matrimonial home of their daughter, they heard the appellant had shot the victim in the eye. They found their daughter lying dead on the floor with a bullet injury.

In cross-examination, she stated there was visiting terms between them and the appellant.

P.W. 2 (Ekram Sk.) and P.W. 6 (Ibrahim Sk.) are the brothers of the deceased. They corroborated the depositions of their parents.

P.W. 5 (Dr. Bablu Saren) is the post mortem doctor. He found following injuries:-

“1. One entry of bullet wound present over the posterior aspect of right side of vulve of partial scale (1.5 X 1.5 c.m.).

2. Evidence of burn marked present around of wound, rounded in save, grease colour present around the wound, wond margidn lacerated, evuted, abraded, evidence of vital reaction are present on de-section extra

vasation of blood, in soft tissues around the wound scalp. One whole present over posterior aspect of right parietal bone.

On facing the track, meninges by parietal lobe with left temporal lobe ruptured and with inter cerebral hematoma in all lobes and bullet exit by fractured the left temporal bone with scalp 1" above left ear. Exit wound is lacerated (1 X 1 c.m.)."

He opined death was due to immediate shock and haemorrhage arising from ante mortem brain injuries, homicidal in nature.

P.W. 9 (J. L. Choudhury) is the police officer who received written complaint from P.W. 1 and P.W. 11 (Atiur Rahaman) is the investigating officer of the case. P.W. 11 held inquest over the dead body of the deceased. He visited place of occurrence and prepared rough sketch map. He recorded statements of the witnesses. He arrested the appellant. He seized Kabilnama. He collected post-mortem report and submitted charge-sheet.

Evidence on record particularly that of P.Ws. 1, 2, 6 and 7 show that the appellant was married to the deceased Kashmira Bibi seven years ago. Two children were born to the couple. Relationship between the couple had soured. On the fateful day i.e. 07.09.2011 appellant made a phone call to his father-in-law and stated he wanted to divorce his wife. He told him to take back his daughter. Hearing

this, P.W. 1 and his wife (P.W. 7) came to the matrimonial home of their daughter and found her lying dead in the room with gunshot injury. They heard from local people that the appellant had fired at the deceased. Post mortem doctor (P.W. 5) found gunshot injury on the left eye of the deceased and opined death was due to shock and haemorrhage from brain injuries, homicidal in nature. Hence, homicidal death of the housewife at her matrimonial home due to gunshot is proved beyond doubt. Mr. Mallick, learned Counsel for the appellant has argued nobody saw the appellant shoot at his wife. Evidence on record shows that the appellant and his wife stayed alone at the matrimonial home. Other relations used to reside separately in separate mess. On the fateful day, at around 3.30 P.M. the appellant had made a phone call to P.W. 1 (Kurdush Sk.) and asked him to take back his wife. Within a couple of hours, P.Ws. 1 (Kurdush Sk.) and 7 (Hasina Bibi) found their daughter lying dead with a gunshot injury in the matrimonial home. They heard from local people that the appellant had murdered his wife.

These local witnesses namely Sukila Bibi (PW 3), Dally Sk (PW 4) and Md. Tukrajul Sk (PW 8), however, did not support the prosecution case. They resiled from their earlier statements before police and were extensively cross examined with regard to their prevaricating stance. Lack of support from the aforesaid witnesses does not erode the intrinsic truth in the prosecution version. On the

other hand, it gives rise to an irresistible inference that the local witnesses owing to their closeness and affinity to the appellant had resiled from their earlier stance and tried to screen the offender from lawful punishment.

Evidence of the relations of the deceased and the post mortem doctor clearly establish the following circumstances against the appellant:-

(a) Appellant had married the deceased Kashmira Bibi seven years ago. Appellant and the victim used to reside separately from other in-laws;

(b) Appellant was not happy with his wife;

(c) On the fateful day i.e. 7.9.2011 he made a phone call to PW 1 informing him to take his daughter back;

(d) PW 1 and his wife (PW 7) went to the matrimonial home and found the deceased lying dead with a gun-shot injury on the head;

(e) Post mortem doctor opined death was due to aforesaid injury which is homicidal in nature;

(f) Appellant was unable to give explanation with regard to homicidal death of his wife.

These circumstances have been proved beyond doubt and irresistibly point to the guilt of the appellant and rule out any possible hypothesis of innocence.

Finally, it is argued the conviction may be altered from one of murder to culpable homicide not amounting to death. Mr. Mallick submits incident occurred in the course of sudden quarrel between the couple and appellant did not intend to murder the housewife.

I am unable to accede to such submission also. Appellant was eager to get rid of his wife. He informed her father (PW 1) to take his daughter back. Thereafter, he shot his wife on the head with a gun. The motive to commit the crime is clearly established. Nature of the weapon used and the vital portion of the body i.e head at which the appellant fired clearly show his intention to commit murder. Hence, I am not inclined to scale down the culpability of the appellant from murder to culpable homicide.

In light of the aforesaid discussion, I uphold the conviction and sentence of the appellant.

The appeal is, accordingly, dismissed.

Connected applications, if any, also disposed of.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellant 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 as well as the Superintendent of Correctional Home 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.)

sdas/tkm/PA