

**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. 342 of 2015

Kalipada Giri

Versus

The State of West Bengal

For the appellant (Legal Aid) : Mr. Navanil De, Adv.

For the State : Ms. Zareen N Khan, Adv.
Ms. Trina Mitra, Adv.

Heard on : 02.01.2023

Judgment on : 25.01.2023

Ajay Kumar Gupta, J:

1. This instant appeal has been filed against the judgment and order dated 16.04.2015 and 17.04.2015 passed by the Additional Sessions Judge, 1st

Court, Contai in Sessions Trial No. II/February/2009 whereby convicting the appellant under Section 302/324 of the Indian Penal Code and sentenced the appellant to undergo rigorous imprisonment for life and pay a fine of Rs. 5,000/-, in default, to suffer simple imprisonment for a further term of 6 months for the offence punishable under Section 302 of the Indian Penal Code and also sentenced to suffer rigorous imprisonment for a period of two years and shall pay a fine of Rs. 2000/-, in default, to suffer simple imprisonment for a further period of three months for committing the offence punishable under Section 324 of the Indian Penal Code. Sentence under all counts shall run concurrently.

2. Sans unnecessary details, the prosecution case is that the marriage between the appellant Kalipada Giri and Mithu Giri, daughter of Asit Giri was solemnized 6 years ago from the date of incident. After marriage there was a quarrel between the couple over domestic chores. Kalipada used to abuse his wife and torture both mentally and physically upon her and for that several occasions village Salish meeting were held. On 18.10.2007 at about 5.30 a.m. a brawl cropped up between the appellant and his wife. Hearing the cries of appellant's wife Mithu and his child Suman, Basanti Giri rushed to the house of the appellant with her grand-child in her lap. Having seen Basanti, the appellant attacked and assaulted both Basanti and her grand-child by a sharp cutting instrument called 'hansua' (which is generally used for cutting green coconuts). Kajal Jana, her husband Himangshu Jana, Bhola and Panchu also

rushed to the house of the appellant to rescue them after hearing the hue and cry of Basanti but the appellant also attacked and assaulted them with the said hansua. It was found appellant's wife Mithu, his child Suman, Kajal, Himangshu, Bhola, Panchu, Basanti were lying there in the house in severe bleeding injuries. Appellant's wife Mithu and appellant's son Suman found died in the place of occurrence due to stabbing them by hansua by the appellant. Basanti was admitted to Darua hospital but other victims were referred to Kolkata for better treatment. Appellant has consumed poison after the incident. One Nilkantha Giri lodged a written complaint on such incident before the Officer-in-Charge of Contai Police Station in resulting Contai Police Station Case No. 206/2007 dated 18.10.2007 under Section 326/307/302/309 of the Indian Penal Code was registered.

3. The said case was entrusted to the investigating officer to cause investigation who investigated the case and finally completion of investigation submitted charge sheet against the appellant under Section 302/324/307/309 of the Indian Penal Code.

4. Charge was framed under Section 302/324/307/309 of the I.P.C. against the appellant, who was pleaded not guilty and claimed to be tried. In order to prove the case, prosecution examined 27 witnesses and exhibited number of documents as Exhibits 1 to 20.

5. Defence of the appellant was that he is innocence and false implication. During questioning by the Court under Section 313 of the Cr.P.C., he admitted he had murdered his wife and son and assaulted other relatives.

6. After appreciation of the oral evidence and considering the admission by the appellant during examination under Section 313 of the Cr.P.C, the Trial Judge, by impugned judgment and order, convicted and sentenced the appellant as mentioned above.

7. Learned counsel, appearing on behalf of the appellant, submitted that the appellant is innocent and he has been falsely implicated into this case. Actually he was suffering from mental disorder at the time of alleged offence. It is the case of the prosecution also that on the date of incident he tried to kill himself by having poison, thus it was in all probability that he was not mentally fit on the date of incident. It is true that his wife and his minor son died in the said incident but he is totally innocent. No father can kill his own wife and minor child on small domestic issue. There was also no motive to kill them. Prosecution failed to prove case beyond reasonable doubt that the appellant had killed his own wife and son. Therefore, he may be acquitted from this case.

8. On the contrary, learned counsel, appearing on behalf of the State submitted that appellant took plea of insanity and sought exoneration from the

liability of an act under Section 84 of Indian Penal Code though he is not entitled. Every person suffering from mental disease is not ipso facto exempted from criminal liability. Onus was on the appellant to prove by way of expert evidence that he is suffering from such mental disorder or condition that could be expected to be aware of consequences of his act, or that he is doing what is either wrong or contrary to law, failure of which only proves that such plea was only an excuse to find any way to escape from the clutches of justice.

9. He further submitted that appellant had murdered his wife as well as his minor son in addition he also tried to kill other relatives who came to the spot to rescue them from his clutches. He assaulted by a handsua on the vital parts of the body of relatives causing bleeding injuries, who were treated extensively in the hospital. They have proved the case beyond reasonable doubt with cogent and reliable evidence. Some of the witnesses had seen the incident and narrated the facts in toto without any inconsistency. Therefore, the learned Trial Court rightly declared him guilty and convicted the appellant. There is no infirmity in the judgment and order dated 16.04.2015 and 17.04.2015. Therefore, the present appeal is required to be dismissed.

10. At the very outset, I would like to say on perusal of the entire evidence meticulously it reveals out of those 27 witnesses, P.W. 5 (Basanti Giri), P.W.6 (Nandadulal Giri), P.W. 9 (Kajal Giri), P.W. 13 (Smt. Kajal Jana), P.W. 22 (Himangshu Jana), P.W. 23 (Bholanath Giri) are the injured persons and vital

witnesses. This is an unfortunate case where appellant is convicted for murder of his own wife and his minor son and had assaulted with dangerous weapon to other relatives in the same incident in his residence on 18.10.2007.

11. P.W. 1 is the complainant and cousin of the appellant narrated that in the morning at 5.30 a.m. on 18.10.2007 there was a quarrel between the appellant and his wife Mithu. His house is adjacent to the house of the appellant so he could hear noise from his bed. After few minutes he heard loud cries raised by the appellant's wife Mithu and child Suman. His mother Basanti also heard the alarms and cries. So, she rushed to the house of the appellant with her grand-child in her lap. Having seen his mother, the appellant attacked and assaulted both his mother and his son by a sharp instrument called hansua. Hearing the hue and cry of his mother, his sister Kajal and her husband Himangshu also rushed to the house of the appellant. The appellant assaulted on the arm of Himangshu and on the head of Kajal with the same weapon. His nephew Bhola and Panchu aged about 7 years and 8 years and one of his cousin's sister, Kajal Giri also went to the house of the appellant but the appellant also attacked and assaulted all of them with the same weapon. When he reached in the house of the appellant found appellant's wife Mithu, appellant's child Suman, his mother Basanti and his son, his sister's husband Himangshu, his sister Kajal, nephews Bhola and Panchu and cousin's sister Kajal Giri were lying seriously injured condition. He along with other villagers including Goutam Manna took seven injured persons to Contai S.D. hospital.

Appellant's wife Mithu and the appellant's son Suman had been taken to hospital by some of the villagers and they were declared dead in the hospital. His mother Basanti was admitted in Darua hospital while six others had been referred to S.S.K.M. hospital, Kolkata. Police came to his house at about 1.00/1.30 p.m. where he narrated the entire incidence to the police.

12. P.W. 5, Basanti Giri is the relative of appellant. She deposed having heard an alarm raised by Mithu 'Bancho Bancho' she rushed to the house of the appellant with her grandson Suman in her lap. She pushed the door and found the appellant's wife and son lying seriously injured condition and the appellant trying to come out of his room with an instrument used for cutting green coconuts. Having seen her, the appellant assaulted on the left side of her neck and shoulder by that weapon. The appellant also assaulted her grandson Suman with the same instrument. She fell down due to such sudden assault. She was taken to Contai S.D. hospital. Her grandson was also taken to the same hospital.

13. P.W. 6 was a minor son of complainant, whose name is coincidentally same as name of the son of the appellant. The Learned Court below put some questions to ascertain his intelligence and competency before examination. He found he was well enough to understand and competent witness after observing all relevant answers given by him. P.W. 6 deposed when he went there the appellant assaulted him by hansua on his right hand, neck and head.

He also saw assaulting by appellant to his grandmother, Basant Giri, brother Bholanath, his father's sister Kajal Giri, his brother Suman Giri, his father Nilkantha Giri, his father's another sister Kajal Jana and her husband Himangshu Jana by the same weapon.

14. P.W. 9, Kajal Giri another victim narrated the incident that she heard an alarm raised by appellant's wife Mithu. She rushed to the house of the appellant after Basanti. When she reached the spot the appellant assaulted her by the weapon by which he assaulted others. The appellant assaulted on her lip, right cheek, left hand, right palm, left palm, right arm, throat and left side of her head. The appellant had given all those blows to kill her. She became unconscious due to the aforesaid assaults. She was treated at Contai S.D. hospital. She was treated also at Kolkata.

15. P.W. 13, Smt. Kajal Jana deposed hearing the shouting of Mithu and Suman at about 5 a.m. her mother Basanti Giri, her brother's son Suman Giri, herself, her husband Himangshu Jana, her Jethamasai Gopal's daughter Kajal Giri, Nandadulal and Bholanath went to the house of the appellant. When they entered the house of the appellant he assaulted them with a cutter. They sustained bleeding injuries. She could not say what happened thereafter. She was assaulted on her head and on the back with that sharp cutting weapon. All the injured were brought to Contai Darua Hospital. Thereafter all the injured

were shifted to Kolkata P.G. hospital. Bholanath, Kajal Giri and herself were shifted to Nil Ratan Hospital for treatment.

16. P.W. 22, Himangshu Jana is another injured deposed at about 5.00 a.m. in the morning of the incident hearing hue and cry in the house of the appellant Kalipada Giri, Basanti Giri, Suman Giri, Bholanath Giri, Kajal Giri, Nandadulal Giri, Kajal Jana and himself went there. On reaching there Kalipada assaulted all of them with a katari. He also sustained cut injury caused by the appellant by the said weapon.

17. P.W. 23, Bholanath Giri who also narrated the incident as similar as P.Ws. 5, 6, 9, 13 and 22. He deposed that hearing the noise of the children of Kalipada he went there. Some other persons namely, Kajal Giri, Kajal Jana, Nandadulal Giri, Basanti Giri, Suman Giri also came there. Appellant assaulted Kajal Giri, Kajal Jana, Nandadulal and Basanti. He was also assaulted by him. He sustained injury on his left side of throat. He was taken to Darua Hospital. From there he was referred to N.R.S. Hospital for further treatment. On return after treatment, he came to know that after assaulting them Kalipada also tried to kill himself by having poison.

18. P.W. 4, Sankar Mondal, member of the Panchayat of village Dholmari deposed the incident took place on 18.10.2007 in the morning in the house of the appellant. On the day of the incident, having heard a hue and cry and

having seen the villagers moving towards the appellant's house, he had also gone to the appellant's house and after reaching there he found the appellant having been confined in his house by the villagers. The dead-bodies of the appellant's wife and son and the other injured persons in the incident had been shifted to the hospital prior to his arrival there. He also stated Kalipada killed his wife and son by an instrument for cutting green coconuts.

19. P.Ws. 8, 12, 14, 15, 16 and 17 deposed in the similar manner that on 18.10.2007 the appellant killed his wife and son by an instrument for cutting green-coconuts and sugarcane and they were declared dead in the hospital. At the same time the appellant attacked and assaulted Basanti Giri, Jethima of the appellant and also the child who was in her lap namely, Suman. The appellant also assaulted Nandadulal Giri, Kajal Giri, Kajal Jana, and his son Bholanath by hansua.

20. P.W. 11, Kanishka Maity deposed he accompanied the police to Contai S.D. Hospital morgue and took up twelve photographs of two dead-bodies lying there on 18.10.2007. Photographs with negatives are marked as Exhibit 13 series.

21. P.W. 18, Sanjoy Sribastava deposed that on 18.10.2007 he was posted as S.I. of Police at Contai Police Station. On that day he received one written complaint from one Nilkantha Giri, Son of Adhar Chandra Giri of village

Dholmari under P.S. Contai and started Contai P.S. Case No. 206/2007 dated 18.10.2007 u/s 326/307/302/309 of I.P.C. He made endorsement on the written complaint to that effect. The endorsement with signature is marked as Ext. 1/1. He filled in the formal F.I.R. The formal F.I.R. is marked as Ext. 14 and the signature is marked as Ext. 14/1. I/C of the P.S. endorsed the case to S.I. Shyamal Kumar Das for investigation.

22. P.W. 19, Dulal Ghorai deposed he is a dome by profession. One dead-body was taken for post mortem examination on 18.10.2007. Two seizure lists (carbon copies) are shown to the witness and the witness said that these two seizure lists bear his signatures in respect of wearing apparels of the dead body which was taken for post mortem examination. Signature of the witness in the carbon copies of said two seizure lists dated 18.10.2007 is marked as Exhibits 15/1 and 16/1.

23. P.W. 20, Sibsankar Mondal deposed the written complaint was written in his hand-writing and this written complaint also bears his signature as scribed of the complaint. It was read over and explained to the complainant. The signature of the witness is marked as Ext. ½.

24. P.W. 21, Atasi Giri deposed on the date of incident hearing the noise in the house of Kalipada, her sasuri, Basanti Giri went to the house of Kalipada having her two years child Suman Giri in her lap. Thereafter, her nanad Kajal Jana, Himangshu Jana, Bholanath Giri and Nandadulal Giri went there. When

she went at the house of the appellant, she found all of them suffered cut injuries caused by the appellant. Appellant also consumed poison. The injured were taken to hospital and thereafter to Kolkata.

25. P.W. 24, Arun Kumar Pal, C/868, deposed he was posted at Contai P.S. as constable of Police on 18.10.2007. Carbon copy of the seizure lists dated 18.10.2007 was shown to the witness, who identified his signatures. The signatures are marked as Exhibits 15/2 and 16/2.

26. P.W. 25, Shyamal Kumar Das, deposed he was posted at Contai P.S. as S.I. of Police on 18.10.2007. One information was received at 6.25 hours on 18.10.2007 vide Contai P.S. G.D. Entry No. 903 dated 18.10.2007. On receipt of the said information, he accompanied by O.C. and other police force went to Dholmari village. They reached there at about 7.30 hours and came to know that one Kalipada Giri has killed his wife and child and also caused injury to some other persons. On enquiry from some people they came to know that a quarrel had taken place between Kalipada and his wife and dashing and pushing had taken place and over that issue Kalipada assaulted his wife and his son by a sharp cutting weapon and when heard the cry of his wife and his son, people came there. They were also assaulted by Kalipada Giri.

On that day at about 11.40 hours he got further information from the hospital that one U.D. Case has been registered in respect of the death of two

persons vide Contai P.S. U.D. Case No. 168 of 2007 dated 18.10.2007 and he was asked to take up investigation of this case.

He held inquest over the dead bodies of the two persons separately. He also took photographs of the deceased. He met Emergency Medical Officer as he wanted to know about the information of Kalipada Giri but the doctor stated that at that stage he could not be interrogated. Thereafter, he returned to Dholmari village, visited the place of occurrence, prepared rough sketch map with index. The rough sketch map is marked as Ext. 17 and the index is marked as Ext. 17(a). He seized some materials from the place of occurrence and prepared seizure list in presence of the witnesses. Thereafter, he examined some witnesses and recorded their statements under Section 161 of Cr.P.C.

On 19.10.2007 at 8.30 hours he went to Contai S.D. Hospital and after taking permission from the doctor he examined Basanti Giri. He also examined appellant Kalipada Giri and arrested. He seized the 'daw' as per leading statement of the appellant Kalipada Giri from his house. 'Daw' was used by the appellant for causing offence. The seizure list dated 19.10.2007 in respect of seizure of the offending weapon used by the appellant is marked as Ext. 5/3. On 20.10.2007 learned Court was intimated about the arrest of Kalipada.

27. P.W. 26, Devi Prasad Nandi deposed on 18.10.2007 he was posted at Contai S.D. Hospital as Medical Officer, Gynaecologist. On that day he held

post mortem examination over the dead body of Mithu Giri, aged about 26 years, wife of Kalipada Giri and prepared report in his hand writing with signature. The Post Mortem Report is marked as Ext. 19. He opined death was due to haemorrhagic shock due to sharp cut injury of liver which is ante mortem and homicidal in nature. On that day he also held Post Mortem Examination over the dead-body of Suman Giri, aged about 6 years, son of Kalipada Giri and opined death was due to cardio respiratory failure in a case of caroted artery (haemorrhagic shock) due to sharp cut injury which is homicidal in nature.

28. After thorough scanning of evidence of the prosecution witnesses, it reveals that the appellant murdered his wife and his son, namely, Mithu Giri and Suman Giri at his residence on 18.10.2007 at about 5 to 5.30 a.m. and also assaulted other relatives when they rushed to his residence after hearing the hue and cry of Mithu Giri and Suman Giri. The appellant also assaulted all of them with the same weapon, which was used to kill his wife and minor son. All injured witnesses corroborated the prosecution case of murder and assault without any contradiction. All of them stated about the date, time and place of assault in similar manner without any inconsistency. Apart from the injured persons, other post-occurrence witnesses also corroborated the prosecution case.

29. I find the prosecution has brought home the charges without any reasonable doubt with cogent and reliable evidence. The present case is totally based on direct evidence. Here two persons were murdered, one is wife and another is minor son of the appellant due to haemorrhagic shock due to sharp cut injury and due to cardio respiratory failure in a case of caroted artery (haemorrhagic shock) which is ante-mortem and homicidal in nature. Seven other relatives of the appellant suffered cut injuries due to assault by the appellant by hansua. It was corroborated by the medical evidence, i.e. P.W. 10 and P.W. 27.

30. P.W. 27 clearly stated that on 18.10.2007 he was attached to the Contai S.D. Hospital. On that day the patients namely, Bholanath Giri, Suman Giri, Himangshu Jana, Kajal Jana, Basanti Giri, Kajal Giri and Nandadulal Giri were admitted at Contai S.D. Hospital under his supervision. All the patients were admitted in Contai S.D. Hospital in injured condition. He gave the basic primary treatment to the patients. He proved the treatment sheets and endorsements and his endorsement on the bed head tickets are marked as Ext. 20 series collectively.

31. P.W. 10, Dr. Asim Kumar Halder stated he examined all the witnesses. He also proved the injury report of Bholanath Giri (marked as Exhibit 6), Suman Giri (marked as Exhibit 7), Himangshu Jana (marked as Exhibit 8), Kajal Jana (marked as Exhibit 9), Basanti Giri (marked as Exhibit 10), Kajal

Giri (marked as Exhibit 11), Nandadulal Giri (marked as Exhibit 12) and also identified the Bed Head Tickets of injured persons which were prepared by his own handwriting marked as Exhibits 6/1, 7/1, 8/1, 9/1, 10/1, 11/1 and 12/1. From the said Exhibits it appears that Bholanath Giri and other injured persons were admitted in the Contai S.D. Hospital which was caused by a sharp weapon Katari/Hasua. They deposed they reached the residence of the appellant at the time of incident and saw the appellant assaulting victims. All the witnesses suffered cut injuries caused by the appellant when they were trying to rescue the victims.

The post mortem reports of Mithu Giri and Suman Giri itself show that both the deaths were due to haemorrhagic shock due to sharp cut injury and due to cardio respiratory failure in a case of caroted artery (haemorrhagic shock) which are ante-mortem and homicidal in nature. So there was no room for casting any doubt regarding the prosecution case that the victims were murdered by the appellant by the weapon, which was seized by the prosecution on his leading statement of the appellant from his house. Seizure witnesses i.e. P.Ws. 2, 3 and 7 also corroborated that they found Kalipada's wife and son lying dead inside his house at about 8.00/8.30 a.m. on 18.10.2007. Police took away the dead body. Appellant had killed his wife and son. They further stated police seized some blood-stained earth, napkin and other articles. Police also seized offending weapon on the following day in their presence from the room of the appellant. They also identified their signatures appearing on the seizure

lists marked as Exhibit Nos. 4, 4/1, 4/2, 5, 5/1 and 5/2 respectively. Barring aforesaid facts, the appellant himself admitted the facts that he killed his wife and his son on the fateful date with a sharp object during his examination under Section 313 Cr.P.C. in question no. 29. He further admitted in question no. 15 that the Hasua was seized on the basis of his statement given. All though he completely overturned his claim that somebody else killed his son in question no. 50 which is totally irrelevant when he himself admitted in question no. 29 that on the fateful date he murdered his wife and son by using weapon hansua which was seized as per his leading statement and all injured persons corroborated the facts of murder by him. He also admitted in question nos. 33, 34, 35, 36, 37, 38 and 39 that Bholanath Giri, Himangshu Jana, Suman Giri, Kajal Jana, Basanti Giri, Kajal Giri and Nandadulal Giri suffered multiple wounds in their persons and they have been treated at Contai S.D. Hospital.

Plea of appellant's suffering from mental disease was taken first time at the stage of trial before the trial Court by the defence without supporting medical documents. No medical document also brought on record to show that he was suffering from mental disease. Onus is totally on the defence to prove by way of expert evidence that he was suffering from mental disorder. Unless he discharges this onus by adducing medical evidence, the Court cannot suo motu declare him in sane. A plea of insanity does not ipso facto exempt an accused from criminal liability. The plea, taken by the defence in the present

case, is only to find a way to escape from the clutches of law as the case is wholly proved through direct evidence. Upon careful perusal of lower Court record, I find that the defence merely raised the plea of mental disorder during trial. Trial Court without any delay referred the matter to a Medical Board to examine his mental condition and ascertain whether he is able to make out his defence. Once the Medical Board declared him fit for trial on 10.05.2011, trial was conducted. The aforesaid materials do not establish that the appellant was mentally ill when he committed the offence. On the other hand, it appears from the report of Medical Board that the appellant had suspicious about the wife's character which gives motive to commit the crime. Consequently, plea taken by the defence that he was suffering from mental disorder at the time of incident is not sustainable.

It appears from the version of some witnesses that the appellant had consumed poison after the incident to commit suicide but I do not find any cogent and reliable medical evidence to probabalise such plea. So from all angles, there is no room to doubt that the appellant committed the crime and was fully capable of understanding the consequences of his heinous act.

32. In the light of the aforesaid discussion and findings, I hold prosecution case against the appellant has been proved beyond reasonable doubt. Conviction and sentence of the appellant is upheld.

33. Appeal is, thus, dismissed.

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

35. Lower Court records along with copy of this judgment are to be sent down at once to the learned Trial Court as well as the Superintendent of Correctional Home for necessary compliance.

36. Photostat certified copy of this judgment, if applied for, is to be given to the parties on priority basis on compliance of all formalities.

I Agree.

(Joymalya Bagchi, J)

(Ajay Kumar Gupta, J)

P. Adak (P.A.)