

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 64 of 2019
with
CRAN 1 of 2022

Ibrahim Naskar alias Kebla
-Vs-
State of West Bengal

For the Appellant : Mr. Sandipan Ganguly, Sr. Adv.
Mr. Arijit Bhusan Bagchi, Adv.

For the State : Mr. Saswata Gopal Mukherji, Id. P.P.
Mr. Rudradipta Nandy, Adv.
Mrs. Sonali Das, Adv.

Heard on : 17.01.2023

Judgment on : 17.01.2023

Joymalya Bagchi, J.:-

1. Appeal is directed against the judgment and order dated 27.09.2018 and 28.09.2018 passed by the learned Additional Sessions Judge, Baruipur, South 24 Parganas in Sessions Trial No. 15(9)/2011 arising out of Sessions Case No. 08(12)/2009 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 fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for one year more.

2. Prosecution case alleged against the appellant is to the effect that on 23.09.2008 the appellant who is the elder brother-in-law of the victim Sarbanu Bibi had put his hand inside her room through a window. When Sarbanu enquired, appellant gave her bad proposals. He also threatened her not to disclose the incident to anyone. But next morning Sarbanu disclosed the incident to her sister-in-law, Momtaz Bibi (PW 5). This enraged the appellant.
3. In the evening of that day i.e. 24.09.2008 when Sarbanu had gone to the pond to wash rice, appellant accosted her. He hit on her head with a brick. She fell down. Thereafter, he again hit her a number of times. As a result she suffered bleeding injuries and died.
4. Rehena Laskar, sister in law of the appellant (PW 1) lodged written complaint against the appellant resulting in registration of Baripur Police Station Case No. 846 dated 24.09.2008 under Section 302 of the Indian Penal Code. Appellant was arrested.
5. In conclusion of investigation, charge-sheet was filed. Charge was framed against the appellant under Section 302 of the Indian Penal Code. He pleaded not guilty and claimed to be tried.
6. In the course of trial, prosecution examined fifteen witnesses and exhibited a number of documents. In conclusion of trial, learned trial

Judge by the impugned judgment and order dated 27.09.2018 and 28.09.2018 convicted and sentenced the appellant, as aforesaid.

7. Learned Counsel for the appellant submits there was family dispute over property between the appellant and his cousins. They were inimical and have falsely implicated him. It is further contended that the victim may have suffered accidental fall and died. No witness from the locality had been examined. Even if the prosecution case is believed, it is contended incident occurred in the course of a sudden quarrel and the appellant did not intend to murder the victim.
8. Learned Counsel for the State submits PWs. 1, 2, 3, 4 and 5 are eye-witnesses. They are all related to the appellant as well the deceased. Plea of enmity over property has not been proved. Their ocular version is corroborated by the injuries noted in the post mortem report. Hence, the appeal is liable to be dismissed.
9. PW 1 (Rehena Laskar) is the de facto complainant. She is the sister-in-law of the appellant. She deposed that the incident had taken place beside the pond adjacent to the house of Sanat Naskar. Hearing hue and cry, she went to the place of occurrence and saw that the appellant hit the victim on her head with a brick. Appellant continued to hit the victim repeatedly. Victim died at the spot. She lodged written complaint. In cross-examination, she stated there was a partition of property between the appellant and her family. She, however, denied there was dispute over such issue.

10. PW 2 (Sajeda Bibi) is the aunt of the appellant. She corroborated PW 1. She stated the appellant had hit Sarbanu with a brick on the head. After she had fallen he continued to hit her repeatedly. When PW 2 cried for help appellant threatened her.
11. PW 3 (Bilkis Bibi) is another sister-in-law of the appellant. She stated the appellant was intoxicated and had hit the victim repeatedly resulting in her death.
12. PW 4 (Najrul Naskar) corroborated the aforesaid witnesses.
13. PW 5 (Momtaz Bibi) is also a sister-in-law of the victim. She deposed in the morning of 24.09.2008 the victim told them that the appellant had put his hand inside her room. When she enquired the appellant gave her bad proposals. He also told her not to disclose the incident to any one. As Sarbanu disclosed the incident to PW 5 and others, appellant got enraged. In the evening he assaulted Sarbanu with a brick on the head repeatedly. As a result she died.
14. PW 5 is corroborated by PW 6 (Hasnabanu Bibi) who claimed that she heard the incident from the former. Other witnesses viz. PWs 7, 8 and 9 are post occurrence witnesses. They heard the incident from others.
15. PWs 10, 11 and 12 (husband of the deceased) are signatories to the inquest.
16. PW 13 drew up the F.I.R.
17. PW 15 is the investigating officer.

18. Learned Counsel for the appellant submits depositions of the eye-witnesses are contradictory to one another. PW 2 claimed that the appellant had thrown the brick in the pond but PW 7 stated he saw the appellant standing at the place of occurrence with a brick. Presence of Jakir Laskar i.e. husband of the deceased (PW 12) was noted by PW 3 at the time of occurrence but Jakir claimed he came to the spot after the occurrence.
19. The aforesaid discrepancies are minor and do not affect the unfolding of the prosecution case. PWs 1 to 5 are eye-witnesses. They have consistently deposed the manner in which the appellant had accosted the victim and repeatedly assaulted her with a brick on the head. Their ocular version is corroborated by the post mortem report which has been exhibited as Exhbt 9. I find five lacerated injuries on various parts on the head of the deceased. Internal hematoma including fracture of nasal bone, mandible and teeth are also noted. This clearly establishes the prosecution case of repeated assault by the appellant on the victim's head with a brick.
20. Motive to commit the crime has also been proved. PW 5 claimed that appellant had misbehaved with Sarbanu on the previous night. He told her to keep quiet but she disclosed the incident to her and others. This enraged the appellant who brutally murdered her in the evening.

21. I am also unable to accept the submission that the offence may be altered to culpable homicide not amounting to murder. Appellant had motive to commit the crime. He had misbehaved with the victim on the previous night. As she disclosed the incident to others, he accosted her near the pond and brutally hit her on the head. When she fell down he continued to hit her repeatedly with a brick. Repeated assaults on the victim is proved by the large number of external and internal injuries on her head. These circumstances clearly establish the intention of the appellant to commit the murder.
22. In the light of the aforesaid discussion, I uphold the conviction and sentence of the appellant.
23. The appeal is, accordingly, dismissed. In view of dismissal of the appeal connected application is also dismissed.
24. 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.
25. We are informed that the appellant has undergone imprisonment for more than 14 years. He does not have criminal antecedents. Under such circumstances, if the appellant makes an application for remission of sentence under Section 432 read with Section 433A of the Code of Criminal Procedure, appropriate authority shall consider his prayer in the light of the aforesaid

observations and other attending circumstances including his conduct in the correctional home.

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

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

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

Sdas/PA