

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

HON'BLE MR. JUSTICE JOYMALYA BAGCHI

And

HON'BLE MR. JUSTICE GAURANG KANTH

CRA 32 of 2018

Ajoy Mudi @Mithu Mudi

Vs

The State of West Bengal

For the Appellant : **Mr. Debasish Roy**
 Mr. Avik Ghatak
 Mr. S K Dasgupta

For the State : **Mr. Swapan Banerjee**
 Mr. Suman De

Heard On: 02.08.2023, 03.08.2023 and 29.08.2023

Judgment On: 05.09.2023

GAURANG KANTH, J

1. The Appellant, in the present Appeal, has assailed the Impugned Judgment and Order of conviction dated 14.09.2017 and 15.09.2017 passed by the Additional Sessions Judge, 2nd Court, Asansol, Burdwan in Sessions Trial No. 08 of 2016 arising out of Sessions

Case No. 117 of 2015 convicting the Appellant for commission of offence under Section 302 of the Indian Penal Code (IPC) and sentencing him to suffer rigorous imprisonment for life with fine of Rs. 5000/-, in default, to suffer further rigorous imprisonment for three months.

2. Prosecution case levelled against the Appellant was that on 22.01.2015, at about 8.00 a.m., the complainant, Manoj Kumar Burnwal (brother of the deceased) was informed by the Appellant (husband of the deceased) about the death of Smt. Prabha Devi (deceased). After receiving the said information, the Complainant along with Mr. Sanjay Kumar Burnwal (the other brother of the deceased) rushed to the matrimonial home of the deceased and found that the body of their sister was lying on the floor of her room. No medical treatment was provided to the deceased by the Appellant or his family. The Complainant and his brother took the deceased to Kelejhora Health Centre where she was declared dead.
3. The Complainant lodged a written complaint at Baraboni PS on 23.01.2015 at about 00:35 hours and accordingly Baraboni PC case No.11/15 dated 23.01.2015 u/s 498A/302/34 IPC was lodged against Ajoy Mudi @ Mithu (Appellant herein and the husband of the deceased), Bijoy Mudi @ Karu (brother-in-law of the deceased) and Suman Mudi (sister-in-law of the deceased).
4. The matter was investigated by the Investigating Officer and after completion of investigation, Charge Sheet being No. 43/15 dated 25.02.2015 was filed u/s 498A/302/34 IPC against the Appellant and u/s 498A against the accused Bijoy Mudi @ Karu and Suman Mudi. Thereafter, the case was committed to the court of Additional

Sessions Judge, 3rd Court, Asansol, and subsequently the case was transferred to the Court of Additional Sessions Court, 2nd Court, Asansol for trial.

5. During the course of the trial, the Appellant filed a bail application CRM No.6430/2015 before this Court. While rejecting the said bail application, this Court directed the investigating officer to examine the two minor sons of the Appellant. Hence the Investigating officer recorded the evidence of the two minor sons of the Appellant and filed supplementary charge sheet being 212/2015 on 12.12.2015 against all the accused persons. Charges were framed against all the three accused persons u/s 498A/302/34 IPC, who pleaded not guilty and claimed to be tried.
6. In order to prove the charges, the Prosecution examined 16 witnesses and exhibited a number of documents. It is the case of the Defence that the accused are innocent and have been falsely implicated in this case. The accused Bijoy Mudi @ Karu examined himself as DW-1 on behalf of all the accused persons.
7. After appreciating the evidence on record, the learned Trial Court, vide the Impugned Judgment and Order of conviction dated 14.09.2017 and 15.09.2017, convicted and sentenced the Appellant for commission of offence u/s 302 IPC, however, exonerated him u/s 498A/34 IPC. The learned Trial Court acquitted the other two co-accused persons, namely, Bijoy Mudi and Suman Mudi of all charges.
8. It is the case of the Appellant that the deceased was suffering from Tuberculosis (T.B.) at the time of her death. The learned Counsel for the Appellant contends that the deceased suffered fracture of the

hyoid bone due to induced vomiting and severe coughing which caused her death. The learned Counsel for the Appellant submitted that the Prosecution has not proved its case beyond reasonable doubt. Hence, the Appellant is entitled to an order of acquittal.

9. On the other hand, the learned Counsel appearing for the Prosecution argued that it is a clear case of murder and there was ample evidence to prove that the Appellant committed the murder of the deceased. The postmortem report clearly reveals that death was due to asphyxia, due to strangulation, ante mortem and homicidal in nature. There was evidence to show that the Appellant, and their two minor children were in the same room with the deceased at the time of her death, therefore, it was the duty of the Appellant to explain the facts regarding the death of the accused. Further, the Appellant failed to explain the fracture of upper laryngeal cartilage and hyoid bone. Ld. Counsel for the State argued that in the light of the aforementioned submissions, the Prosecution has thus proved its case beyond doubt.
10. This Court heard the arguments advanced on behalf of both the parties and examined the documents and evidence on record and also the judgements relied on by the learned Counsels for the parties.
11. The evidence of Manoj Kumar Burnwal (PW-1), Sanjay Kumar Burnwal (PW-2), Ranju Devi (PW-4), Uma Devi (PW-9), Sunita Prasad (PW-12) and Madhu Kumari Burnwal (PW-15) has proved that the Appellant and deceased were having a strained relationship. All the said witnesses deposed that the Appellant and his family used to torture the deceased both physically and mentally

and she was not given proper food and medical care. The testimonies of the aforementioned Prosecution Witnesses prove that the relationship between the Appellant and his wife (deceased herein) was strained and not good and she was tortured by him.

12. The Prosecution has proved the postmortem report [Exhibit-9] by examining Dr. Satinath Banerjee (PW-11), the medical officer who conducted the postmortem of the deceased. PW-11 categorically stated in his evidence that the death was due to asphyxia, due to strangulation ante mortem and homicidal in nature. PW-11 also revealed that there was abrasion center back 3 CM X 3 CM. On dissection, extra vasation of blood in the neck with fracture of upper laryngeal cartilages and hyoid bone both greater cornu. PW-11, in his cross examination, also pointed out that hyoid bone fracture can also be due to induced vomiting, severe cough and old age. He further deposed that cough is a symptom of T.B. cases.
13. It is the case of the Appellant that the deceased was suffering from T.B. at the time of her death, however, the Prosecution contends that the deceased was not suffering from T.B. at the time of her demise. The deposition of PW-1 and PW-2 reveals that the deceased was suffering from T.B. and was kept in their house since after 2/3 years from her marriage and they arranged for her treatment. She was under treatment for about 8 to 12 months. The evidence on record reveals that the deceased was suffering from T.B. after 2/3 years from her marriage and was treated at her parents' house and there is nothing on record which shows that the deceased was suffering from T.B. at the time of her death.

14. Further, there is no evidence to show that the deceased was having induced vomiting/severe cough. It is admitted that the deceased, Appellant, Bishal Mudi @ Golu (PW-7) and Chandan Mudi @ Bholu (PW-8) were sleeping on the same bed on the date of the said incident. PW-7 and PW-8, in their respective depositions, have not stated anything in respect of induced vomiting or severe coughing by the victim on the date of the incident.
15. The postmortem report reveals that there was fracture of laryngeal cartilage of the deceased. However, there is no explanation as to how there was a fracture in the laryngeal cartilage of the deceased. This Court is of the view that laryngeal fracture can be caused by a direct trauma or high impact force.
16. With regard to the abrasion center back of the deceased, it has been argued on behalf of the Appellant that as evident from the testimony of PW-7, the deceased was dragged near the ring-well by the neighbours to spray water on her face and the abrasion may be caused for the said reason. However, this Court is of the view that such an explanation is unacceptable as any sane person would fetch water from the ring-well to spray it on the face of a patient rather than dragging the patient to ring-well for spraying water on her face.
17. In the present case, there were no eyewitness(es) and the conviction was based on circumstantial evidence. Bishal Mudi@ Golu (PW-7), the minor son of the Appellant and the deceased, stated in his deposition that on the day of incident, he slept with his parents on the same bed. The Appellant has also admitted the said fact in his Statement u/s 313 Code of Criminal Procedure (Question No.19).

DW-1 also in his deposition stated that the deceased and the accused were sleeping in the same room. Hence, it has been established based on evidence that the Appellant and the deceased were together in one room on the date of death of the deceased.

18. Dr. Nemaï Krishna Roy (PW-10), the medical officer who issued the death certificate, deposed that he examined the body of the deceased at 9.30 am on 22.01.2015 and found rigor mortis over the dead body. PW-1 & PW-2 have also stated in their evidence that doctor who examined the deceased told them that she had died 3 to 4 hours back. PW-7 in his deposition stated that the Appellant left the home around 4.00 am. The aforementioned testimonies of PW-1, PW-2, PW-7 and PW-10 indicates that the Appellant was in the same room with the deceased at the time of her death. Postmortem report clearly shows that there was abrasion center back and fracture of upper laryngeal cartilages and hyoid bone both greater cornu. As discussed herein above, these fractures are usually caused by high impact force such as strangulation. The Appellant was not able to give a plausible explanation for such fractures on the body of the deceased.

19. On careful reading of the evidence of the PW-7, this Court finds that there were contradictions in his evidence. PW-7 & 8 are minor sons of the Appellant and deceased, who were in the care and custody of their paternal grandparents. It is well settled position of law that the child witnesses are prone to tutoring and hence Court should look for corroboration from an independent and reliable witness (**1995 SCC Supp (4) 416 titled as Arbind Singh Vs State of Bihar**). There

is no corroborating evidence to the effect that at the time of death of the deceased, the Appellant was not present at the room.

20. As per Section 101 of the Indian Evidence Act, whoever desires any Court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts, he must prove that those facts exist. The burden is, therefore, always on the Prosecution to bring home the guilt of the accused beyond a reasonable doubt. Section 106 of the Indian Evidence Act constitutes an exception to Section 101 of the Indian Evidence Act. Section 106 applies to the cases where the Prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused failed to offer proper explanation about the existence of said other facts, the Court can always draw an appropriate inference. In the present case, the Prosecution succeeded in establishing that the Appellant was present in the room at the time of the death of the deceased. Postmortem report revealed that the death happened due to asphyxia, due to strangulation, ante mortem and homicidal in nature. There was fracture of upper laryngeal cartilages and hyoid bone both greater cornu. No explanation has been provided by the Appellant as to how his deceased wife, who slept with him on the same bed in the same room, suffered such severe fractures. In view of the aforesaid, this Court is of the considered view that while the Prosecution has proved its case beyond doubt, the Appellant failed to give proper explanation regarding the facts which led to the

death of the deceased and failed to discharge the burden which rested on him in terms of Section 106 of the Indian Evidence Act.

21. Analysis of the evidence shows that on the intervening night of 21.01.2015/22.01.2015, the deceased along with the Appellant and their two minor sons, PW-7 and PW-8 had slept on the same bed in the same room. On 22.01.2015 at about 8:00 a.m., PW-1 was informed by the Appellant that Prabha Devi (deceased) was no more. After receiving the said information about the death of the deceased, PW-1 and PW-2 rushed to the matrimonial home of the deceased to find no medical arrangements were done by the Appellant and his family. PW-1 and PW-2 took the deceased to the Kelejhora Medical Centre where she was declared dead.
22. The postmortem report of the deceased clearly establishes that death was caused due to asphyxia, due to strangulation, ante mortem and homicidal in nature. There was fracture of upper laryngeal cartilages and hyoid bone both greater cornu. The said postmortem report has been proved by PW-11 in his evidence. Further, PW-10 i.e., the medical officer who issued the death certificate of the deceased found rigor mortis over the body of the deceased (which indicated that the deceased had died couple of hours before the examination of the body) which is corroborated with the deposition of PW-7 to establish the fact that the Appellant was in the same room with the deceased at the time of her death.
23. Under such circumstances when the presence of the Appellant is proved beyond doubt in the room where his wife was murdered, the onus shifted on the Appellant to explain how his wife died, especially when the postmortem report reveals the cause of death

to be asphyxia, due to strangulation, ante mortem and homicidal in nature. During trial the Appellant has not come out with any plausible explanation how his wife died due to such severe fractures and injuries while he was present in the room.

24. In the light of the aforesaid discussion, this Court is inclined to hold that the circumstances relied on by the Prosecution corroborated by the postmortem report have established the guilt of the Appellant to have murdered his wife beyond reasonable doubts. Accordingly, the conviction and sentence of the Appellant is upheld, and the Appeal is dismissed.
25. 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.
26. Copy of this judgment along with the lower court records be forthwith sent to the Trial Court at once.
27. Photostat Certified copy of this judgment, if applied for, be supplied to the Appellant upon completion of all necessary legal formalities.

I agree.

(Joymalya Bagchi, J.)

(Gaurang Kanth, J.)