

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 3 of 2021

Subrata Roy @ Lalu

Vs.

The State of West Bengal

With

CRA 162 of 2020

Subrata Roy @ Lalu

Vs.

The State of West Bengal

Amicus Curiae : Ms. Anasuya Sinha, Adv.

For the State : Mr. Madhusudan Sur, Ld. APP
Mr. Aniket Mitra, Adv.
Mr. Dipankar Pramanick, Adv.

Hearing Concluded on : January 18, 2023

Judgement on : February 1, 2023

DEBANGSU BASAK, J.:-

1. The elder brother of the deceased had lodged a complaint with the police on July 20, 2015 which was registered as Moyna Police Station Case No. 165/2015 dated July 20, 2015 under Sections 498A/302 of the Indian Penal Code, 1860.

2. In the police complaint, the elder brother of the deceased had stated that, the deceased and the appellant were married. They had lived peacefully and happily for around 15 years. Out of the wedlock, a daughter and a son had been born. Four years prior to the police complaint, the appellant tortured the deceased physically and mentally. The deceased had asked him not to complain to any person as she wanted to live in her matrimonial home. When the level of torture had increased, the deceased informed the matter to him. Several attempts had been made to settle the domestic problems through village mediation. On July 19, 2015 at around 2 o'clock in the noon, the deceased and the appellant returned from Mumbai. On that night, the deceased had gone to the Rath fair with the appellant. After visiting the fair, they had returned to their home. An altercation had happened between the deceased and the appellant with regard to domestic issues. At around 11:40 PM in the night, the appellant had tied hands of the deceased to the back of the plastic chair with the help of cloth. He had then poured alcohol on the entire body and set it on fire. The deceased had fallen down on the ground. Thereafter, the appellant had cut the throat of the deceased with a sharp cutting tool and killed her brutally. As soon as the de-facto complainant had received the news he

had gone to the matrimonial home of the deceased with other people. There he had noticed the deceased to be lying dead on the ground with the hands tied. He had also seen a bloodstained sharp cutting tool beside the dead body of the deceased. After the police had been informed, they came to the spot and took the dead body for post-mortem.

3. Police had investigated the First Information Report and submitted a charge sheet with regard thereto. The Court had framed charges against the appellant under Sections 498A/302 of the Indian Penal Code, 1860 on February 19, 2016. The appellant had pleaded not guilty and claimed to be tried.

4. In order to prove the charges as against the appellant, the prosecution had examined 23 witnesses. The prosecution had relied upon various documentary and material evidences. On conclusion of the evidence of the prosecution, the appellant had been examined under Section 313 of the Criminal Procedure Code where he had claimed himself to be innocent and falsely implicated.

5. The de facto complainant had been examined as PW 1 by the prosecution. He had reiterated the contents of the written complaint. He had stated that, the police seized the sharp cutting tool on July 20, 2015. He had stated that, the

First Information Report was written by the scribe in accordance with the instructions given by him and in front of him. He had said that, the written complaint was read over and explained to him. He had tendered the written complaint which was marked as Exhibit 1.

6. A neighbour of the appellant had deposed as PW 2. He had stated that, the appellant used to torture the deceased physically and mentally. There had been mediation within the locality twice with regard to the disputes between the deceased and the appellant. He had stated that on July 19, 2015 at 1:30 PM the deceased and the appellant returned from Mumbai and they went to the Rath fair. At 11:30 PM another neighbour of the appellant had called him stating that some sound was coming from the house of the appellant and that there was screaming of somebody from the house of the appellant. The local people had gone to the house of the appellant with light. When the local people which included PW 2 were going through the road, he saw the appellant run away by opening his door of the house. He had described the apparels worn by the appellant at that point of time. The appellant had been found to be wearing a Bermuda with bloodstains. He had entered the house of the appellant and saw the deceased to be lying on her back on the floor with the

hands tied with rope. He had found a cut wound on her throat. He had found the deceased in a pool of blood and a sharp cutting tool lying on the floor with blood stains. Some part of the body of the deceased had been burnt. The deceased was wearing a synthetic sari. He had found the deceased to be dead. He had called the father of the appellant and the de facto complainant and informed them about the matter. After about 1 ½ hours the police had come. The police had taken the body for post-mortem. He had identified his signature on the seizure list dated July 20, 2015.

7. Another neighbour of the appellant had deposed as PW 3. He had identified the appellant in Court. He had corroborated the statement of PW 2. He had seen the appellant run away from his house. He had also seen the dead body of the deceased in a pool of blood on the floor with a cut injury on her throat. He had seen the sharp cutting tool on the floor and an ash coloured plastic chair on the site. The sari worn by the deceased was bloodstained. He had identified his signature on the seizure list relating to the sharp cutting tool. It has come out in cross-examination that, mediation with regard to the disputes between the deceased and the appellant had been held and that the last of such mediation was held about 2 years from the date of the incident.

8. Another neighbour of the appellant had deposed as PW 4. He however did not see the appellant at that point of time. He had seen the deceased to be lying on the floor in half naked condition and her throat cut. He had seen the appellant to produce a sharp cutting tool with blood to the police. He has stated that on July 22, 2015 the police had come to the house of the appellant with the appellant again. He had gone to the house of the appellant with the police. There the appellant had produced one Bermuda pant, torn piece of cloths, one glass bottle, one glass and one mobile. Police had seized such items. He had signed the seizure list dated July 22, 2015 which was tendered in evidence and marked as Exhibit 6. He had identified the article seized by Exhibit 6 in Court and such articles had been marked as Material Exhibit II.

9. Another neighbour of the appellant who had seen the deceased lying dead at her matrimonial home deposed as PW 5. He had seen the deceased lying on the ground with a cut injury on her throat in a pool of blood. He had seen one chair and other things to be scattered. He had seen blood on the chair and on the floor. He had also seen one sharp cutting tool. He had identified his signature on the seizure list dated July 20, 2015. He had identified the appellant in Court.

10. Another neighbour of the appellant had deposed as PW 6. He had seen the deceased lying on the ground in a room in a pool of blood. He had identified his signature on Exhibit 3/2.

11. Another neighbour of the appellant had deposed as PW 7. He had also seen the deceased to be lying dead on the ground in a pool of blood. He had identified his signature on the seizure list dated July 20, 2015.

12. A police constable had deposed as PW 8. He had identified his signature on Exhibit 6. He had identified the articles marked as Material Exhibit IV series. He had also identified his signature on the seizure list dated July 22, 2015 and identified the burnt border of the sari as Material Exhibit V series.

13. The sister of the deceased had deposed as PW 9. She had seen the deceased lying dead on the floor wearing a sari and in a pool of blood. She had signed the inquest report. Police had seized the photo identity card of the deceased and she signed such seizure list which was tendered in evidence and marked as Exhibit 3. She had stated that, the deceased used to tell her over telephone that the appellant used to torture her. She had identified the appellant in Court.

14. A neighbour of the appellant had deposed as PW 10. On July 19, 2015 at 10:30 PM he had heard hue and cry between the deceased and the appellant which they heard everyday so he did not care about the same. At night he had heard huge hue and cry from the neighbours. He had entered the house of the appellant and saw the deceased in a pool of blood. He had identified his signature on the seizure list dated July 22, 2015 which was tendered in evidence and marked as Exhibit 6.

15. A village police had deposed as PW 11. He had stated that on July 19, 2015, he was on night duty. At about 11:46 PM he had received a phone call from the appellant claiming that he murdered his wife and told him to come to his house where he wanted to surrender. He called for civic police personnel. He had called the officer in charge over telephone. The officer in charge had told him to go to the spot and enquire into the matter. He had gone to the house of the appellant where he saw the appellant to be running away wearing a Bermuda pant. On their shouting, local people came there. He had identified the local persons who had come out. He had seen the deceased lying on the floor in a pool of blood with her throat cut and hands tied and the deceased being in

a near about naked condition. He had identified the appellant in Court.

16. A civic volunteer at that point of time had deposed as PW 12. He had stated that at about 11.45 in the night, his colleague received a phone call and told him that the appellant killed his wife. The local police station had been informed. The officer in charge of the local police station had asked the village police and the civic police to go to the spot. He had seen the appellant to run away. He had entered into the house and saw the deceased in half naked condition on the floor, her hands to be tied and her throat to be cut. He had identified the appellant in Court.

17. Another civic volunteer had deposed as PW 13. He had corroborated the statements of PW 12. PW 14 is another civic volunteer who had corroborated the statements of PW 13 and 14.

18. The photographer who had taken the photographs and video on July 20, 2015 at the house of the appellant at 12.30 at night deposed as PW 15. On August 25, 2015 he had video recorded the statement that the appellant made to the police. He had signed the seizure list dated August 25, 2015.

19. Another civic police had deposed as PW 16. He had corroborated the statements made by PW 12, 13 and 14.

20. The doctor conducting the post-mortem on the dead body of the deceased had deposed as PW 17. He had tendered the post-mortem report which was marked as Exhibit 10. He had described the injury he found on the dead body of the deceased. In his opinion, the cause of death was due to the effects of cutthroat injury ante mortem in nature and homicidal in manner.

21. The judicial magistrate before whom the statement of PW 11 had been recorded under Section 164 of the Criminal Procedure Code deposed as PW 18. He had identified his signature on the document which was marked as Exhibit 8.

22. The police constable who escorted the body of the deceased for post-mortem and identified the body in the Unnatural Death Case had deposed as PW 19. He had identified his signature on the seizure list dated July 22, 2015.

23. An assistant sub- inspector of police had deposed as PW 20. He had identified his signature on the seizure list dated July 20, 2015. He had also identified the 2 photographs and the 2 compact discs.

24. A neighbour of the appellant had deposed as PW 21. He had stated that, when he entered the room, he saw the deceased tied to a chair by her hands with her throat cut by a

sharp weapon and lying in a pool of blood. He had identified the appellant in Court.

25. The Chief Judicial Magistrate who had put his signature and seal on the First Information Report on July 21, 2015 had deposed as PW 22. He had stated that, on September 15, 2015, the Investigating Officer had filed a prayer for voice recording of the appellant. He had allowed such prayer on September 22, 2015. On October 13, 2015, the appellant had given written consent for recording his voice, in his presence. In his presence, the voice recording of the appellant had been done by the Investigating Officer and he had passed an order on October 13, 2015.

26. The Investigating Officer had deposed as PW 23. He had narrated about the manner in which the investigation was conducted. He had stated that, he arrested the appellant on July 20, 2015 and recorded his statement under Section 161 of the Criminal Procedure Code. He had gone to the place of occurrence on July 22, 2015 with the appellant and according to the indication of the appellant, he had seized the articles as mentioned in the seizure list dated July 22, 2015 regarding the garments of the deceased and the accused. He had spoken about the seizure that he made during the investigations. He had stated that, on the date of the incident, at 1 AM in the

night the local persons had detained the appellant near the place of occurrence in the shed of his kitchen when the police reached the place of occurrence and arrested him after filing of the First Information Report. At first, the appellant was not taken into custody as the investigation related to an unnatural death case. Thereafter, the appellant was arrested. In the arrest memo, the time of arrest was shown as 11:55 PM. He had been cross-examined at length on behalf of the appellant.

27. Learned advocate appearing for the appellant has contended that, the prosecution failed to prove the case beyond all reasonable doubt. The manner in which the prosecution case has unfolded does not point to an irresistible conclusion of guilt of the appellant.

28. Learned advocate appearing for the appellant has contended that, the time and place of arrest of the appellant has not been properly proved. Moreover, the versions of the prosecution witnesses with regard to the recovery and seizure of material articles from the place of occurrence have varied. It varied with regard to the alleged weapon of assault and the manner of its seizure.

29. According to the learned advocate appearing for the appellant, recovery of the alleged blood stained Bermuda of

the appellant was doubtful. Some of the prosecution witnesses had stated that, they saw the appellant running away wearing a bloodstained Bermuda. Therefore, there was no scope for recovery of the same from the house of the appellant after his arrest.

30. Learned advocate appearing for the appellant has submitted that the conduct of the de facto complainant was contrary to normal human behaviour. The de facto complainant did not lodge any complaint with the police when the dead body was removed in his presence. The presence of the civic police was highly doubtful in absence of any document being produced by them regarding their duty on the date of the incident. Moreover, PW 2 had stated that there was no civic police at the time. Therefore, since the presence of the civic police and the village volunteer was doubtful, then the so-called confession by the appellant over the phone and consequent chain of events created grave suspicion.

31. Learned advocate appearing for the appellant has submitted that, PW 3 stated that the last mediation with regard to the family disputes between the deceased and the appellant took place 2 years prior to the date of the incident. Therefore, the motive of the murder as portrayed by the

prosecution being the marital discord between the couple did not have any foundational basis.

32. Learned advocate appearing for the appellant has submitted that, the de facto complainant placed the source of information on the local panchayat. Such claim had been corroborated by his brother PW 9. However, the prosecution did not examine any panchayat member.

33. Learned advocate appearing for the appellant has submitted that, the conduct of PW 11 was suspicious. PW 11 did not inform the police initially about the call that the appellant had made to him. Moreover, his statement under Section 164 of the Criminal Procedure Code had been recorded 2 months after the incident.

34. Although, the prosecution witnesses had claimed that alcohol was poured on the body of the deceased and she was set on fire, the evidence of the post-mortem doctor did not suggest the same. Moreover, the post-mortem doctor stated that it was not possible for him to say whether the same sharp cutting instrument was used to inflict the injury as seized by the police.

35. According to the learned advocate for the appellant, the investigation had been conducted in a perfunctory manner which resulted in serious travesty of justice.

36. Learned advocate appearing for the appellant has submitted that, PW 2, 7, 9, 10 and 16 had omitted to state material facts to the Investigating Officer at the earliest opportunity. As such their versions before the Court during the trial suffered from embellishments and contradictions.

37. Learned advocate appearing for the appellant has submitted that, the learned trial judge had erred in relying upon the Forensic Science Laboratory reports when the same were not proved by experts.

38. Learned advocate appearing for the State has submitted that, the appellant was last seen in the company of the deceased as would appear from the depositions of PW 2 to 7 and PW 10 as well as PW 11 to 14. Prosecution witnesses had seen the appellant fleeing away from the place of occurrence through the back door of the house. The appellant being the husband of the deceased did not discharge his burden of proof as to how the deceased was found dead at night in his house. No explanation had been given by the appellant with regard to the circumstances in which his wife suffered homicidal death and as to why no attempt had been made by him to save the deceased by taking her to the hospital for summoning a doctor.

39. Learned advocate appearing for the State has submitted that, the sharp cutting tool had been seized from the place of occurrence and the same was marked as an Exhibit being Material Exhibit III. The post-mortem doctor being PW 17 had opined that the death was due to the cut throat injury anti-mortem and homicidal in nature. Not only smell of spirit or alcohol had been found coming out of the body of the deceased, the same had been corroborated by the seizure of the bottle of wine.

40. According to the learned advocate appearing for the State, the chain of circumstances left no doubt that the assailant was the appellant. Therefore, the judgement and order of conviction was totally justified and should not be set aside.

41. The dead body of the deceased had been discovered at the residence of the appellant. The deceased was married to the appellant for a considerable period of time. They had a son and a daughter out of their wedlock. They had matrimonial disputes between them which required mediation of people of the locality. They used to quarrel often. There had been a quarrel between them on the fateful day at night. On hearing the screams, the neighbours had intervened to find the deceased lying on the floor in a pool of blood and the appellant

to be fleeing the place of occurrence in a bloodstained barmuda.

42. The dead body of the deceased had been sent for post-mortem. The post-mortem report being Exhibit 10 and the deposition of the doctor conducting the post-mortem on the body of the deceased have established that, the deceased suffered one lacerated wound in front of neck at the junction beneath chin and upper root of neck. PW 17, the doctor performing the post-mortem on the body of the deceased, had opined that the cause of death was due to the effects of cutthroat injury ante-mortem and homicidal in nature. Therefore, the prosecution had established that, the deceased was murdered with her throat being cut.

43. Police had seized the sharp cutting tool on July 20, 2015 being Exhibit 4. The sharp cutting tool seized is a tool used for the purpose of cutting vegetables in a household in Bengal and is referred to in the local dialect as “bonti”. Prosecution witnesses who had seen the relevant sharp cutting tool stated that it was bloodstained. Such sharp cutting tool had been seized from the place of occurrence.

44. Neighbours had intervened roundabout 11 PM in the night on July 20, 2015. They had seen the appellant and the

deceased together. They had also seen the appellant to flee away from the place of occurrence.

45. As the husband of the deceased, and more particularly he being seen last with the deceased, it was incumbent upon the appellant to establish the circumstances under which, the deceased was murdered and by whom. In his examination under Section 313 of the Criminal Procedure Code, apart from claiming that the allegations against him are false and that he is innocent, he did not offer any explanation as to how the deceased came to be murdered. He did not produce any evidence at the trial as to his whereabouts on July 20, 2015 at 11 PM. He had been arrested by the police on the night of the incident itself.

46. In such circumstances, it can be safely said that, prosecution had been able to establish the chain of circumstances leading to the irresistible conclusion of the guilt of the appellant in murdering his wife, the deceased.

47. The contentions that have been raised on behalf of the appellant, in the facts and circumstances of the present case, are of no substance. Even if one was to discount the presence of the civic police being PW 11, 12, 13, 14 and 16, the prosecution has placed overwhelming evidence through

neighbours of the appellant to implicate the appellant in the murder of his wife.

48. All the neighbours had deposed that, there were matrimonial discord between the appellant and his wife over a considerable period of time which required intervention of the people of the locality from time to time. It would be incautious to expect all prosecution witnesses depose as to the time of the situation developing with exactitude in respect of an incident happening in 2015 when they are deposing as to such incident 2 years after the happening of the incident. Therefore, the minor discrepancies in the timing of the developing situation do not distract from the credibility of the prosecution witnesses. All the prosecution witnesses had narrated the incident in a manner which instils confidence.

49. In such circumstances, we have not found any ground to interfere with the impugned judgement of conviction and the order of sentence. We affirm the same.

50. The appellant will serve the remainder of his sentences as imposed by the learned Trial Judge. The sentences awarded shall run concurrently. Period of detention undergone shall be set of.

51. CRA 162 of 2020 with CRA 3 of 2021 are dismissed.

52. Trial Court records along with a copy of this judgement and order be sent down at once to the appropriate Court for necessary action.

53. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

[DEBANGSU BASAK, J.]

54. I agree.

[MD. SHABBAR RASHIDI, J]