

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

**C.R.A. 56 of 2018
Rajiv Kumar
-Vs-
State of West Bengal**

For the Appellant(s) : Mr. Partha Sarathi Bhattacharyya
Mrs. Sukla Das Chandra
Mrs. Swarnali Saha

For the State : Mr. Saibal Bapuli
Mr. Bibaswan Bhattacharya

Heard on : 01.08.2023

Judgment on : 01.08.2023

Joymalya Bagchi, J. :-

1. Appellant has assailed judgment and order dated 05.12.2017 and 06.12.2017 passed by learned Additional Sessions Judge, Fast Track Court, Siliguri, District-Darjeeling in Sessions Trial No. 15 of 2013 arising out of Sessions Case No. 22(2) of 2013 convicting the appellant for commission of offence punishable under Sections 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 simple imprisonment for six months more.

- 2.** Prosecution case levelled against the appellant is as follows:-
- 3.** At 10.00 PM on 24th October, 2012, the family members of the appellant had gone to sleep. Around 3.00 A.M. hearing cries of their father, Tanushka Kumari (PW1) and her sister Sirin woke up. They found their mother was lying dead on the bed. Her throat had been cut open. Appellant had also cut his hand and was standing with a knife. The domestic help-Rohit snatched away the knife from the hand of the appellant. Tanushka informed her relations over phone. Local people and police assembled at the spot. They removed the appellant and his wife to hospital. At the hospital his wife was declared dead.
- 4.** Tanushka lodged written complaint resulting in registration of Siliguri P.S. Case No.633 of 2012 dated 25.10.2012 under Sections 302/307 of the Indian Penal Code. Appellant was arrested and charge sheet was filed against him. Charges were framed under Section 302 of the Indian Penal Code for the murder of his wife, Rima Kumar and under Section 307 of the Indian Penal Code for attempting to murder his daughter, Tanushka. Appellant pleaded not guilty and claimed to be tried. In the course of trial prosecution examined 15 witnesses and exhibited a number of documents.

5. In conclusion of trial, trial Judge by the impugned judgment and order dated 05.12.2017 and 06.12.2017 convicted and sentenced the appellant, as aforesaid.
6. Mr. Partha Sarathi Bhattacharyya, learned Advocate for the appellant submits the most vital witness i.e. Tanushka has deviated from the First Information Report. During deposition she was silent with regard to the attempt to suffocate her. Another vital witness i.e. Rohit has not been examined. Appellant suffered injuries on his body which had not been explained by the prosecution. Prosecution case is not proved beyond doubt. Hence, the appellant is entitled to an order of acquittal.
7. Mr. Bibaswan Bhattacharyya, learned Advocate for the State argues Tanushka (PW1), daughter of the appellant was present in the house. Her deposition leaves no doubt that the appellant had committed the murder. Thereafter, he tried to commit suicide. Her deposition is corroborated by the neighbours who came at the spot. Post mortem report corroborates the ocular version and proves the prosecution case beyond doubt.
8. I have gone through the evidence on record. PW1, Tanushka Kumari is the daughter of the appellant and the de-facto complainant. She deposed she was sleeping along with her sister in the house. On hearing the shouts of her father, she woke up and went to the room occupied by her parents. Her mother was

lying dead on the bed. Blood was also coming out from her father's hand. She called the neighbours. Police came to the spot. She lodged First Information Report.

9. Her deposition is corroborated by the local witnesses Arup Ratan Ghosh (PW2), Kuntal Goswami (PW3), Dipak Kumar Baran (PW4), Ashok Mimani (PW8) and S.I. Sudip Kumar Dutta (PW10). These witnesses speak in unison and claimed around 3.00 A.M. in the night they came to the house of the appellant and found the appellant's wife Rima Kumari lying on the bed with a cut throat injury. The appellant also had bleeding injuries on his hand. Police came to the spot. The couple was removed to the hospital where Rima Kumari was declared dead.
10. Dr. Rajiv Prasad (PW 6) is the post mortem doctor. He held post mortem over the body of Rima Kumari and found the following wounds: -

"1. Chop wound 5 ½ x 2/3rd x soft tissue, place transversely at front of the neck upper margin of which placed 2"below the left ear lobule, 1"below the angle of mandible, 2 ½ below the chin, 1 ½"below the right angle of mandible, directed downward right laterally, deeper at left side transecting all the superficial and deeper structure (larynx, carotid artery etc.) margin of the wound is clean cut.

2. Chop wound 4"x 1 ½" x soft tissue placed transversely at front of the neck just 2/3"below the previous injury, upper

margin placed, 2"below the left angle of mandible, 3"below the chin,, 2"below the right angle of mandible directed downward right laterally deeper at left side, transecting all the superficial and deeper structure margin of the wound is clean cut.

3. Incised injury $\frac{1}{4}$ "x 2"x muscle placed transversely at front of the right shoulder directed downward laterally margin of the wound is clean cut.

4. Incised injury $\frac{1}{6}$ "x 2 $\frac{1}{2}$ " x muscle placed transversely just 2"below the previous injury at front of the right shoulder directed downward laterally, margin of the wound is clean cut."

He opined death was due to effect of anti mortem homicidal injuries caused by a sharp cutting moderately heavy weapon.

- 11.** Dr. Prabhas Kr. Roy (PW14) proved the discharge certificate of the appellant. He deposed the appellant was admitted at North Bengal Medical College and Hospital with a history of suicidal attempt by causing cut wounds on the volar aspect of left forearm. Appellant was discharged on 27.10.2012.
- 12.** S.I. Samit Sarkar (PW15) is the Investigating Officer. He deposed at 3.00 A.M. while he was on his duty in a mobile van, he got information to the effect that a murder had taken place at Agamani Apartment situated at Dangipara Mahanandapara

Siliguri. He along with another police officer came to the spot. He found Rima Kumari was lying on a bed with a sharp cutting injury. Another person was sitting beside the lady with a cut mark on his left hand. He shifted them to Siliguri Sadar Hospital. Attending doctor declared the lady dead.

- 13.** I.C. came to the spot. Tanushka (PW1), daughter of the appellant lodged written complaint. Thereafter, he took over investigation of the case. He prepared rough sketch map with index (Ext.8). He recorded statements of the witnesses. He returned to Siliguri Sadar Hospital and prepared inquest over the dead body. He sent the dead body for post mortem examination. He arrested the appellant from North Bengal Medical College and Hospital. He seized articles viz., bloodstained bed sheet, pillow, one white colour vest of the appellant and a napkin from the place of occurrence. He submitted charge sheet.
- 14.** Analysis of the evidence on record show in the night between 24.10.2012/25.10.2012, a ghastly incident took place at the house of the appellant. As per PW1 around 10:00 PM the family members had gone to bed. Around 3.00 A.M. hearing cries of her father, PW1 woke up and went to the bedroom of her parents. She found her mother lying dead in the bedroom on the cot with cut throat injury. Her father had injuries on his left arm. She informed the neighbours. Police also came to the spot. Appellant

and his wife were removed to the hospital. His wife was declared dead while the appellant was released after treatment on 27.10.2012.

- 15.** Evidence of post mortem doctor proves that Rima Kumari, wife of the appellant had suffered homicidal death due to a cut throat injury. The incident occurred in the dead of night and appellant was the only person who was present in the room with his wife. Soon after the incident, appellant's daughter Tanushka (PW1) saw her mother lying dead and the appellant sitting beside her. During trial appellant has not come out with any plausible explanation how his wife died due to cut throat injury while he was present in the room.
- 16.** I find no reason to disbelieve PW1. It is contended on behalf of the appellant PW 1 that the appellant had tried to smother him but in court she gave a different version with regard to the incident. This variation in the deposition of PW1 does not improbabilise presence of the appellant at the spot. She is the daughter of the appellant and was present in the house at night. She has clearly described the circumstance in which she saw her father inside the room where her mother was lying dead with her throat cut. This fact remains unassailed and proves beyond doubt the presence of the appellant in the room where his wife was murdered. Under such circumstances, the onus shifted on the

appellant to explain how his wife was murdered. He has singularly failed to do so leading to the finger of guilt unerringly pointing at him.

- 17.** The other argument advanced by the appellant is non-examination of the domestic servant Rohit Kr. Das. As discussed earlier, evidence of Tanushka Kumari (PW1) clearly proves the presence of the appellant in the room where his wife was murdered. Her evidence is of sterling quality and we find no reason to disbelieve her version. Quality and not quantity of evidence is germane to decide the fate of the prosecution case. Domestic servant Rohit Kr. Das was also present at the place of occurrence. As the evidence of the daughter of the appellant Tanushka Kumari (PW1) is wholly reliable, we are of the opinion examination of the said witness would have only added to the quantity of evidence that the appellant was present in the room where his wife was murdered. Thus, non-examination of domestic servant Rohit Kr. Das does not affect the unfolding of the prosecution case and does not lead to an adverse inference against the case.
- 18.** Ocular version of PW1 is corroborated not only by the post occurrence witnesses but the medical evidence too. PW6 post mortem doctor corroborated the evidence of PW1 and opined that her mother Rima Kumari had suffered homicidal death due to

ante mortem injury on her throat caused by a moderately heavy weapon.

- 19.** Injuries on the appellant have also been explained. Medical report exhibited by PW14 Dr. Prabhas Kr. Roy records that the injuries were caused due to suicidal attempt by the appellant himself. Hence, I am unable to accept the submission of Mr. Bhattacharya that the prosecution has failed to explain the injury on the appellant.
- 20.** In the light of the aforesaid discussion I am of the opinion prosecution evidence points to the irresistible conclusion that it was the appellant and the appellant alone who had committed the murder of his wife.
- 17.** Conviction and sentence of the appellant are upheld. Appeal is accordingly dismissed.
- 18.** Though the appellant had acted in a violent manner and murdered his wife, we note he did not flee away from the spot. On the other hand, he tried to commit suicide. These circumstances though not impacting the culpability of the appellant, may be relevant while considering the prayer for remission of sentence under section 432 Cr.P.C.

19. In the event upon completion of 14 years of actual imprisonment, the appellant makes a prayer for remission of his sentence, the appropriate authority may consider such prayer bearing in mind the aforesaid observations as well as his conduct in the correctional home.
20. 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.
21. Let a copy of this judgment along with the lower court records be forthwith sent down to the trial court at once.
22. Photostat certified copy of this judgment, if applied for, shall be made available to the appellants upon completion of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)