

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

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

C.R.A. 489 of 2019

***Dhulo Sk. @ Dhulo Chand nee Piyada
-Vs-
The State of West Bengal***

For the Appellant : Mr. Arnab Chatterjee, Adv.
Mr. Kunal Kumar Mukherjee, Adv.
Ms. Dhanasree Biswas, Adv.
Ms. Poulami Bose, Adv.

For the State : Mr. Rana Mukhopadhyay, Id. A.P.P.

Heard on : 18.11.2024

Judgment on : 18.11.2024

Joymalya Bagchi, J. :-

1. Appeal is directed against judgment and order dated 02.07.2019 & 03.07.2019 passed by learned Additional Sessions Judge, 5th Court, Krishnagar, Nadia in Sessions Case No.371 (12) of 2018 (Sessions Trial No.VII (XII) of 2018) convicting the appellant for commission of offence punishable under Section 302 of the Indian Penal Code and sentencing

him to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for one year more.

Prosecution case:-

2. Prosecution case levelled against the appellant is as follows :

Appellant married Noorjahan Sk. @ Khatun in 1998 as per Muslim rites and customs. At the time of marriage, father of Noorjahan viz. Nur Nabi Sk. gifted various articles to his daughter. From the wedlock, three daughters were born to the couple. As Noorjahan had given birth to three daughters, appellant along with other in-laws demanded Rs.3,00,000/- from her father. The demand could not be met. One month prior to her death, Noorjahan came to the matrimonial home and conveyed to her parents the aforesaid demand. Her father assured he would pay the money within six months. Appellant had an illicit relationship with one Silpi Bibi, a co-villager. Noorjahan was subjected to mental and physical torture over the relationship.

3. On 15.02.2017 at 8:30 A.M. appellant in collusion with other in-laws hit Noorjahan with a wooden stick. The other accused had surrounded her. She became unconscious. She was initially shifted to Chapra Rural Hospital. As her condition worsened she was shifted to Shaktinagar Hospital where she was declared dead.

4. Her father viz. Nur Nabi Sk. (PW 1) lodged written complaint scribed by PW 5 resulting in registration of Chapra Police Station Case No.52 of

2017 dated 15.02.2017 under Sections 498A/302/34 of the Indian Penal Code.

5. During investigation, appellant was arrested and on his showing the weapon of offence i.e. wooden stick was recovered. In conclusion of investigation, charge sheet was filed against the appellant and five others viz. Mahila Bibi, Sabyasachi Sk. (Piyada), Manick Sk. (Piyada), Silpi Bibi and Insan Sk. (Piyada). Charges were framed under Sections 498A/302/34 IPC. In course of trial, prosecution examined fifteen witnesses and exhibited a number of documents. Weapon of offence i.e. wooden stick was exhibited along with documentary evidence.

6. In conclusion of trial, learned trial Judge by impugned judgment and order dated 02.07.2019 & 03.07.2019 convicted and sentenced the appellant, as aforesaid. The other accused were acquitted of the charges levelled against them.

Arguments at the Bar:-

7. Mr. Arnab Chatterjee, learned Advocate for the appellant submits children of the couple (PWs 4 and 7) did not support the prosecution case and desposed their mother had suffered accidental death. Trial Judge illegally relied on their statements recorded before Magistrate to come to a finding of guilt. Oral dying declaration before PW 2 was rightly disbelieved. There is no cogent evidence connecting the appellant to the murder. Accordingly, he prays for acquittal of the appellant.

8. In the alternative, he contends the incident occurred in course of a quarrel between husband and wife. After the incident, appellant took his wife to the hospital to save her. This shows he did not have any intention to kill her.

9. Nobody appears for the State. Mr. Rana Mukhopadhyay, learned Additional Public Prosecutor is requested to represent the State. Learned Public Prosecutor is requested to regularise his appointment.

10. Mr. Mukhopadhyay submits appellant had an illicit relationship with a co-villager namely, Silpi Bibi. On the fateful day, as per the children of the couple, there was a quarrel between the appellant and his wife. Appellant hit her with a wooden stick on the head resulting in injuries. Medical officer (PW 14) who treated her at Chapra Hospital proved the injury report which records history of physical injury. Post-mortem doctor (PW 15) also deposed injuries were homicidal and had been caused by the seized wooden stick. On the showing of the appellant weapon of offence i.e. wooden stick had been seized. These circumstances improbabilise the defence version of accidental injury and prove the prosecution case beyond doubt. Accordingly, the appeal is liable to be dismissed.

Analysis of the evidence on record:-

11. PWs 1 and 3 are the parents of the deceased.

12. PW 1 (Nur Nabi Sk.) is her father. He deposed her daughter was married to the appellant. From the wedlock three daughters were born. Appellant had an illicit relationship with Silpi Bibi, a co-villager. He along with other in-laws demanded a sum of Rs.3,00,000/-. His daughter communicated this to him. He assured he would pay the money within one month. As he could not pay, his daughter was tortured. On the fateful day, appellant hit the deceased on the head with a '*balidhara*' i.e. wooden stick. Other in-laws had surrounded her. Villagers took her to Chapra Hospital. When her condition was critical, she was referred to Saktigarh Hospital, Krishnagar. He along with Sirajul Haque went to Krishnagar Hospital and found her daughter dead. He lodged written complaint. He proved his signature on the complaint.

13. PW 3 (Hawa Bibi) is the wife of PW 1. She corroborated PW 1.

14. PW 2 (Sarifuddin Sk.) is a cousin. He deposed he heard the incident from his uncle viz. Nur Nabi Sk. (PW 1). Thereafter he along with his uncle and aunt (PWs.1 & 3) went to Chapra Hospital. At the hospital his sister stated appellant had hit on the head while the other in-laws had surrounded her. He also stated the doctor of Chapra hospital was present when Noorjahan narrated the incident but he did not record it.

15. PW 14 (Dr. Nilotpal Biswas) doctor of Chapra hospital deposed he had examined Noorjahan at 8:30 P.M. She had been admitted with a history of physical assault. He proved the injury report (Exhbt.10).

During cross-examination, he stated such injury may be caused due to a dash with hard object.

16. Trial Judge rightly disbelieved PW 2 as his evidence with regard to oral dying declaration is neither corroborated by the parents of the deceased nor the medical officer at Chapra Hospital (PW 14). However, he relied on the statements of the children of the couple (PWs.4 & 7) recorded before Magistrate under Section 164 of the Code of Criminal Procedure wherein they unequivocally stated their father had assaulted their mother with a wooden log. Unfortunately, both the children turned hostile in court and did not support their version before Magistrate.

17. When a prosecution witness does not support the contents of the statement made by her before Magistrate and is declared hostile, the contents of her statement before Magistrate cannot be treated as substantive evidence to bring home the guilt. But, the entire evidence of a hostile witness need not be thrown out in toto. While the court would justly reject those portions of her evidence which appear to be false or tutored, other portions of the evidence which are corroborated and found reliable on broad probabilities of the case may be relied upon to prove the prosecution case.

18. From this perspective I have examined the evidence of PWs.4 & 7, the children of the couple.

19. PW 4 (Mukti Khatun) deposed incident occurred at their house beside *verandah*. On that day, her father was working in the field. Her

mother went to give him rice. On their way home they quarrelled over some issue. When her mother entered the room, she dashed on the bamboo frame of a tile shed, sustained injury and died. Her younger sister (PW 7) resonates her and stated her father had gone to the field. Her mother went to the field to give food. After sometime both of them came home. Her mother sustained accidental injury on her head from the bamboo frame of the *verandah* and became unconscious.

20. While in their deposition the two children attributed cause of injury to an accidental dash with the bamboo frame, before Magistrate they had claimed it was their father who had struck blow with bamboo log resulting in injuries.

21. In light of their contradictory stance, the witnesses were declared hostile and the cause of death stated by them in Court which runs counter to their version before Magistrate was not believed. But the other portions of their evidence, i.e., on the fateful day their father had gone to the field for work, their mother took food to him, on their way back to the house they started quarrelling and finally their mother suffered a head injury at the *verandah* of the house and died appears to be credible and can safely be relied upon. These evidence prove beyond doubt that Noorjahan had suffered head injuries at the *verandah* and died. Appellant was present at the spot.

22. The next question which arises is did the appellant cause the fatal injuries?

23. To determine this, one requires to delve into the medical evidence on record.

24. PW 13 (Dr. Triptesh Kumar Das) is the post mortem doctor. He found the following injuries :-

- (1) One bruise mark over left side of forehead 2" above middle of left eye brow measuring 2" x 1".*
- (2) One lacerated injury over vertex above hair line and placed vertically over midline measuring 1" x ½" x bone deep with underlying depressed comminute fracture (left frontoparietal).*
- (3) One lacerated injury over left parietal region - ½" lateral from no.2 injury measuring 1" x 1" X bone deep with underlying depressed comminute fracture (left parietal).*
- (4) One lacerated injury over vault of head at midline – 1" behind no.2 injury and placed obliquely measuring 3" x 1" X bone deep with depressed comminute fracture of underlying bone (both parietal)*
- (5) Brain – haemorrhage in almost all lobes.*

In the post-mortem report, he noted death was due to shock and haemorrhage due to abovenoted injuries, ante mortem in nature. In court, he further deposed the injuries could be caused by wooden stick which was produced in court. He further clarified the injuries noted in post mortem report suggest the cause of death was homicidal.

25. PW 14, medical officer who treated the victim at Chapra hospital deposed he had examined the victim at 8:30 P.M. with a history of physical assault. He found she sustained head injury due to hard object

and the injury was grievous. During cross-examination, he stated injuries could be caused due to dash with hard object.

26. The aforesaid pieces of medical evidence lead us to the irresistible conclusion that the cause of injuries resulting in death was homicidal and not accidental. The emphatic opinion of the post-mortem doctor is corroborated by PW 14 when he deposed he had examined the victim at 8:30 P.M. with history of physical assault. His opinion elicited during cross-examination that injury may be caused due to dash with hard object is a theoretical proposition which does not fit into the factual matrix of the case particularly in light of the entry in column 11 i.e. physical assault as history of injury.

27. I am of the opinion the version held out by the appellant through the mouths of the two hostile witnesses with regard to accidental injury has been wholly negated in light of the medical evidence and other attending circumstances on record.

28. In addition thereto, PW 15 (Apurba Chakraborty), Investigating Officer deposed he had seized blood stained earth along with normal earth from the place of occurrence. FSL report shows blood stained earth matched with the control earth recovered from the place of occurrence. PW 15 further deposed on the next day he arrested the appellant and on his leading statement the weapon of offence i.e. wooden stick was seized. He proved the seizure list in court.

29. Mr. Chatterjee strenuously contends the independent witness (PW 12) to the recovery of weapon of offence has been declared hostile.

30. I have examined his evidence on record. During his examination-in-chief, PW 12 admitted his signature on the seizure list but tried to wriggle out of the situation by claiming that he had subsequently signed it at Chapra. It is trite pre-varicating stance of an independent witness would not erode the credibility of an official witness with regard to recovery when his version is found to be credible. Moreover, leading statement of the appellant has been exhibited in court and the seized wooden stick has been identified by the medical officer as the weapon of offence, corroborating the evidence of Investigating Officer (PW 15) in this regard.

31. In light of the aforesaid evidence on record, I am of the opinion prosecution has been able to prove the following circumstances beyond doubt which irresistibly establish the appellant was the author of the injuries on his wife which resulted in her death.

32. The circumstances proved by the prosecution are as follows :-

- (1) Appellant had illicit relationship with Silpi Bibi which gave him motive to commit the crime.
- (2) A combined reading of the evidence of the children (PWs.4 & 7) shows their parents were quarrelling on the fateful day while returning from the field.

- (3) At the *verandah* in front of the house, victim suffered head injuries and became unconscious. Blood stained earth recovered matched with the control earth collected at the place of occurrence.
- (4) Appellant tried to make out a false case of accidental injury through deposition of hostile witnesses i.e. PWs.4 & 7.
- (5) The defence case of accidental injury is rendered unbelievable on the strength of a number of injuries on the head of the deceased and opinion of the post-mortem doctor i.e. cause of death was homicidal.
- (6) Post mortem doctor's opinion is bolstered by notings in the injury report (Exhbt. 10) at column 11 wherein history is recorded as physical assault and not accidental injury.

33. These circumstances prove beyond doubt the appellant had an illicit relationship with Silpi Bibi and on the fateful day he quarrelled with his wife. Thereafter he hit her with a wooden stick causing injuries.

34. However, evidence has also come on record immediately thereafter appellant did not run away and took his wife for medical treatment at Chapra hospital.

35. The twin circumstances i.e. quarrel between the couple immediately before the incident and the fact after the incident the appellant had shifted his wife to hospital for medical treatment shows

that he had acted in a fit of passion during a sudden quarrel and did not intend to kill his wife.

Conclusion:-

36. Accordingly, I am of the opinion conviction of the appellant may be altered from Section 302 IPC to Section 304 Part I of the Indian Penal Code.

37. Coming to the issue of sentence I note appellant had hit the victim on the head, a vital part of the body. However, incident occurred in a fit of passion during a sudden quarrel and he did not act in a cruel manner. On the other hand, he rushed his wife to the hospital to save her. He does not have criminal antecedents and has deep root in the society.

38. Balancing the aggravating and mitigating circumstances, I modify the sentence imposed upon the appellant and direct he shall suffer rigorous imprisonment for ten years and pay a fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for one year more.

39. Appeal is allowed to the aforesaid extent.

40. 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.

41. Trial court records along with a copy of this judgment be sent down at once to the learned trial Court for necessary action.

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

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

akd/SG