

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Kausik Chanda

C.R.A. 484 of 2004

Md. Wasim

-Vs.-

The State of West Bengal

For the Appellant : Mr. Suman De, Adv.

For the State : Mr. N. Ahmed, Adv.
Ms. Amita Gaur, Adv.

Heard on : 04.01.2022

Judgment on : 04.01.2022

Joymalya Bagchi, J.:-

The appeal is directed against the judgment and order dated 09.03.2004 passed by the learned Additional Sessions Judge, 5th Fast Track Court, Calcutta in connection with Sessions Trial no. 1(4) of 2003 arising out of Sessions Case No. 22/2003 convicting the appellant for commission of offence punishable under Section 302 and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs. 5,000/- (Rupees Five Thousand only) in default to undergo simple imprisonment for three more months.

This is a case of matricide. In the early hours of 06.10.2002 it is alleged that the appellant had hit his mother on the head with a kitchen grinding stone resulting in instantaneous death. His wife, Safia Begum, PW-3 found the appellant standing in the bedroom of her mother-in-law with a blood stained

kitchen grinding stone. Her mother-in-law was lying on the floor. Blood was oozing out from her ears. Appellant threatened her not to raise alarm. Around 6.15 hours, an unknown person made a phone call at Bowbazar Police Station stating that an assault had taken place at 33, Harinbari Lane, Kolkata – 73. PW-9, Mahadeb Singha Roy, who was posted therein as S.I. of police diarised the incident and proceeded to the spot. He recorded the statement of PW-3, which was treated as the FIR. Appellant was arrested and the weapon of offence was also seized from the spot. In the meantime, relations were informed and PW-6, son-in-law of the deceased rushed to the spot. Appellant admitted his guilt before his brother-in-law, PW-6. During investigation, appellant also made a judicial confession before the Magistrate under Section 164 of the Code of Criminal Procedure. Charge sheet was filed against him and charge was framed under Section 302 of the Indian Penal Code. Appellant pleaded not guilty and claimed to be tried.

In the course of trial, prosecution examined 13 witnesses and exhibited a number of documents. In conclusion of trial, the trial Court by judgment and order dated 09.03.2004 convicted and sentenced the appellant as aforesaid. Defence of the appellant was one of innocence and false implication. A faint plea was also taken that the appellant was suffering from mental ailments.

Mr. Suman De, learned lawyer appearing on behalf of the appellant argues that the prosecution case suffers from various inconsistencies and improbabilities. Motive to commit crime has not been proved. Evidence has come on record that appellant was suffering from mental ailments. It is possible that he committed the incident while he was suffering from a bout of insanity. It is also argued FSL report did not show presence of human blood on the kitchen grinding stone. Hence, it cannot be said to be the weapon of offence. Judicial confession made by the appellant was recorded in Bengali

although he is a Hindi speaking person. The appellant claimed that he had been coerced by the police to make the confession. Hence, it is of little evidentiary value. Thus, the appellant is entitled to an order of acquittal.

On the other hand, learned lawyer for the State submits that the evidence on record, particularly that of his wife, PW-3 show that the relationship between the appellant and his mother was strained over money matters. The appellant was found standing with a blood stained kitchen grinding stone in the room where the deceased was lying with blood injuries. He made extra judicial confession before PW-6 and also admitted his guilt before the Magistrate. The appellant was actively pursuing business and family life and there is no evidence that he was suffering from any mental illness at the time of occurrence. Hence, the appeal is liable to be dismissed.

PW-3 is the wife of the appellant. She deposed that she married the appellant in 2002 and they were residing in a rented flat with her mother-in-law, the deceased, in the first floor of 33, Harinbari lane, Kolkata – 73. They used to stay in one room while her mother-in-law occupied the adjacent bedroom. There was a door between the two rooms, which was ordinarily kept open. She further deposed that her husband had business in perfume and used to quarrel with his mother over monetary demands. Their relation had strained. On 05.10.2002 at about 10.30 PM, her mother-in-law went to her bedroom to sleep after taking dinner. At 3.30 AM she woke up upon hearing a sound from the bedroom of her mother-in-law. She did not find her husband in her room. She went to the room of her mother-in-law and upon switching the light saw her husband standing with a blood stained kitchen grinding stone in his hand and her mother-in-law was lying on the floor with bleeding injuries. When she was about to raise hue and cry, her husband threatened her to keep mum. Police came to the place of occurrence and seized the

kitchen grinding stone. She identified the kitchen grinding stone in Court. Police also seized other blood stained articles from the room. Police took photographs in the room. She identified the photographs as well as other articles in Court. She made a statement to police (Exhibit- 2) which was treated as FIR. She was extensively cross-examined but remained unshaken.

PW-6 is the son-in-law of the deceased. He corroborated the evidence of PW-3 and stated that the appellant was staying with his mother-in-law at 33, Harinbari Lane, Kolkata – 73. PW-6 used to reside in the front portion of the same premises while his mother-in-law used to reside in the first floor. He stated there were quarrels between the appellant and his mother-in-law. Upon being informed of the incident, he rushed to the room of his mother-in-law and found her lying in a pool of blood. Upon enquiry, the appellant admitted that he committed murder of his mother-in-law over money matters. He found the blood stained kitchen grinding stone at the place of occurrence. Police came to the spot and took photographs, seized various articles including the kitchen grinding stone. He put his signature on the seizure list. He identified the articles in Court.

In cross-examination, the witness stated that the appellant was of very simple nature and had been treated for mental problems. He, however, denied that the appellant was violent due to mental problems. He denied the suggestion that due to mental disorder, the appellant had become out of control and used to have outbursts.

PW-11 is another son-in-law of the deceased. He received the information from PW-6 and came to the place of occurrence. He is a reported witness.

These are the witnesses of fact. PW-8 is the PM doctor who held autopsy over the dead body of the deceased. He found the following injuries.

"1) One lacerated injury 3" x 1" x bone deep was placed over right temporo-parietal region 1.3" right parietal eminence with evidence of depressed comminuted fracture 3" x 2" over the corresponding site of right temporal bone along with one fissured fracture 2" long extending to the right parietal bone.

2) One hematoma 3" x 2.5" was placed over soft tissues of scalp of right parietal occipital region.

3) One hematoma 2.6"x 3.1" was placed over soft tissues of scalp of left temporo occipital region.

4) One fissured fracture 2"long was placed over left temporal and adjoining left parietal bone.

5) Evidence of laceration of brain over left temporal lobe corresponding to injury no.4.

6) Evidence of laceration of brain over right temporal lobe and adjoining right parietal lobe corresponding to injury no. 1.

Defused subarachnoid haemorrhage was present in both hemisphere of brain surrounding the injury of brain."

He opined that the death was due to the effect of head injury which is ante-mortem and homicidal in nature. He proved the PM report (Exhibit-50). He further opined the injury Nos. 1, 5 and 6 appear to be the result of impact of a moderately heavy, hard, blunt substance or edging.

PW-9 was attached as S.I. of police at Bowbazar Police Station. He deposed at 6.55 P.M. he received information from an unknown person about the incident of assault at 33, Harinbari Lane, Kolkata – 73. He diarised the information. He went to the place of occurrence, i.e., first floor of 33, Harinbari Lane, Kolkata –73. He found a lady lying on the floor with bleeding injuries. He found another lady standing in the adjacent room. The latter disclosed her identity as the daughter-in-law of the deceased. He noticed a kitchen grinding stone with blood stains by the side of the dead body. On query, the daughter-in-law stated her husband has murdered her mother-in-law with the kitchen

grinding stone. He sent information to the Officer-in-charge of the police station and requested for police photographer and plan maker to be sent to the place of occurrence. As per the instruction of the officer-in-charge, he recorded the statement of PW-3, which was treated as the FIR.

Thereafter, the investigation was handed over to PW-13, Subhajit Sen. Upon taking over investigation, PW-13 prepared rough sketch map of the spot. He seized blankets, bedsheets, blood samples from the place of occurrence as well as the kitchen grinding stone under a seizure list. He arrested the appellant. He forwarded the appellant for recording statement under Section 164 of the Criminal Procedure Code. He collected the PM report. Upon conclusion of investigation, he filed charge sheet. Subsequently, on receipt of FSL report, he produced the same in Court.

PW-4 who was attached as Assistant Serologist and Chemical Examiner, Government of India, in the Institute of Serology, proved the FSL report, which was produced in Court (Exhibit-13).

PW-12 is the Magistrate who recorded the statement of the appellant under Section 164 of the Code of Criminal Procedure. He proved the statement (Exhibit-33).

The aforesaid evidence on record, particularly the evidence of PW-3, PW-6 and PW-11 show that the appellant and his wife, PW-3 used to reside with the deceased in a rented apartment in the first floor of 33, Harinbari Lane, Kolkata – 73. The appellant used to carry on business in perfumes and had quarrels with his mother over demands of money. On the night on 05.02.2002, the deceased had retired to her room and the appellant with his wife went to sleep in the adjacent room. Around 3.30 A.M. in the morning, wife of the appellant, Safia Begum, PW-3 woke up hearing a noise in her mother-in-law's room. She went to the room and found her mother-in-law lying on the floor

with bleeding injuries. Appellant was standing there with a blood stained kitchen grinding stone. When Safia tried to raise hue and cry, he threatened her. Subsequently, PW-6 arrived at the spot and the appellant made an extra judicial confession to him.

These circumstances corroborate the contents of the judicial confession, which was subsequently recorded before PW-12, the Magistrate. PW-12 deposed that the appellant had been produced before him on 07.10.2002 and was sent for segregation. On 09.10.2002, the appellant was again produced and upon giving him due warning, his confession was recorded.

Mr. De, learned lawyer for the appellant challenged the judicial confession on various grounds. He contended the confession was recorded in Bengali language while the appellant had responded to questions posed to him during his examination under Section 313 of the Code of Criminal Procedure in Hindi. He also argued that the appellant during his examination under Section 313 of the Code of Criminal Procedure Code had retracted the confession and claimed that he had been threatened by police to make confession.

I am unable to accept the aforesaid objections raised on behalf of the appellant. The appellant had himself admitted during his examination under Section 313 of the Code of Criminal Procedure Code to have confessed his guilt before the Magistrate. More so, PW-12 stated that he had taken pains to transcribe the statement of the appellant in Bengali and had read over and explained the same to the appellant and latter had admitted it to be correct. It appears that the appellant is bilingual and was aware of Bengali language too. Thus, I do not find any prejudice suffered by the appellant on the score that his confession recorded under Section 164 of the Code of Criminal Procedure had been transcribed in Bengali by the Magistrate.

Coming to the voluntariness of the confession, I note that the appellant had been sent for reflection to judicial custody for two days before recording his statement. Thereafter, the Magistrate took precautions to verify whether the appellant had been subjected to any coercion or inducement to make the statement. Judicial confession so recorded had not been promptly retracted and only during his examination under Section 313 of the Code of Criminal Procedure did the appellant come up with a belated plea of coercion by the police to make confession.

For the aforesaid reasons, I am of the opinion that the judicial confession recorded by PW-12 does not suffer from any infirmity and is a voluntary and truthful admission of guilt. It is a trite law that conviction can be recorded solely on the basis of a judicial confession. However, in the present case, contents of the judicial confession receive substantial corroboration from the evidence of the prosecution witnesses including the wife of the appellant, PW-3.

As a last resort, it is argued that the appellant was suffering from mental imbalance and ought to be acquitted. I find little force in such submission. PW-6 merely stated that the appellant was a simple person and had previously received some treatment for mental problems. He, however, denied that the appellant was violent due to mental disorder. On the contrary, ample evidence has come on record that the appellant was leading a healthy and normal life. He was carrying on business in perfume on his own.

In this backdrop, I find it difficult to persuade myself that the appellant had discharged his onus to establish that he committed the crime while suffering from a bout of insanity. To fall within the general exception of legal insanity, it is incumbent on the part of the defence to establish that the accused was suffering from mental ailment of such degree at the time of

commission of the offence that he was unaware of the consequences of his act. Appellant has singularly failed to discharge such onus. Vague reference to previous medical treatment by PW-6 without cogent materials like prescriptions or other medical evidence being placed on record to prove the nature and degree of mental impairment at the time of commission of the offence would not sustain the plea of legal insanity.

On the other hand, evidence on record shows the appellant had inimical relationship with his mother. He was demanding money from her to run his business. As she refused, he murdered her in the dead of night.

Thus, in the light of the aforesaid discussion, I am of the opinion conviction and sentence of the appellant is well merited and does not call for any interference.

The appeal being C.R.A. 484 of 2004 is, accordingly, ***dismissed***.

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.

(Kausik Chanda, J.)

(Joymalya Bagchi, J.)