

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. 2 of 2020

***Basar Sk. @ Basarul Sk. and another
versus
The State of West Bengal***

For the Appellants : Mr. Usof Ali Dewan,
Mr. Arup Sarkar,
Mr. Asif Dewan.

For the State : Mr. Ranabir Roy Chowdhury,
Mr. Mainak Gupta.

Heard On : 27.08.2024 & 03.09.2024.

Judgement On : 03.09.2024.

Tirthankar Ghosh, J. :

The present appeal has been preferred against the Judgment and Order of conviction and sentence dated 27.11.2019 and 28.11.2019 passed by the learned Additional Sessions Judge, 1st Fast Track Court, Jangipur, Murshidabad in connection with Sessions Trial No. 07(01)/2013 arising out of Sessions Case No. 391 of 2012, wherein the learned trial court was pleased to convict the appellants under Sections 323/34 and 306 of the IPC and sentenced them as follows:

- i) For the offence under Section 306 of the IPC, the accused Basar Sk. @ Basarul Sk. was sentenced to undergo R.I. for six years and fine

of Rs.1,000/- i.d., Rigorous Imprisonment for five months; and, accused Renu Bibi was sentenced to undergo Rigorous Imprisonment for four years and fine of Rs.500/- i.d., Rigorous Imprisonment for one month.

ii) For the offence under Section 323 of the IPC, accused Basar Sk. @ Basarul Sk. was sentenced to undergo Simple Imprisonment for six months and fine of Rs.200/- i.d., Simple Imprisonment for one month and accused Renu Bibi was sentenced to undergo simple imprisonment for one month and fine of Rs.100/-, i.d., simple imprisonment for 20 days.

In course of hearing of the appeal, it was brought to the notice of this Court that Basar Sk. @ Basarul Sk. expired at M.R. Bangur Hospital on 11.03.2020 and, as such, this Court by an order dated 27.08.2024 declared that his appeal (the appellant no.1 in this case) is abated because of his death. So, the present appeal is restricted to the appellant no.2 being Renu Bibi.

The genesis of the case relates to Sagardighi P.S. Case No.27 of 2007 dated 15.03.2007 which was registered for investigation under Sections 498A/302 of the Indian Penal Code against Basar Sk., Rehesan Sk. and Renu Bibi. During the course of trial, Rehesan Sk., the father-in-law expired so the trial court at the time of delivering of the judgment restricted its finding in respect of Basar Sk., the husband of the deceased and Renu Bibi, the mother-in-law of the deceased. As pointed out earlier that during the pendency of the

appeal, Basar Sk. also expired and, as such, this appeal is restricted to only Renu Bibi.

The letter of complaint was addressed to the Officer-in-Charge, Sagardighi P.S. by Ismail Sk., who complained that his daughter Saima Bibi was married about 8/9 years ago and being unable to bear the torture inflicted upon her by the accused persons, who are his son-in-law and his parents and as a result of physical torture she died. His daughter had two children aged about 4 years and 2 years and at one point of time she was enjoying her married life. However, the same all of a sudden changed and he came to know from reliable source that on 14.03.2007 in the morning when they had been to the house of the accused persons they found his daughter Saima Bibi lying dead with profuse bleeding through her ears and nose. The complainant therefore requested the police authorities to take action against the accused persons. Consequently, the present case was registered for investigation under Sections 498A/302 of the Indian Penal Code on 15.03.2007 and the Investigating Officer on being assigned with the investigation of the case visited the place of occurrence, examined the dead body of Saima Bibi, prepared surathal report in presence of the witnesses, sent the dead body for the post mortem examination, prepared draft sketch map of the place of occurrence with index, examined Hasina Khatun who was aged about seven years (the daughter of the deceased), examined other witnesses, recorded their statements under Section 161 of the Code of Criminal Procedure, seized the wearing apparels of the deceased by way of preparing seizure list, sent the

child/daughter of the deceased to the learned Magistrate for her statement to be recorded under Section 164 of the Code of Criminal Procedure and lastly collected the said statement, the viscera report, the post mortem report and on completion of investigation submitted charge-sheet against the FIR named accused persons.

The learned Magistrate on receipt of the charge-sheet took cognizance of the offence and was pleased to commit the case to the learned Additional Sessions Judge, Jangipur, Murshidabad. The learned trial court on perusal of the materials by an order dated 11th January, 2013 was pleased to frame charges against the accused persons under Sections 498A/302 IPC. The contents of the charges were read over to the accused persons to which they pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon 14 witnesses which included PW-1, complainant; PW-2, Hasina Khatun, daughter of the deceased; PW-3, Ohab Sk., co-villager; PW-4, Sk. Sadir Rahaman @ Rahamatulla, signatory to the inquest report; PW-5, Abdul Rakib, signatory to the inquest report; PW-6, Farida Bibi @ Faridan Bibi, a co-villager; PW-7, Firoz Sk., signatory to the inquest report; PW-8, Mahammad Nabiul Islam, the Investigating Officer of the case; PW-9, Faimuddin Sk., Homeguard of Sagardighi Police Station who was seizure list witness at the time of seizure of the wearing apparels of the deceased; PW-10, Tusar Kanti Hazra, Constable of Sagardighi Police Station who signed on dead body challan when it was taken

to Jangipur Hospital Morgue; PW-11, Bimal Biswas, SI of Police of Sagardighi Police Station who received the complaint and filled the formal FIR and on directions of the Officer-in-Charge, registered Sagardighi Police Station case No. 27/2007 dated 15.03.2007 under Sections 498A/302 of the Indian Penal Code; PW-12, Ranajit Bhattacharya, post mortem doctor; PW-13, Dr. Sobhandev Banerjee, Scientific Officer of State Forensic Science Laboratory; PW-14, Ananda Sk., scribe of the FIR.

The prosecution's case was mainly based on the evidence of few witnesses which included amongst others, the deposition of Hasina Khatun, who, at the relevant point of time was aged about seven years and the daughter of the deceased, who in her statement under Section 164 of the Code of Criminal Procedure referred to an incident of goat being fed by the deceased consequent to which the said goat died for which three FIR named accused persons throttled the deceased/victim which resulted in her death. In the same breath, the child stated before the Magistrate that her father threatened her not to disclose such incident to anybody or in the alternative, she will meet with the same fate as her mother.

In her deposition before the Court, the witness being PW2 stated that her father, grandfather and grandmother murdered her mother by throttling. The aforesaid evidence of Hasina Khatun, PW2 (the daughter of the deceased), is contrary to the medical records.

According to the doctor-P.W.12, there were certain external injuries on the body of the deceased which are as follows :

- “1. Sign of bleeding from nose and forth from angle of mouth,
2. Swelling over right eye brow (Haematoma)’
3. Bruise over right ear,
4. Bruise over anterior aspect of neck and
5. Bruise over left side of chest.”

Further PW 13 the Scientific Officer of the State Forensic Science Laboratory in his deposition before the court relating to his report opined that in the viscera of the deceased endosulfan (an insecticide which is poisonous in nature) was detected. Thus, from the medical examination of the two doctors it is seen that the victim was assaulted and poison was detected by the FSL. So it is the poison which is the cause of death and the injuries which were found on her body are the reasons which could have compelled the victim to consume poison. This fact is corroborated from the inquest report wherein it was recorded in the report of the investigation of the unnatural death that “her husband assaulted her last night, on having some drinks, as it is seen at late night at about 2 p.m. that Sayema Bibi is lying dead.” The cause of death in this case is thus attributed to the husband.

At the present stage we are concerned with the appeal of Renu Bibi.

Although there are general and omnibus allegations against all the members of the matrimonial home but the version of the child witness in this case cannot be relied upon in view of the inconsistency of her version and the same being contrary to the medical evidence.

On an assessment of the evidence the fact of involvement of the husband after consuming liquor and assaulting the victim is corroborated by the injuries in the post mortem report and the consumption of insecticide i.e., endosulfan, a kind of insecticide in the FSL report which do probabilise a case of committing suicide.

Thus, the abetment in this case, if any, can only be attributed to the husband in view of the assault being inflicted within a close proximity of time of the death of the victim. There are no materials available against the present appellant, Renu Bibi which can be of any assistance to hold that she was at all responsible for aiding and/or abetting in the cause of death of or for that purpose commission of suicide of Saima Bibi.

Consequently, I am of the opinion that the only eye witness being PW-2 cannot be relied upon. As such I am of the view that it would be unsafe to rely upon such evidence to hold the appellant guilty of abetment to commit suicide.

Accordingly, the judgement and order of conviction and sentence dated 27-11-2019 and 28-11-2019 passed by the learned Sessions Judge, 1st Fast

Track Court, Jangipur, Murshidabad in connection with Sessions Trial No. 07(01) of 2013 arising out of Sagardighi P. S. Case No. 27 of 2007 dated 15-03-2007 calls for interference and is set aside.

The appellant Renu Bibi is acquitted of the charges. The appellant, Renu Bibi is on bail and as such, she is discharged from the bail bonds.

Accordingly CRA 2 of 2020 is allowed.

Pending connected application, if any, is consequently disposed of.

Department is directed to send back the lower court records along with a copy of this judgment immediately to the learned trial court.

All concerned parties shall act on the server copy of this judgement duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this judgement, if applied for, be given to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)