

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. 424 of 2018

+

CRAN 1 of 2021

Charan Hembram

-Vs-

The State of West Bengal

For the Appellant : Mr. Jayanta Narayan Chatterjee, Adv.
Mr. Nazir Ahmed, Adv.
Ms. Jayashree Patra, Adv.
Ms. Sreeparna Ghosh, Adv.
Mr. Suvrodeep Koley, Adv.
Ms. Dipanwita Das, Adv.
Ms. Pritha Sinha, Adv.

For the NCB : Mr. Neguive Ahmed, Id. A.P.P.,
Ms. Amita Gaur, Adv.

Heard on : 27.04.2022

Judgment on : 27.04.2022

Joymalya Bagchi, J. :-

Appellant has assailed judgment and order dated 27.06.2018 and 28.06.2018 passed by the learned Additional Sessions Judge, 2nd Court, Balurghat, Dakshin Dinajpur in Sessions Trial No.32 (12) of 2015 arising out of Sessions Case No. 315 of 2015 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 a fine of Rs. 10,000/-, in default, to suffer rigorous imprisonment for four months more.

Factual matrix giving rise to the impugned conviction is that appellant married the deceased Laxmi Tudu 11 years ago according to the Hindu social rites and customs. Two sons were born to the couple. Appellant used to subject the housewife to torture and salishes were held over such issue. Appellant agreed not to subject his wife to torture in future. Finally in the night between 4/5th June, 2015, appellant in an inebriated condition assaulted his wife with a spade resulting in her death. On the next morning, he admitted his guilt before his brother (P.W.7) and other villagers including the parents of the deceased.

Sankai Tudu (P.W.1), father of the deceased lodged written complaint resulting in registration of Tapan Police Station Case No. 170 of 2015 dated 05.06.2015 under Sections 498A/302 of the Indian Penal Code. In course of investigation, on the showing of the appellant spade was recovered. Charge sheet was filed against the appellant and charges were framed under Section 498A/302 IPC. Prosecution examined 17 witnesses and exhibited a number of documents. Defence of the appellant is one of innocence and false implication.

In conclusion of trial, learned trial Judge by the impugned judgment and order dated 27.06.2018 and 28.06.2018 convicted and sentenced the appellant, as aforesaid.

Mr. Jayanta Narayan Chatterjee, learned Advocate appearing for the appellant argues extra judicial confession of the appellant is not reflected in the first information report. Such evidence appears to have been concocted during trial. It is contended papers relating to the salishes have not been produced. It is argued minor sons of the appellant who were present at the place of occurrence are not examined. In the alternative, it is argued appellant acted in the heat of passion in the course of a quarrel and conviction of the appellant may be altered to one under Section 304 IPC.

Mr. Neguive Ahmed, learned Additional Public Prosecutor with Ms. Amita Gaur argues appellant was in the habit of torturing his wife. Salishes were held over such incidents of torture. On the fateful night, appellant in an inebriated state repeatedly hit the victim resulting in her death. A number of injuries were found on the body of the victim disclosing the intention of the appellant to kill her. He made extra judicial confession not only to the father of the victim/informant but also to his own brother and other villagers. Hence, the appeal is liable to be dismissed.

P.Ws.1 and 2 are the parents of the deceased.

P.W.1 is her father. He deposed victim Laxmi was married to the appellant 12 years ago as per social rites and customs. Two sons were born to the couple who are presently residing with him. Appellant used to torture his daughter in intoxicated condition. Salishes were held in the matter on two occasions. At 7.00 a.m. he received information that his daughter had been murdered. He along with his wife and daughter viz., Babita Tudu and others went to the matrimonial home of the deceased. He found his daughter lying dead in the verandah. He saw the appellant at the spot. Appellant stated he was intoxicated. He had quarrel with his wife and had hit her on the head with a spade. He lodged written complaint which was scribed by P.W.14. He identified his L.T.I. on the complaint.

P.W.2 has substantially corroborated her husband on material particulars.

P.W.7, Baro Hembram is the brother of the deceased. He used to reside in the adjoining house. On the morning after the incident, he came to the residence of the latter and the appellant confessed his guilt to him.

Neighbours of the appellant viz., P.Ws.3, 8, 9, 10 and 11 also stated they had come to the spot next morning and appellant had admitted his guilt to them.

P.W.10, Saiba Baskey and P.W.11, Premsagar Rabidas have also corroborated the parents of the deceased with regard to salishes held over earlier incidents of torture.

P.W.13, Dr. Kallol Banerjee is the post mortem Doctor who held post mortem over the body of the deceased. He found a lacerated wound behind her left ear, one lacerated wound at the nape of neck, one lacerated wound over right side of chest, one lacerated wound over right fore-arm. On dissection, he found extravasation of blood diffused over left fronto parietal region of scalp, depressed comminuted fracture over both table of left parietal bone, extravasation of blood over right fore-arm. He opined death was due to injuries, ante mortem and homicidal in nature.

P.W.16 and P.W.17 are the Investigating Officers of the case.

P.W.16, Sushanta Paul commenced investigation. He came to the place of occurrence, prepared a rough sketch map, arrested the accused and took him into police custody. On 07.06.2005 on the showing of the appellant he seized the weapon of offence i.e. spade. He identified the spade in Court. He prepared seizure list. Seizure was witnessed by P.Ws.3 and 4. Investigation was completed by P.W.17 who submitted charge-sheet.

From the evidence on record it appears the victim housewife had suffered homicidal death at her matrimonial home. Incident occurred in the night between 4/5th June, 2015. On the next morning when the

brother of the appellant (P.W.7) came to the spot appellant confessed his guilt. Thereafter, local villagers including the parents arrived at the spot. Appellant confessed his guilt before the said witnesses. It is contended that extra judicial confession is not reflected in the first information report. Ordinarily, omission of such vital circumstance would have affected the veracity of the confession. However, in the present case extra judicial confession made by the appellant had not only been disclosed to the father/informant but also to other witnesses including the brother of the appellant viz., P.W.7. P.W.7 who resided in the adjoining house arrived at the place of occurrence first. He stated appellant confessed his guilt before him. Evidence of P.W.7 in this regard has remained unshaken during cross-examination. His version is corroborated by neighbours who are independent witnesses viz., P.Ws.3, 8 to 11. There are evidence galore with regard to the extra judicial confession made by the appellant to his own brother and other independent witnesses. Under such circumstances, omission to disclose such fact in the FIR does not affect the truthfulness of the prosecution case in this regard.

It is argued minor sons of the appellant have not been examined. From the evidence of P.W.1 it appears that the minor children were barely 8 years and 5 years old at the time of occurrence. Incident occurred at the dead of night. It is possible that the minors were asleep and, hence, were not examined as witness. Failure to

examine the minor children in the aforesaid factual matrix does not affect the unfolding of the prosecution case which is clearly established by the extra judicial confession and other attending circumstances of the case.

Appellant was present with his wife and the minor children in the house on the fateful night. On the next day, his wife was found dead with severe injuries. On the next morning, he confessed his guilt to his own brother and other witnesses. These circumstances lead to the irresistible conclusion that it was the appellant who had murdered his wife.

Finally, it is argued the appellant did not intend to commit murder. He was in an inebriated condition and in the course of quarrel, he acted in a fit of passion. It appears the appellant was a habitual drunkard and used to regularly torture his wife. Salishes were held over the incidents of torture but he did not mend his ways. On the fateful night, appellant in an inebriated condition again brutally assaulted his wife with a spade. Voluntary drunkenness does not give exemption from criminal liability. Conduct of the appellant in subjecting the helpless housewife to brutal assault which is evidenced through a number of injuries found on her body including vital parts viz., head and chest clearly discloses his intention to murder his wife.

In this factual backdrop, I am unable to accede to the plea of Mr. Chatterjee that the conviction of the appellant be converted from one of murder to culpable homicide not amounting to murder.

In the light of the above discussion, conviction and sentence of the appellant is upheld.

The appeal is thus dismissed.

In view of the dismissal of the appeal, connected application being CRAN 1 of 2021 is also dismissed.

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 for necessary compliance.

Photostat certified copy of this judgment, if applied for, shall be made available to the appellant upon completion of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)