

06.02.2023

M/L. 1

Court No.12

Suvayan/

Sourav

CRA 267 of 2002

In the matter of: **Gobardhan Naiya**

....Appellant.

Mr. Pravas Bhattacharyya

...for the appellant.

Ms. Z. N. Khan

Mr. Ashok Das

...for the State.

1. Heard learned Counsel for both the parties.
2. This appeal arises out of judgment of conviction and order of sentence dated 15.05.2002 passed by learned Additional Sessions Judge, Fast Track Court, Diamond Harbour, South 24 Parganas in S.T. Case No. 6 (10) of 2001/S.C. Case No. 7 (6) of 1999 convicting the appellant under Section 302 IPC and sentencing him to suffer imprisonment for life and to pay fine of Rs. 10,000/- in default to suffer simple imprisonment for further 3 years more.
3. This is a case of oxoricide. The occurrence happened at about 11 a.m. on 11.06.1996 in the matrimonial home of the deceased. As found from the record of the case the appellant and the deceased were married since about 17 years. They were blessed with a son and a daughter, the son being the eldest. The deceased, appellant and their two children were residing in the spot house. On the date of occurrence, i.e., 11.06.1996 the deceased was found in the spot house in a pool of blood and a 'chhura' was found lying near the dead body. The villagers gathered there and father of the deceased who has been examined as P.W. 1 also came to the spot being intimated by some co-villager of the appellant. The father of

the deceased, P.W. 1 thereafter lodged the FIR being scribed by P.W. 8. The I.O. (P.W. 7) registered the FIR under Section 498A/302 IPC against the present appellant and others, namely, Sebabala Naiya, Nadiram Naiya, Profullya Naiya, Tulu Rani Gharami and Amar Gharami.

4. Investigation was taken up and inquest over the dead body was held. In course of inquest it was found that some hairs are there in the right hand fist of the deceased. Subsequently, those hairs were collected and kept in a clean sealed envelope. In course of investigation the appellant surrendered before the competent Court after 15 days of the occurrence, he was also taken on remand and his sample hair was also collected and kept in a clean sealed envelope. Witnesses were examined but the I.O. (P.W. 7) did not examine the mother and brother-in-law of the deceased, i.e., P.W.s 9 and 10 during investigation. Incriminating seizures were also made and after completion of investigation charge-sheet was filed against the present appellant only for offence punishable under Section 498A/302 IPC.

In course of trial, learned Trial Court framed the charge against the appellant under Section 302 IPC for the offence of oxoricide.

5. The prosecution has examined 12 witnesses. P.W. 1 is the father of the deceased, P.W. 9 is the mother of the deceased and P.W. 10 is the eldest son-in-law of P.W.s' 1 and 9. P.W. 8 is the scribe of the FIR. P.W.s 2, 3 and 4 are co-villagers of the appellant out of whom P.W. 3 has turned hostile. P.W. 5 is the

'Black Smith' from whom the appellant is alleged to have purchased a 'chhura' by placing order but P.W. 5 has also turned hostile. P.W. 6 is the medical officer who conducted postmortem over the dead body of the deceased. P.W. 12 is the medical officer in whose presence sample hair of the appellant was collected. P.W. 11 is the Senior Scientific Officer, Biology Division, FSL at Belgachia, Kolkata who examined the hair collected from the right fist of the deceased and sample hair collected from the appellant. P.W. 7 is the I.O.

Defence plea is one of complete denial and false implication.

6. It is not disputed at the Bar that the case is based entirely on circumstantial evidence. Learned Trial Court in the judgment has enumerated the circumstances on the basis of which he reached the conclusion regarding guilt of the appellant. Those circumstances are
 1. That there was strained relationship between the appellant and the deceased regarding some issues.
 2. That appellant used to stay with the deceased in the same house where the dead body of deceased was found.
 3. The appellant was seen in that village and also requested P.W. 2, Rabin Sardar to attend the 'salish' as his (appellant's) father-in-law had arrived.
 4. That since after the ghastly incident the appellant was not seen in that village and only surrendered before the Court after 15 days of the incident.
 5. P.W. 5 identified the appellant as the person who placed

the order to manufacture one 'chhura'.

7. Mr. Bhattacharyya, learned Counsel for the appellant submits that the circumstances relied on by learned Trial Court is without any basis and those circumstances are held to have been proved by the trial court on the basis of surmises and conjectures. It is further submitted by learned Counsel for the appellant that there being no matching of the hair found in the right fist of the deceased and the sample hair collected from the appellant, it cannot possibly be held that the appellant was the perpetrator of the crime.

Mr. Das, learned Counsel for the State on the other hand support the impugned judgment and submits that there being no infirmity in the impugned judgement the appeal be dismissed.

8. We have anxiously heard learned Counsel for the parties at length, we have perused the evidence of the witnesses between the lines and have given our anxious thought to the submissions advanced by learned Counsel for the parties.
9. The first circumstance relied on by learned Trial Court is to the effect that there was strained relationship between the appellant and the deceased. Except P.W. 9 and P.W. 10 who have deposed for the first time in Court, no witness has testified to the effect that there was strained relationship between the appellant and the deceased. No co-villagers of the appellant, i.e., P.W.s 2, 3 or 4 as whispered a word to the effect that there was strained relationship between the appellant and the deceased. Rather P.W. 2 has testified that the appellant's

mother is very old and she works in Kolkata as a maidservant. Further he has testified that the appellant is a daily labourer and goes out for his job. There is some whisper about illicit relationship of deceased with some other co-villagers before the incident though none had direct knowledge about such relationship. Neither P.W. 2 nor P.W. 4 who have testified about such fact had any direct knowledge about such illicit relationship of the deceased. P.W. 2 has candidly testified that appellant had not told to him about such illicit relationship between his wife and another person. From the sole testimony of P.W.s 9 and 10 who were chosen to be not examined by the I.O. during the investigation, it cannot conclusively be held that there was strained relationship between the appellant and the deceased specially when their marriage was for more than 15 years and their elder daughter was 12 to 13 years old and the appellant at no point of time had told any co-villager about the character of his deceased wife.

10. The second circumstance relied on by learned Trial Court is to be effect that appellant used to stay with the deceased in the same house where the dead body of the deceased was found. This circumstance is an admitted fact. The appellant, the deceased and their children were staying in the same house. The occurrence happened at about 11 a.m. in the morning. In the morning of the occurrence day, the appellant had gone to call P.W. 2 in his (P.W. 2's) absence in the house, for a 'salish' as his father-in-law had come. Thereafter, none has seen appellant in the village. There is no evidence to the effect that

the appellant was present in the scene of occurrence or he was seen in the village just prior to the occurrence or just after the occurrence. There is no evidence to the effect that P.W. 2 had seen him in the morning though he heard from his family members that appellant had come in the morning to invite P.W. 2 for a 'salish' in his house. A person who had taken steps for 'salish' in the morning cannot immediately take steps to murder his wife. When the incident happened in the day time there were also possibility on the part of the other persons to commit the offence in absence of the appellant in the house. Therefore, in absence of any positive and affirmative evidence regarding the presence of the appellant in the village just prior to the occurrence or at the time of occurrence or just after the occurrence, we are of the view that this circumstance has also not been proved.

11. Circumstance No. 3 is to the effect that the appellant was seen in that village and also requested P.W. 2, Rabin Sardar to attend the 'salish' as his (appellant's) father-in-law had arrived. We do not find any merit to consider this circumstance in view our discussion under circumstance No. 2. Suffice it to say that father of deceased was there in the village prior to the occurrence if evidence of P.W. 2 is to be believed. But there is nothing on record in the evidence of P.W. 2 to the effect that he has seen the appellant in village in the morning. Rather the entire evidence on record is silent about the presence of the appellant in the village just prior to the occurrence or at the scene of the occurrence or after the occurrence.

12. Circumstance No. 4 is to the effect that after the ghastly incident, appellant was not seen in the village and surrendered before the Court after 15 days of the incident. So far as this circumstance is concerned absconding as a fact alone cannot be held to be an incriminatory circumstance in absence of other circumstances to provide a link to such factum of absconding. A person out of fear or out of different apprehension may abscond from the scene even if he has not committed any offence so when the other circumstances as per discussion (Supra) have not been proved, this circumstance though admitted by the defence cannot be held to be an incriminatory circumstance against the appellant.
13. The 5th circumstance relied by learned Trial Court is to the effect that P.W. 5, the 'Black Smith' had identified this appellant as the person who had placed the order to manufacture one 'chhura'. This circumstance has no potency to stand on its own alone in as much as P.W. 5 has turned hostile and he had only testified that the present appellant had placed order for manufacture of a 'chhura' which may be of many use in a village life. The 'chhura' has not been identified by P.W. 5 as being one made by him and this being the nature of evidence this circumstance has no relevance so far as the present case is concerned.
14. Coming to the other evidence, the I.O. has testified that during inquest some strand of hairs were found in the right fist between the finger of the deceased. Those hairs were collected carefully and kept in clean sealed cover and were sent for bio-

logical examination along with sample hair of the appellant collected in presence of P.W. 12. Both the hairs were examined by the Senior Scientific Officer, P.W. 11 who has very emphatically testified that the hairs found in the right fist of the deceased between her fingers do not match with the sample hair of the appellant.

15. From the hair in the right fist of the deceased it is clear that when the perpetrator of crime or the actor has come to assault or has given the fatal assault, there has been defence attack by the deceased and she has caught hold of the tuft of hair of the assailant's head which in course of assault has come to the hand of the deceased. The hair found in the hand of the deceased is the hair of that person who had committed the offence. But ironically here, the hair found in the right fist of the deceased do not match with the sample hair collected from the appellant. This fact alone negative the role of the appellant in the alleged crime.
16. Regard being had to our discussion (Supra), we are constrained to hold that the prosecution has failed to prove the charge against the appellant beyond reasonable doubt and the appellant is entitled to be acquitted.
17. Accordingly the impugned judgement of conviction and order of sentence passed by learned Additional Sessions Judge, Fast Track Court, Diamond Harbour, South 24 Parganas in S.T. Case No. 6 (10) of 2001/S.C. Case No. 7 (6) of 1999 convicting the appellant under Section 302 IPC and sentencing him thereunder are set aside. The appellant is acquitted of the

charge.

18. The appellant being stated to be on bail he be discharged of the bail bond.
19. Accordingly, the appeal being **CRA 267 of 2002** is allowed.
20. Let a copy of this judgment along with LCR be sent down to the trial court forthwith.
21. Urgent certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)