

**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

CRA 465 of 2015

Ajitesh Mandal

-Vs-

State of West Bengal

For the Appellants : Mr. Swapan Kumar Mallick, Adv.
Mr. Ajay Gupta, Adv.
Ms. Sudeshna Das, Adv.

For the State : Mr. Swapan Banerjee, Id. SGA,
Ms. Purnima Ghosh, Adv.

Heard on : 15th March, 2023.

Judgment on : 15th March, 2023.

Joymalya Bagchi, J. :-

1. This is a case of parricide. In the morning of 28.02.2013 appellant bolted the door of the kitchen and brutally assaulted his parents on the head with a cricket bat. As a result, both of them died immediately. Blood was seen flowing out underneath the door. Matter was reported to the police. The door was broken open. The dead bodies were recovered and the appellant was arrested. Written complaint

lodged by Amitesh Mandal, elder brother of the appellant, resulted in registration of Kaliaganj P.S. Case No. 49 of 2013 dated 28.02.2013 under Section 302 of the Indian Penal Code.

2. In conclusion of investigation, charge sheet was filed and case was committed to Court of Sessions. Charge was framed under Section 302 of the Indian Penal Code.

3. During trial, appellant pleaded that he was suffering from insanity. On his prayer, medical report was called for from the Superintendent, Raiganj Correctional Home. Appellant examined the medical officer and psychiatrist who had treated him as defence witnesses, i.e., DWs 1 and 2. On the other hand, prosecution examined 13 witnesses.

4. On an assessment of the evidence on record, trial judge by the impugned judgment and order dated 22.05.2015 and 25.05.2015 convicted the appellant for commission of offence punishable under Section 302 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for life and pay a fine of Rs.10,000/-.

5. Mr. Swapan Kumar Mallick, learned Advocate for the appellant submitted the conduct of the appellant before, during and after the incident shows he was insane and was not aware of the consequences of his act. He had no motive to commit the crime. On the fateful day, in a fit of insanity he committed the murder. He remained inside the room till the police arrived. He did not make any effort to run away.

Prosecution witnesses deposed he was suffering from insanity. DW2 noted appellant complained of sleeplessness and insanity.

6. In the light of the aforesaid submissions with regard to mental health of the appellant, this Court by order dated 4th January, 2023 directed the Director of Health Services to constitute a medical board comprising eminent psychiatrists to evaluate:-

(i) Present psychiatric status of the appellant and

(ii) Whether appellant had history of mental illness and if so of what magnitude.

7. Pursuant to such direction, reports of the Psychiatrists have been placed on record. In the report it is noted that the patient claimed that he did not have mental capacity to commit the crime and his memory about crime revived after he was punished. However, upon a clinical assessment, the psychiatrist opined at present no gross psychopathology could be detected.

8. Senior Government Advocate argued that the defence has not been able to make out a case of legal insanity which falls within the exception under Section 84 of the Indian Penal Code. On the other hand, evidence on record unequivocally shows that the appellant was present inside the room where his parents had been murdered. He did not give any explanation with regard to their homicidal death. Hence, appeal is liable to be dismissed.

9. I have examined the evidence on record in the light of the rival submissions at the Bar.

10. Amitesh Mondal (PW1) is the son of the deceaseds and the elder brother of the appellant. He is the de-facto complainant. He deposed on 29.02.2013 he received a phone call and immediately rushed to his residence. He found local people had assembled at the spot. Police was also present. They broke the door of the kitchen. Bodies of his parents were lying inside the kitchen. Police prepared inquest. He signed on the inquest report. He also signed on the written complaint which was scribed by PW5. He was declared hostile.

11. Sashimohan Debsarma (PW2) is a neighbour. He received a phone call and came to the house of Amal Mondal. He saw television switched on in one of the rooms. Kitchen door was bolted from inside. Police opened the door and recovered the bodies of Amal Mandal and his wife. Appellant was present in the kitchen. He signed on the seizure list.

12. Bimal Mondal (PW4) is the brother of the deceased Amal. He deposed Amal and his wife were staying with their younger son i.e. the appellant in the house. He also deposed that Amal and his wife Chhabi Mandal expired on 28.02.2013. Due to poor eye sight, he was unable to identify the appellant in Court.

13. Kumud Debsarma (PW6) is a member of Panchayet Samity. He deposed he arrived at the spot at 09.00 AM. Police was already there. He signed on the inquest report. In cross-examination, he stated that he heard appellant was a mad person.

14. Dharitri Mondal (PW8) is the brother-in-law of the appellant. He is a post occurrence witness. He deposed on arriving at the spot he saw the dead bodies in the courtyard. Police arrested his brother-in-law i.e. the appellant. He was declared hostile. In cross-examination, he stated that his brother-in-law was insane. He also stated that he did not see his brother-in-law at the spot.

15. Protibha Rani Das (Mondal) (PW9) is the daughter of the deceaseds and sister of the appellant. She was also declared hostile. She stated that the appellant was insane and his father had taken him to Berhampore for treatment. When she reached her parents' house, she found their dead bodies lying in the courtyard.

16. PW (Dr. Tapas Ranjan Biswas) is the post mortem doctor who held post mortem over the body of the deceased Amal Mandal. He found the following injuries:-

- a. *lacerated wound on the left side of the head 3" x 2" x brain laceration;*
- b. *by lacerated injury on right little finger almost separated;*
- c. *lacerated injury on right middle finger.*

He also conducted post mortem over the body of deceased Chhabi Rani Mondal. He found the following injuries:-

- a. *lacerated injury on forehead (middle) 3" x 1" x bone deep;*
- b. *another lacerated injury on left side of forehead 1" x 1/2" x bone fracture;*
- c. *lacerated injury on right side of forehead 1" x 1/2" x bone deep x 1" above the right eye brow. lacerated injury on brain matters and meanings under the fracture bone seen.*

He opined death was due to shock arising from injuries which were homicidal in nature. Injuries were caused by a blunt weapon. He proved the post mortem reports.

17. PW10 (Sudhir Chandra Barman) is a home guard attached to Kaliaganj PS. He deposed on 28.2.2013 they received information that a boy had killed his parents. He came to the spot with other police officers. They found a boy was standing in the kitchen with a cricket bat in his hand. Dead bodies of his parents were lying in the kitchen. The boy was arrested. Cricket bat, blood-stained earth wearing apparels etc. were seized. He signed on the seizure list. Dead bodies were sent for post mortem examination.

18. PW13 (Dilip Kr. Paul) is an officer attached to Kaliaganj PS. He produced the General Diary Book (Ext 2). Relevant entries in the GD book were marked as Ext 16.

19. PW11 (Shyamal Chatterjee) is the investigating officer. He deposed on 28.2.2013 an information was received over telephone that blood was coming out from a closed room in a house. He along with IC Kaliaganj and other police went to the spot. He found that elder brother was not in the house. He informed the BDO, Kaliaganj (PW3) and the Pradhan. In their presence he broke the door. He found dead bodies of Amal and his wife Chhabi were lying in a pool of blood. Appellant was standing in the room with blood-stained cricket bat in his hand. He

admitted he had killed his parents. He was arrested. Inquest reports were prepared. Cricket bat, wicket, wearing apparels, blood stained earth were seized. PW1 lodged written complaint. Formal FIR was drawn up. Rough sketch map was prepared. In conclusion of investigation, charge sheet was filed.

20. From the evidence on record it transpires in the morning of 28.02.2013 police attached to Kaliaganj Police Station had received information that blood was coming out from a closed room in a house. The fact was diarised. GD book containing the said diary entry was exhibited as Ext.16. PW11 and other police officers went out of the police station to work out the information. They came to the spot and found the kitchen room in the house of Amal Mondal was bolted from inside. In presence of BDO (PW3) the room was opened and bodies of Amal Mondal and his wife Chhabi Mondal were found inside the room. Appellant was standing in the room with a bloodstained cricket bat. Appellant was arrested. Cricket bat, wicket, gloves and bloodstained earth were seized from the place of occurrence Post mortem was conducted by PW12. He found lacerated injuries on bodies of the victims. He opined both the victims had died due to shock arising out of haemorrhage and injuries which were homicidal. Injuries could have been caused by a hard blunt substance.

21. The aforesaid evidence on record has remained unchallenged and proves beyond doubt that in the morning of 28.02.2023 Amal

Mondal and his wife Chhabi Rani Mondal were brutally murdered by dealing blows on their heads with a cricket bat. The place of occurrence was inside the kitchen which was bolted from inside. Upon the room being opened, appellant was found inside the room with the dead bodies. Weapon of offence i.e. cricket bat was recovered from his possession. During trial no explanation was given by the appellant with regard to the circumstances in which his parents had suffered homicidal death inside the room where he was present. These circumstances establish beyond doubt that the appellant had dealt fatal blows on the head of his parents resulting in their brutal end.

22. It is, however, contended that the appellant was insane and the case fell within the exception engrafted under Section 84 of the Indian Penal Code.

23. Section 84 of the Indian Penal Code reads as follows:-

“84. Act of a person of unsound mind.- Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.”

24. In order to avail the aforesaid exception, it is incumbent on the part of the defence to show that the accused at the time of commission of the offence was suffering from unsoundness of mind i.e. insanity of such nature that he was incapable of knowing the nature of the act or that act was either wrong or contrary to law. The burden to prove the

aforesaid requirement lies on the defence. In **Dahyabhai Chhaganbhai**

Vs. State of Gujrat¹ the Apex Court held as follows:-

“7. The doctrine of burden of proof in the context of the plea of insanity may be stated in the following propositions : (1) The prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea, and the burden of proving that always rests on the prosecution from the beginning to the end of the trial. (2) There is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by Section 84 of the Indian Penal Code : the accused may rebut it by placing before the court all the relevant evidence oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings. (3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court by the accused or by the prosecution may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged.”

25. The Court further held:-

“9. ... The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed. Whether the accused was in such a state of mind as to be entitled to the benefit of Section 84 of the Indian Penal Code can only be established from the circumstances which preceded, attended and followed the crime.”

26. Applying the aforesaid ratio to the facts of the case, let me examine whether the appellant has been able to discharge the onus regarding the plea of insanity.

27. Mr. Mallick referred to the cross-examination of PWs 4, 6, 8 and 9 in support of the plea that the appellant was insane. He has also referred to the evidence of DWs 1 and 2, the medical officer and

¹ 1964 (7) SCR 361

psychiatrist who assessed the mental health of the appellant during trial.

28. I have analysed the said pieces of evidence. Both PWs 4 and 6 are hearsay witnesses with regard to the mental health of the appellant. They claimed that they heard the appellant was insane. Though PW8, brother-in-law and PW9, his sister claimed appellant was insane and had been medically treated, no document with regard to his treatment has been placed on record. PWs. 8 and 9 have been declared hostile and were confronted with their earlier statements before police. During their interrogation by police, the said witnesses did not whisper anything with regard to the mental illness of the appellant. This shows that the plea of insanity by PWs 8 and 9 was a belated and desperate one raised during trial to protect the appellant from legal punishment. Plea of insanity was raised on behalf of the appellant during trial.

29. To prove the plea of insanity, defence examined two medical witnesses. DW1 and DW2 are the medical personnel who had treated the appellant. DW1 stated that the appellant was under his treatment at Raiganj District Correctional Home. He referred the patient to Raiganj District Hospital as per advice of Psychiatrist. He proved his report, Ext.A. I have examined Ext.A the document is a referral to Raiganj District Hospital for psychiatric assessment. DW2 is the psychiatrist who examined the appellant at Raiganj District Hospital. He deposed appellant complained of headache and sleeplessness. He prescribed medicines for such complaint. Report of the Superintendent,

Raiganj Correctional Home endorsing treatment sheet at Raiganj District Hospital endorses the aforesaid deposition.

30. Over all assessment of the medical evidence does not give an impression that the appellant was suffering from insanity of such nature which would affect his mental capacity to understand the nature of his act. I have also examined the attending circumstances regarding the behaviour of the appellant before, during and after the incident to assess the plea of legal insanity. It is contended that the appellant had no motive to commit the crime. He remained in the room where the incident occurred till the police arrived. He did not make any effort to run away. With regard to the lack of motive, it appears that the prosecution witnesses have deviated from their earlier statements. PW11, Investigating Officer claimed Amitesh Mondal (PW1), brother of the appellant had told him that the latter demanded money from his parents and when such demand could not be fulfilled he entered into a brawl and committed murder. But in Court PW1 resiled from the earlier statement and remained mum. Hence, the motive could not be proved. Conduct of the appellant to bolt the door from inside before commission of the offence indicates prior preparation with regard to the crime. Had he committed the act during a bout of insanity, the door of the kitchen would not have been bolted from inside. Mere lack of motive or no effort to run away in the absence of convincing medical evidence regarding mental ailment cannot invariably lead to the inference of unsoundness

of mind. Reference may be made to ***Sheralli Wali Mohammed vs. The State of Maharashtra***².

31. Reference in ***Devidas Loka Rathod vs. State of Maharashtra***³ is misconceived. In the said case prosecution had not disputed the prior medical history of the appellant. In that backdrop, the Apex Court held burden was cast on the prosecution to establish that the accused with a prior history of medical illness was conscious of the culpable act. No convincing evidence has been placed before the trial court or before this Court that the appellant was labouring from prior medical ailment or any medical illness during trial or thereafter.

32. On the other hand, he effectively defended himself and his response during examination under Section 313 of the Code of Criminal Procedure shows his conscious and active participation during trial. True, during his psychiatric assessment appellant claimed that he was mentally ill and was unaware of the incident till he was punished. This stance of the appellant appears to be a sham and is belied by the rational answers given by him during his examination under Section 313 of the Code of Criminal Procedure.

33. For the aforesaid reasons, I am constrained to hold that the plea of insanity taken by the appellant has not been established even on preponderance of probability.

34. Hence, the conviction and sentence of the appellant are upheld.

² (1973) 4 SCC 79 (para 14)

³ (2018) 7 SCC 718

35. Accordingly, appeal is dismissed.

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

37. Let a copy of this judgment along with the lower court records be forthwith sent down to the trial Court at once.

38. Photostat certified copy of this judgment, if applied for, shall be made available to the appellant within a week from the date of putting in the requisites.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)