

**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. 856 of 2006***

***Haripada Sahoo***

***-Vs-***

***The State of West Bengal***

**For the Appellants** : Mr. Moinak Bakshi, Adv.

**For the State** : Mr. Partha Pratim Das, Adv.  
Mrs. Amita Gaur, Adv.

**Heard on** : 04.05.2022

**Judgment on** : 04.05.2022

**Joymalya Bagchi, J. :-**

Appellant has assailed his conviction under Sections 302/309 of the Indian Penal Code and sentence, that is imprisonment for life and to pay a fine of Rs. 2,000/-, in default, to suffer rigorous imprisonment for one year more for the offence punishable under Section 302 IPC and rigorous imprisonment for one year and to pay a fine of Rs. 500/-, in default, to suffer rigorous imprisonment for six months more for the offence punishable under Section 309 IPC in this appeal.

Appellant was married to one Shyama Rani Sahoo, (one of the deceaseds herein) 7/8 years ago according to the Hindu rites and customs. At the time of marriage Rs.10,000/-, a watch, gold ring, bicycle and other articles were given as dowry. Initially, the couple resided happily. Two years after marriage, Shyama Rani was subjected to torture on further demands of money. She was brought to her parental home on Sitala puja. On the next day, when her brother Anil Kumar Sahoo (P.W.2) took her back to her matrimonial home, the appellant misbehaved with them and threw her saree and other articles in the fire. When Shyama Rani became pregnant, appellant drove her out of the matrimonial home. She gave birth to a son viz., Milan at her parental home. She continued to stay at her parental home. A salish was held over the issue and 6/7 months before the incident, she returned to her matrimonial home. On Bijaya Dasami day i.e. 4/5<sup>th</sup> October, 1995, the appellant on further demands of money strangled Shyama and the minor child. He also consumed poison. Neighbours came to the spot and found the victims lying dead. Appellant was removed to Debra hospital where he confessed his guilt to his neighbours. Anil Kumar Sahoo (P.W.2), brother of the deceased Shyama lodged written complaint against the appellant and the parents-in-law of Shyama being Debra Police Station Case No.136 of 1995 dated 5.10.1995 under Sections 302/498A/34 IPC. In conclusion of investigation, charge sheet was filed and charges were framed against the appellant and the parents-in-law under Sections 498A/34 of the Indian Penal Code and under Sections

3/4 of the Dowry Prohibition Act and under Sections 302/309 of the Indian Penal Code against the appellant. Accused persons pleaded not guilty and claimed to be tried. In course of trial, prosecution examined 16 witnesses. Defence of the accused persons was one of innocence and false implication. It was the specific defence of the appellant that dacoits had come to the house and strangled his wife and son. Out of remorse, he tried to commit suicide. In conclusion of trial, learned trial Judge by the impugned judgment and order dated 9.9.2003 and 10.9.2003 convicted and sentenced the appellant, as aforesaid. All the accused persons including the appellant were acquitted of the charges under Section 498A of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act.

Mr. Moinak Bakshi, learned Advocate appearing for the appellant submits confession made by the appellant to neighbours is unreliable. Medical officer (P.W.14) has not corroborated such confession. P.W.13 who recorded judicial confession of the appellant did not follow the statutory safeguards relating to recording of judicial confession. Prosecution case has not been proved beyond doubt.

Mr. Partha Pratim Das with Mrs. Amita Gaur, learned Advocates appearing for the State argues Judicial Magistrate (P.W.13) lawfully recorded the confession of the appellant. Prior to recording of the confession warning was given to the appellant and upon reflection the confession was recorded. In addition thereto, he made extra judicial confession to his neighbours. Prosecution case is proved beyond doubt.

From the evidence on record and the submissions made at the Bar, it appears that the best evidence against the appellant is the judicial confession recorded by P.W.13.

P.W.13, Judicial Magistrate deposed on 13.10.1995 appellant was produced before him. He gave statutory warning to the appellant and thereafter sent him for reflection in segregation for a day. On 14.10.1995, appellant was again produced and P.W.13 recorded the confession of the appellant. At the time of recording confession he ensured no police personnel was present. Confession was read over and explained to the appellant and he signed the same admitting the contents. He proved the confession, Exhibit 8.

The confession recorded in Exhibit 8 reads as follows:-

*“I am a poor person. I am unable to run my household. After 6/8 months of marriage, my wife returned to her parental home. She stayed there for 6/7 years. 6/7 months ago she returned with my son. It was agreed my in-laws would bear the expenses of our household. I expected to use the money to do business and run my household. My in-laws did not pay the money. 8/10 days ago around 10/11 P.M. due to poverty, I throttled my wife and son to death.”*

Confessional statement of the appellant is corroborated from independent sources.

P.Ws.3, 5, 6 and 10 are neighbours of the appellant. P.W.10, Sabitri Dinda was a member of the Panchayat at the relevant time. On the next day in the morning, they had come to the residence of the appellant and found the door of his room closed. They opened the door and found his wife and son lying dead. Appellant was in restless condition and smell of poison was coming from his mouth. Appellant was shifted to Debra hospital.

P.Ws.3, 6 and 10 stated at the hospital appellant had confessed his guilt to them.

P.W.14, Dr. Fajlur Rahaman Khan treated the appellant at Debra Hospital. He proved the bed head ticket. He stated appellant was gasping and it is recorded it was a case of ingestion of organo phosphorous poison. He clarified in case of recovery appellant may regain his senses.

Evidence of the aforesaid witnesses corroborate the judicial confession of the appellant and establish he was found inside the room where the victims were found lying dead. It is argued P.W.14 did not state about the extra judicial confession by the appellant in hospital. P.Ws.3, 6 and 10 visited the hospital where the appellant was admitted. Upon regaining senses he confessed his guilt to his neighbours. P.W.14 may not have been present when the appellant admitted his guilt but he probalised the confession by stating upon recovery the appellant may have regained his senses.

In view of the aforesaid facts, extra judicial confession made by the appellant to his neighbours appears to be probable and supports the subsequent judicial confession recorded by P.W.13. Manner in which the appellant confessed to have committed murders also resonate with the opinion of the post mortem doctor (P.W.9).

P.W.9, Dr. T.K. Pathak deposed the victims died due to shock and haemorrhage and suffocation resulting from ante mortem injuries which is due to throttling. He proved the post mortem reports Exhibits 6 and 7.

Thus, judicial confession made by the appellant that he murdered his wife and son by throttling is corroborated by the P.M. doctor, as aforesaid.

P.W. 2, Anil Kr. Sahoo, is the brother and the informant in the case. He along with other relations namely, P.Ws. 7 and 11, brothers of the deceased Shyama and P.W.8 her sister-in-law deposed after two years of marriage appellant was unable to maintain his family and started demanding money. Shyama came to her parental home during Sitala Puja. When she returned to her matrimonial home with P.W.2, appellant misbehaved with her. While Shyama was pregnant she was sent to her parental home where she gave birth to her son viz. Milon. She stayed there for a couple of years. Finally, salish was held and it was agreed Shyama and her son would go back to her matrimonial home. 6/7 months before the incident, Shyama with her son returned to the matrimonial home. Thereafter, they were murdered by the appellant.

Appellant admitted in his confession that he had agreed to his wife and son returning to the matrimonial home on the ground the in-laws would bear the household expenses. As they did not do so, he murdered his wife and son.

The evidence of the relations of the housewife Shyama corroborate the motive of the appellant to commit the crime.

Thus, the judicial confession of the appellant is corroborated in all material particulars by the evidence on record.

Conviction and sentence of the appellant is upheld.

Appeal is accordingly dismissed.

Period of detention suffered 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.

Let a copy of this judgment along with the lower court records be forthwith sent down to the trial Court at once.

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.)**