

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

**C.R.A No. 54 of 2011
With
CRAN 1 of 2012 (Old CRAN 3727 of 2012)**

**Banshidhar Prajapati
Vs.
The State of West Bengal**

Amicus curiae : Mr. Surajit Saha.

For the State : Mr. Narayan Prasad Agarwala,
: Mr. Pratick Bose.

Hearing concluded on: 16/02/2023

Judgment on: 19/07/2023

Rai Chattopadhyay, J.

1. The appellant is the convict in Sessions Trial No. 1(7) of 2009 under Section 304 (part I) of the Indian Penal Code. The Additional District and Sessions Judge, Fast Track, 8th Court at Bichar Bhawan, Kolkata, in the said Sessions trial has delivered judgment and order of conviction dated November 29, 2010 and November 30, 2010, respectively, to find the appellant guilty of the offence as above. The Court has passed the sentence directing the appellant to suffer simple imprisonment for 7 (seven) years and to pay fine of Rs. 5,000/-, in default of which he would further suffer simple imprisonment for 6 (six) months more.

- 2.** FIR was lodged by One Bholanath Thakur and was registered as Jorabagan Police Station Case No. 24 of 2009 dated 31.01.2009. The facts which led to filing of the FIR were that on January 31, 2009 at about 5:30 a.m or 6:00 a.m in the morning the incident happened. The date was of Saraswati Puja of that year. The appellant was found by the other residents of the said building, including the complainant, to mercilessly assault his wife with fists and blows and kicks and also by pulling her hair and felling her on the ground. The victim was shouting for help. However, the appellant could not be restricted as he was behaving unnaturally violent and arrogant. As neighbouring people assembled at the relevant place, the appellant left his wife and moved away. Later on the victim was shifted to Calcutta Medical College and Hospital where she died.
- 3.** After completion of investigation police submitted charge sheet arraying the present appellant as the accused person therein. After commitment of the case the trial proceeded, and finally resulted into the judgment and order of conviction as mention above.
- 4.** Appellant has not been represented in this appeal. In view of absence any one to represent him, the Court appointed Id. Amicus Curiae, to assist in disposing of this appeal. State is represented.
- 5.** At the outset it may be mentioned that on behalf of the State, a report has been submitted, i.e, dated January 23, 2023, which reveals that the appellant who was incarcerated since November 30, 2010 was released on bail in G.R. Case No. 269 of 2009 on January 22, 2014.
- 6.** To bring home the charges against the appellant/accused persons, the prosecution has examined twelve witnesses in this trial including the neighbours, brother and son of the appellant, doctors and Police Personnel. The fact of death of the victim is admitted as well as the

reason thereof, which has been mentioned in the post-mortem report. The post-mortem report reveals the opinion of the Medical Officer regarding the cause of death, to be the head injury noted in detail, in the said report. Post-mortem report has been made exhibit (exhibit-2) in the trial.

- 7.** P.W 7 and P.W 8 are the two doctors including the autopsy surgeon. Their substantive evidence as regards the injury found on the body of the victim and the result of post-mortem has not been challenged in this trial. Therefore considering the oral and documentary medical evidence, to find out the cause of death of the victim, it can conclusively be held that the reason for death of the victim are the injuries including the major head injury suffered by her.
- 8.** Now the other evidences may be gone into to find out if the prosecution has conclusively been able to bring on record as regards the reasons of such injury and the part played by the present appellant in infliction of those, if at all.
- 9.** As a matter of fact, the brother of the appellant and his son have turned hostile in this case stating that they are not aware as to how the victim died. Prosecution's case mainly is based upon the evidence of the eye witnesses/neighbours in the building where the incident happened, P.W 1, P.W 3 and P.W 5 precisely. Evidence given by these three eye witnesses which show that on the date of incident in the morning the appellant in a violent mood assaulted his wife, at an open and conspicuous place, which could be witnessed by the neighbouring people. They assembled in response to the shouting of the victim for help. On there being assembled the appellant moved away from there and the injured victim was hospitalized. To this extend ocular evidence of the three eye witnesses as mentioned above are coherent, substantive

and believable. They have withstood the cross-examination, which eliminates any doubt as regards appellant's involvement in causing bodily harm to the victim. The said injury is the direct cause of death of the victim.

10. On the facts proved in the manner as discussed above, it can be found beyond all reasonable doubts that the death of the victim was caused due to the injuries suffered by her, as a result of assault by the present appellant.

11. The other thing all the eye witnesses have indicated that the appellant at the relevant point of time was in an unnaturally hyper and violent mood for which none of the witnesses present could control him or restrain him in any way. This brings the offence committed by the appellant within the four fold of the provision under Section 304 IPC. Pre-meditation by the appellant in any way to commit death of his wife is not traceable from the evidence of any of the eye witnesses. Instead the appellant's action can be attributable to his violent reaction to the grave and sudden provocation and covered under Section 304 (I) of the IPC. On the discussion as above and on perusal of the judgment of the trial Court as mentioned above, it is found that the same suffers with no infirmity or illegality whatsoever. The prosecution has been able to bring home the charges well and the impugned judgment is a proper one not to be interfered with in any way.

12. So far as the sentence part of the impugned judgment is concerned this Court takes into notice the report submitted on behalf of the State as mentioned above. It appears that the appellant has been awarded with seven years of imprisonment along with fine of Rs. 5,000/-. The appellant has already undergone incarceration for four years. Considering the said facts this Court is of the opinion that the sentence

passed by the trial Court as above may be modified to the extent that the appellant be granted sentence to suffer imprisonment for the period already undergone by him.

13. The impugned judgment and order of sentence as above, is modified to the said extent.
14. C.R.A 54 of 2011 succeeds and allowed in part. The finding of the trial Court of guilt and conviction of the appellant stands upheld. However, the sentence granted is modified to the extent as mentioned above. The appeal is thus disposed of along with connected application being CRAN 1 of 2012 (Old No: CRAN 3727 of 2012).
15. Before parting, the Court appreciates the able assistance put in by the Ld. Amicus Curie in this case. Let the High Court Legal Services Committee take necessary steps to pay fees to the learned Amicus Curiae in accordance with the scale applicable to "Category-A" lawyer in its panel. The same may be paid within a period of one month from the date. A copy of this order be immediately forwarded to the Secretary, High Court Legal Services Committee, for doing the needful.
16. Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of requisite formalities.

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(Rai Chattopadhyay,J.)