

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. 750 of 2012

Darna Lohar

-Vs-

State of West Bengal

For the Appellant : Mr. Moinak Bakshi Adv.

For the State : Ms. Sreyashee Biswas Adv.

Heard on : 01.04.2022.

Judgment on : 01.04.2022

Joymalya Bagchi, J. :-

Appellant has assailed his conviction and sentence under Section 302 of the Indian Penal Code in the present appeal.

Prosecution case against the appellant is to the effect on 01.09.2011 at 9.30 a.m. appellant had assaulted an octogenarian, namely, Kalipada Machoar with an axe while the latter was sitting under a tree. His son Mangal Machoar (P.W. 1) witnessed the incident and cried out for help. Local people assembled at the spot. Appellant ran away. Mangal took his father to Korang Primary Health Centre,

thereafter to Pathardih B.P.H.C. P.W. 10 (medical officer) referred the victim to Purulia (Sadar) Hospital. En route, the victim became lifeless. So, he was brought back to the aforesaid B.P.H.C. where he was declared dead. On the written complaint of P.W. 1, Baghmundi P.S. case No. 52/2011 dated 01.09.2011 under Section 302 of the Indian Penal Code was registered for investigation. In course of investigation, appellant was arrested. On his showing offending axe was recovered and charge-sheet was filed. Charge was framed under Section 302 of the Indian Penal Code.

In course of trial, prosecution examined 15 witnesses and exhibited a number of documents. 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 26th July, 2012 convicted the appellant for the commission of offence punishable under Section 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life.

Hence, the present appeal.

During the hearing of the appeal, Mr. Moinak Bakshi appearing for the appellant submitted he was suffering from mental illness. In order to assess his mental status, this Court by order dated 03.12.2019 directed psychiatric assessment of the appellant by a Board constituted by the Director of Health Services. Pursuant to such order, appellant was examined and a report dated 27.02.2020 has been placed on record. The report reads as follows:

“Patient was brought by warder Swapan Kumar Senapati, MCCH, Paschim Medinipur. The accused was first produced to us on 26.10.2017 with complaints of sudden anger outburst with physical assault. As per informant, he had no prior history of mental illness. On 26.10.2017, he was diagnosed as a case of F.29 (Psychosis NOS). Since then he is on medication and currently no significant psychotic symptom could be elicited. On diagnostic psychometry, test findings reveal Mild Mental Retardation which may be due to no formal education and chronic psychosis.

Opinion

Patient is a case of F.29 (Psychosis NOS). Currently no significant psychotic symptoms present. He should continue with supervised medication.”

Referring to the said report, Mr. Bakshi submits appellant had been diagnosed as a case of unspecified psychotic disorder in 2017. He is under medication. No motive for commission of the crime has been proved. These circumstances show that the appellant in a fit of insanity had attacked the deceased. Hence, he ought to be acquitted of the charge levelled against him.

Ms. Sreyashee Biswas, learned Advocate appearing for the State submits evidence of P.Ws. 1 and 5 show that the appellant had intentionally struck the deceased with an axe resulting in his death. Thereafter, he threatened and ran away. His conduct does not show he was suffering from mental illness at the time of occurrence. In view of the aforesaid report, Ms. Biswas admitted appellant exhibited angry

outbursts in the correctional home and is under treatment for his psychiatric condition since 2017.

I have considered the evidence on record in the light of the aforesaid submissions.

P.W. 1, Mangal Machoar is the son of the deceased. He is an eye witness and informant in the instant case. He deposed on the date of occurrence around 9.30 a.m. deceased Kalipada Machoar was sitting under a tree in front of his house. Appellant came to the spot and hit his father Kalipada on the head and on the left side of his chest. His father suffered bleeding injuries. He cried out for help. He took his father Kalipada to Pathardih hospital. He was referred to Purulia Sadar Hospital. On the way his father expired.

P.W. 5, Chitta Machuar, nephew of the deceased also witnessed the incident and corroborated the evidence of P.W. 1.

P.W. 10, Lambodar Orang is the Medical officer who was attached to Pathardih hospital at the relevant time. On 01.09.2011 he examined the victim and seeing his serious condition, he referred him to Purulia Sadar Hospital for better treatment. At 4.45 p.m., the patient was brought back to his hospital. He declared the patient dead.

P.W. 12, Dr. Amal Nath held post mortem over the body of the deceased and found the following injuries :

- “1. Incised wound longitudinal sharp margin 2” x ½” x brain deep front of left side of head and bone cut.*
- 2. Incised wound oblique sharp margin 3” x ¼” x thoracic cavity back of left lower chest.*

3. Incised wound oblique sharp margin 1½" x ¼" x thoracic cavity below left scapula.

After dissection, I found the following injuries :

- 1) Sub-cutaneous haematoma left side on frontal and left parietal region.*
- 2) Clean cut left parietal bone anteriorly.*
- 3) Intra cerebral haemorrhage present.*
- 4) Left lung cut in two places."*

He opined that the injuries were caused by a sharp cutting substance. He stated death was due to shock and haemorrhage owing to the aforesaid injuries, ante mortem and homicidal in nature.

P.W. 15, Nagendra Nath Das is the Investigating Officer. He arrested the appellant and on the basis of his statement, he seized the offending axe.

P.W. 6, Manbodh Lohar, a co-villager witnessed the recovery of the axe as per the showing of the appellant.

From the aforesaid evidence on record, I have no doubt in my mind on 01.09.2011 appellant had suddenly attacked the deceased with an axe on the head and ribs. As a result, the victim suffered injuries and died. Ocular version of the incident as narrated by P.Ws. 1 and 5 is corroborated by the treating doctor (P.W. 10) as well as post mortem doctor (P.W.12). After the incident, on the showing of the appellant, the offending weapon viz., axe was also recovered.

It is contended motive to commit the crime is not proved. Although there is vague reference by P.W. 1 that appellant assaulted his

father over previous grudge, no evidence is forthcoming with regard to inimical relationship between them. It is settled law when murder is proved through reliable evidence, absence of motive would not affect the prosecution case. However, in the present case Mr. Mainak Bakshi harps on absence of motive in support of his contention that the appellant owing to unsoundness of mind had committed the murder.

Section 84 of the Indian Penal Code reads as follows;

“84. Act of a person of unsound mind.- *Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.”*

The aforesaid provision is an exception and absolves an insane from criminal liability when at the time of commission of offence due to unsoundness of mind the person concerned is incapable of knowing the nature of his own act. Although materials have been placed before this Court that the appellant was suffering from unspecified psychosis in the correctional home since 2017, there is nothing on record to show that he was suffering from unsoundness of mind at the time of occurrence. In fact, the report of the Medical Board notes no information relating to prior history of mental illness of the appellant had been placed before them during evaluation. Mental illness simpliciter would not be sufficient to attract the exception of Section 84 of the Indian Penal Code. It must be shown from the evidence on record that the accused was suffering from mental illness at the time of occurrence and the illness

was of such degree that he was unable to understand the nature of his own act.

The factual matrix of the present case, however, does not portray such a picture. Hence, I am not inclined to set aside the conviction on the ground that the appellant was suffering from unsoundness of mind at the time of occurrence.

Conviction and sentence of the appellant is, therefore, upheld.

However, in view of the medical report placed before this Court which shows that the appellant is under supervised medication for unspecified psychosis, I direct the Superintendent of Midnapore Correctional Home to ensure proper medical treatment and periodic check-ups of the appellant while he is serving out his sentence. In the event condition of the appellant deteriorates, Correctional Home authorities, upon advice of medical personnel, may transfer the appellant to an appropriate mental health facility for proper treatment and management.

In view of the aforesaid circumstances and as the appellant does not have criminal antecedent, it shall be open to the appellant upon completion of 14 years of actual imprisonment to make an application for remission of his sentence in terms of Section 433A of the Code of Criminal Procedure. In the event such an application is made, the appropriate authority shall consider such application in the light of the mental health of the appellant and other attending circumstances including his conduct in the Correctional Home.

With these observations, the appeal is 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 appellants upon completion of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)