

**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. 17 of 2012***

***Sunil Mondal***

***-Vs-***

***The State of West Bengal***

**For the Appellant** : Mr. Partha Sarathi Bhattacharyya, Adv.  
Mr. Madhusudan Sur, Adv.  
Ms. Swarnali Saha, Adv.

**For the State** : Md. Anwar Hossain, Adv.  
Ms. Sreyashee Biswas, Adv.

**Heard on** : 2<sup>nd</sup> January, 2023.

**Judgment on** : 2<sup>nd</sup> January, 2023.

**Joymalya Bagchi, J. :-**

1. Appellant has assailed judgment and order dated 01.02.2011 and 02.02.2011 passed by the learned Additional Sessions Judge, Islampur, Uttar Dinajpur in Sessions Trial No.12 of 2010 arising out of Sessions Case No.82 of 2010 convicting the appellant for commission of offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay fine of

Rs.10,000/-, in default, to suffer rigorous imprisonment for six months more.

**2.** Prosecution case as alleged against the appellant is as follows:-

**3.** Appellant had married one Kakuti @ Mamata Mandal 18 years ago. A son and daughter were born to the couple. Appellant was working in a hotel at Rajdanga. He suspected Mamata had an illicit affair with another person. On 24.1.2010 appellant left the hotel around 12.30 AM after seeking permission from the Manager Amit Majumder to go to his residence. He returned at 3.00 AM. On the very night, his wife was found brutally murdered near his residence.

**4.** Manoj Halder, brother of the deceased was informed of the incident. He lodged written complaint against the appellant and his brother Dulal Mondal at Chakulia Police Station resulting in registration of Chakulia Police Station Case No.26 of 2010 dated 24.01.2010 under Section 302/34 of the Indian Penal Code. Appellant was arrested. During investigation a knife was recovered from his belongings in the hotel. He was remanded to judicial custody. His elder brother Swapan Mondal (PW13) heard of the incident and met him in the correctional home. When Swapan enquired why the appellant had committed the act, the latter retorted that he had done it consciously. In conclusion of investigation charge sheet was filed against the

appellant and his brother Dulal. Charges were framed under Sections 302/34 and Sections 201/34 of the Indian Penal Code.

**5.** Prosecution examined 22 witnesses to prove its case. During examination under Section 313 of the Code of Criminal Procedure, appellant, inter alia, admitted he had met his brother Swapan Mondal in the correctional home. He, however, denied he made confession to him. In conclusion of trial, the trial judge by the impugned judgement and order convicted and sentenced the appellant, as aforesaid. Co-accused Dulal Mondal was acquitted of the charges levelled against him.

**6.** PW1 (Manoj Haldar) is the brother of the deceased and the de-facto complainant. He deposed on 24.01.2010, he received telephone call intimating him his sister Kakuti @ Mamata had been murdered. He went to her matrimonial home. He found the body of her sister lying there. Mother of the appellant informed the latter had killed Kakuti. Appellant suspected Kakuti had an illicit relationship with another person. Relation between them was not good. He lodged written complaint. He signed on the inquest.

**7.** PW3 (Gautam Chandra Pal), PW4 (Niranjan Mandal), PW5 (Arun Kumar Sikdar) and PW6 (Rashmani Mondal) are the neighbours of the appellant.

**8.** PW3 deposed hearing the news he came to the place of occurrence. He found the dead body of Kakuti. Police had brought the

appellant to the house. Appellant confessed his guilt in presence of police and other villagers. He signed on the inquest report.

**9.** PWs.4, 5 and 6 admitted Kakuti had been murdered near her matrimonial home. Apart from the aforesaid fact, they did not support the prosecution case and were declared hostile.

**10.** PW9 (Amit Majumdar) is the Manager of the hotel where the appellant used to work as a cook. He deposed on 24.01.2010 at 12/12.30 AM appellant sought his permission to go to his residence. At 3.00 AM he returned to the hotel. He was unmindful. On 24.01.2010 police came to the hotel. On being asked by Investigating Officer, appellant confessed his guilt before the police.

**11.** PW7 (Pabitra Roy) and PW10 (Krishna Sha) are the employees of the hotel. They deposed on 24.01.2010 Investigating Officer seized a knife from the belongings of the appellant. They proved their signatures on the seizure list.

**12.** PW12 (Santoshi Mondal) is the minor daughter of the couple. She deposed on the fateful night, she had gone to sleep with her mother. When she woke up she found her mother was not in the room. After search dead body of her mother was recovered. She did not implicate the appellant.

**13.** PW13 (Swapan Mondal) is the brother of the appellant. He is the most vital witness. He deposed he came to know of the incident. He was at Bombay at the material time. After 15/20 days he came to his

village. He met the appellant at Islampur Correctional Home. When he asked why he committed the act, appellant stated he had done the act consciously.

**14.** PW15 (Saurav Bhattacharya) recorded the statement of the minor daughter Santoshi Mondal. He proved the statement.

**15.** PW16 (Ananda Mohan Singha) is the scribe of the first information report.

**16.** PW17 (Dr. D. K. Kundu) is the post mortem doctor. He found the following injuries on the deceased.

*“1. Two sharp incised wounds over neck (anterior surface)*

*i) measuring 5 inches x 3 inches x 2 inches, ii) 4 inches x 2 inches x 2 inches*

*2. Two sharp incised wounds over left lower breast.*

*3. Five sharp incised wounds over different regions of abdomen inflicted by sharp and pointed weapon.*

*4. Incised wounds 1 inch x ½ inch x ½ inch over left middle finger defence cut.”*

Following injuries were also found on the chest of the deceased.

*“1. Penetrating injuries over left lung-three in number.*

*2. One penetrating injury over anterior surface of heart.*

*Head of the deceased was found congested during dissection.”*

He opined the injuries were sufficient to cause death in ordinary course of nature. He further opined injuries could have been inflicted by knife. He proved the post mortem report, Ext.9.

**17.** PW18 (Madhab Chandra Das) Officer-in-charge, Chakulia Police Station received the written complaint and drew up the first information report.

**18.** PW19 (Nakul Halder) is the cousin of the deceased. He deposed relationship between the couple was strained as the appellant suspected the character of his wife.

**19.** PW22 (SI Krishnendu Das) is the Investigating Officer. He went to the place of occurrence. He found the dead body lying 5/6 ft. away from the room. He held inquest over the body of Kakuti, Ext.1/2. He seized bloodstained and controlled earth. He prepared rough sketch map of the place of occurrence. He seized a knife measuring 7.5 inches having butt measuring 3.5 inches with bloodstains under a seizure list, Ext.5/2. He examined witnesses and submitted charge sheet.

**20.** Analysis of the evidence on record would show the prosecution case essentially hinges on the extra judicial confession of the appellant to his brother Swapan Mondal (PW13). Swapan was in Bombay at the time of occurrence. Upon receiving news he came to the village. He went to meet his brother i.e. the appellant at the correctional home. At the correctional home he enquired why he committed the incident. In reply, appellant stated he had done it consciously. PW13

was extensively cross-examined but remained unshaken. In fact, appellant during his examination under Section 313 of the Code of Criminal Procedure admitted that he had met his brother in the correctional home but he denied making confession to him.

**21.** Extra judicial confession, if voluntary and truthful, can form the basis of conviction. Before relying on such a confession it is important to test the confession on the anvil of reasonableness particularly the manner and circumstances in which the confession is made. Person to whom the confession is made is most vital. Ordinarily confession of guilt would be made to a person in confidence. PW13 was the brother of the appellant and a man in whom the appellant could trust. When PW13 candidly enquired the appellant of the incident, the latter told him he had done the act consciously. I am not unmindful of the fact that the appellant was in the correctional home when he made the confession but the confession had not been made either in presence of the police or while he was in police custody. On the other hand, the confession was made to his own brother in whom the appellant had complete trust. These circumstances persuade me to hold that the confession was voluntary and had not been procured through coercion or undue influence.

**22.** The confession is also truthful. There are corroborating evidence supporting the contents of the confession. PW9 Manager of the hotel deposed appellant had sought his permission to go to his

residence on the fateful night at 12/12.30 AM. He returned from his residence at 3.00AM. He was unmindful and disturbed. The incident occurred in the night between 24/25<sup>th</sup> January, 2010. Evidence of PW9 establishes the presence of the appellant on the fateful night at his residence and corroborates the contents of the confession.

**23.** Mr. Sur strongly contends no jail personnel was examined to establish that the appellant had met his brother in the jail. This is of little consequence as appellant himself admitted in his examination under Section 313 of the Code of Criminal Procedure that he had met his brother (PW13) while he was in the correctional home. The admission of the appellant corroborates the probability of the confession being made under the circumstances as proposed by the prosecution.

**24.** A knife was recovered from the belongings of the appellant. This is proved by the IO (PW22) and the witnesses to the recovery viz., PWs7 and 10. This fact was also admitted by the appellant during his examination under Section 313 of the Code of Criminal Procedure though he claimed that the recovered knife was a small one. Blood was detected on the knife though its origin and group could not be ascertained. Post-mortem doctor (PW17) deposed that the incised wound on the deceased could be caused by a knife. Motive of the crime has also been proved. PW1 (brother of the deceased), PW3 (co-villager) and PW13 (cousin of deceased) stated relationship between the couple

was strained as the appellant suspected the character of the deceased. On one occasion he had broken her hand.

**25.** These pieces of the evidence corroborate and establish the truthfulness of the confession of the appellant.

**26.** In the light of the aforesaid discussion, I uphold the conviction and sentence of the appellant.

**27.** The appeal is accordingly, dismissed.

**28.** Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon him in terms of Section 428 of the Code of Criminal Procedure.

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

**30.** 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.)**