

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. 706 of 2009

Jitendra Tiwari

-Vs-

The State of West Bengal

For the Appellant : Mr. Partha Sarathi Bhattacharyya, Adv.
Mr. Debangana Bhattacharjee, Adv.
Ms. Swarnali Saha, Adv.

For the State : Mr. Apurba Kumar Datta, Adv.

Heard on : 13.04.2022

Judgment on : 13.04.2022

Joymalya Bagchi, J. :-

This is a case of matricide. Appellant has been charged for committing murder of his own mother and causing injury on the hand of his niece namely, Rinki Tewari. Appellant were three brothers. His youngest brother namely, Dharmendra Tewari used to work at Ichapur Rifle Factory and resided in a Government quarter along with his wife, namely, Bijeta Tewari, his mother, namely, Lakshmani Tewari (the

deceased) and niece Rinki (daughter of the eldest brother, namely, Ravindranath Tewari. Appellant used to come to the quarter and demand money from his mother. If his mother did not oblige, appellant would abuse her. In the evening of 23.12.2003 appellant had come to the quarter. An altercation took place between the appellant and his mother, Lakshmani. Lakshmani did not allow the appellant to enter the house. Thereafter, she and her granddaughter Rinki (PW2) went to sleep in one room while Dharmendra Tewari (PW1) and his wife Bijeta Tewari (PW12) retired in the other room of the quarter. On the next day around 06:15 a.m. Rinki woke up hearing a sound and found the appellant was sitting on the chest of her grandmother and assaulting her with an axe. She tried to save her grandmother and was also assaulted on the back side of her right palm. She raised hue and cry. Her uncle, Dharmendra and aunt Bijeta rushed to the spot. Dharmendra jostled with the appellant who dropped the axe and fled away. Local people chased and caught the appellant. He was tied to a tree. Police arrived at the spot and apprehended the appellant. Weapon of offence was also seized. Written complaint was lodged by Dharmendra resulting in Noapara Police Station Case No. 184 dated 24.12.2003 under Section 302 IPC. Statement of Rinki was recorded under Section 164 of the Code of Criminal Procedure. In course of investigation, seized axe was sent for FSL examination. Requisition was also made to collect the injury report of Rinki from B.N. Bose Hospital. Charge sheet was filed and charges were framed under Sections 302/324 IPC against the appellant. In course of trial, prosecution

examined 13 witnesses. Defence of the appellant was one of innocence and false implication. In conclusion of trial, the trial Judge by the impugned judgment and order dated 31.01.2006 convicted the appellant for commission of offence punishable under Sections 302/324 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for life and to pay a fine of Rs. 2,000/-, in default, to suffer simple imprisonment for six months more for the offence punishable under Section 302 IPC and to suffer rigorous imprisonment for three years for the offence punishable under Section 324 IPC; both the sentences to run concurrently.

Mr. Partha Sarathi Bhattacharyya, learned advocate, appearing on behalf of the appellant argues his client has been falsely implicated in the instant case due to a land dispute. No injury report with regard to the alleged injury suffered by Rinki Tewari (PW2) was produced in court. PW2 is a young girl and was under the influence of her uncle (PW1) who had inimical relation with the appellant. Hence, her evidence ought not to be relied upon. Axe was not seized from the possession of the appellant. FSL report with regard to the seized axe had also not been produced in Court. Prosecution case has not been proved beyond doubt. Accordingly, appellant is entitled to an order of acquittal.

Nobody appears on behalf of the State. Mr. Apurba Kumar Datta, learned advocate, is requested to appear on behalf of the State.

Mr. Datta submits PW2 is an injured eyewitness. Her deposition is corroborated by her uncle (PW1) and aunt (PW12) who were in the house when the incident occurred. Post-mortem doctor (PW6) corroborates the

ocular version of PW2. Other local witnesses namely, PWs.5, 7 & 10 have also corroborated the prosecution case. Hence, the prosecution case is proved beyond doubt and the appeal is liable to be dismissed.

PW1, Dharmendra Tewari (brother of the appellant), PW2, Rinki Tewari (niece) and PW12, Bijeta Tewari (sister-in-law of the appellant) were present in the house at the time of occurrence.

PW2, the injured eyewitness, was sleeping with her grandmother in the same room. Around 6:00 a.m. in the morning she heard a sound and woke up. She saw the appellant sitting on her grandmother and striking her with an axe. She tried to resist and the appellant hit her on the back side of her right palm. She raised hue and cry. Her uncle (PW1) came to the spot. He scuffled with the appellant and the axe fell on the ground. Appellant ran away from the spot.

PW1 (Dharmendra Tewari) and his wife, Bijeta Tewari (PW12) corroborated the version of PW2. They stated on hearing hue and cry they came to the room and found the appellant hitting the victim with an axe. PW1 grappled with the appellant who dropped the axe and fled away. Local people arrived at the spot and one Ram Bahadur caught the appellant. He was tied with a rope to a lamppost. PW1 further deposed police came to the spot. He lodged written complaint marked as Exhibit-1. Police prepared inquest report over the dead body. The appellant was arrested. They seized the axe from the place of occurrence under a seizure list. Local people namely, PWs.7,10 & 11 have corroborated the aforesaid relation witnesses.

PW7 (Kalyani Maity) saw the appellant tied with a rope. Rinki was crying and had an injury on her right palm.

Similarly PW10 (Jayanta Pal), who is a post-occurrence witness stated he heard that brother of Dharmendra had murdered his mother. He is a signatory to the inquest report as well as the seizure of various articles from the place of occurrence including the axe.

PW11(Bina Hari) deposed he saw Dharmendra chasing his brother and shouting that his mother had been murdered.

Apart from corroboration from the aforesaid witnesses, ocular version of PWs.1, 2 & 12 with regard to the assault by the appellant on his mother, Lakshmani is supported by medical evidence of post-mortem doctor (PW6).

PW6 (Dr. Jnan Prokash Bandopadhyaya) held post-mortem over the body of the deceased and found multiple injuries. He opined death was due to the effect of the injuries ante mortem and homicidal in nature. He also opined some of the injuries may have been caused with an axe. He proved the post mortem report.

In view of the clear and unequivocal evidence of the injured eyewitness (PW2) which is corroborated by other eyewitnesses namely, PWs.1 & 12 as well as medical evidence, I am of the opinion failure of the Investigating Agency to produce the injury report of PW2 inspite of earnest effort by the Investigating Officer (PW13) does not create a dent in the prosecution case. Similarly, non-production of FSL report with regard to the seized axe is of little consequence as the post-mortem doctor (PW6)

opined most of the injuries had been caused by the seized weapon of offence. PW1 has explained the circumstance in which the appellant had in course of scuffling dropped the axe and ran away from the spot. Hence, seizure of the axe from the place of occurrence and not the person of the appellant is clearly explained and does not affect the prosecution case. Defence plea of false implication of the appellant is also unfounded. Suggestion with regard to dispute over landed property at Balia had been squarely denied by PW1.

Finally motive to commit the crime has also been established. PWs.1 & 12 have stated that the appellant used to come and demand money from his mother. When she refused to pay, he used to quarrel. In the evening of 23.12.2003 appellant had come and quarreled with his mother. She did not allow him to enter the quarter. In the early hours of the next day, appellant came to the house and brutally murdered her. When his niece (PW2) tried to resist, she was also assaulted.

In the light of the aforesaid discussion, I am of the opinion prosecution case has been proved beyond doubt. Conviction and sentence of the appellant is upheld.

The appeal is accordingly, dismissed.

Period of detention, if any, undergone by the appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon him in terms of Section 428 of the Code of Criminal Procedure.

We are informed the appellant has already undergone sentence for about 19 years. In the event he makes an application for remission of his sentence under Section 433A of the Code of Criminal Procedure, the appropriate authority may consider the same in view of the fact that he does not have any criminal antecedents as well as other relevant factors including his conduct in the correctional home.

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.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)