

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

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Shampa (Dutt) Paul

***C.R.A. 158 of 2018
CRAN 2623 of 2018***

***Ashoke Murmu
-Vs-
The State of West Bengal***

For the Appellant : Mr. Kallol Mondal, Sr. Adv.
Ms. Rituparna De Ghose, Adv.

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

Heard on : 3rd January, 2025.

Judgment on : 3rd January, 2025.

Joymalya Bagchi, J. :-

1. The appeal is directed against judgment and order dated 26.02.2018 and 27.02.2018 passed by the Learned Additional Sessions Judge, 1st Fast Track Court, Hooghly in Sessions Trial No. 57/2012 arising out of Sessions Case No. 159/2011 convicting the appellant for commission of offence punishable under section 302 of

IPC and sentencing him to suffer rigorous imprisonment for life.

Factual Matrix

The prosecution case against the appellant is as follows : -

2. In the night of 24.06.2010, Ashoke Murmu was in the house with his wife Hira (P.W 10) and their five year old daughter Tuktuki. Ashoke took out a *katari* (a sharp cutting weapon) and cut the throat of his daughter Tuktuki. Out of fear, wife Hira ran away and took refuge in a nearby house where she became senseless. After the incident Ashoke tried to commit suicide by cutting his throat but failed. In that condition, he went to Magra Police Station and surrendered himself. A.S.I Sanjib Kumar Mondal (P.W 8) detained him and diarized the incident. P.W 8 referred him to Magra BPHC for treatment.

3. In the meantime, local people assembled and one of them namely, Mangal Mandi (P.W 2) lodged written complaint resulting in the registration of Polba P.S case no. 56/10 dated 25.06.2010 under section 302 IPC against the appellant.

4. The appellant was arrested by the investigating officer, P.W 19. Statement of his wife Hira was recorded before the Magistrate. Blood-stained *Katari* and other articles were sent for FSL examination and charge sheet was filed. Subsequently,

supplementary charge sheet enclosing the FSL Report was also filed. Charge was framed under section 302 IPC.

5. Appellant pleaded not guilty and claimed to be tried. During trial prosecution examined 19 witnesses and exhibited a number of documents. The defence of the appellant was one of innocence and false implication. In conclusion of trial, the Trial Judge by impugned judgment and order convicted the appellant and sentenced him as aforesaid.

Evidence on Record:-

6. P.W 10, Hira Murmu is the wife of the appellant and mother of the deceased child. She was present in the house when the incident occurred. She has been examined as P.W 10. She deposed her husband had slit the throat of her daughter with a scythe. She was sleeping inside the room when the incident occurred. Out of fear she took shelter in an adjacent house and became senseless. She was brought to her brother's house. During cross-examination she stated she had resided with her husband for 4½ years. Cognates and agnates of her husband were residing around their house. She denied the fact that her husband used to work in Jharkhand or Purulia. She stated out of fear she had taken shelter in the house of her *kakasoshur* namely, Potu Murmu. She regained her senses in the evening. She had not informed anyone in the

locality about the incident of her daughter being killed. After she was brought to her brother's house he told her that her daughter was killed by her husband.

7. P.Ws. 1 to 5 are the local villagers. P.W 2 is the defacto complainant.

8. P.W 1 deposed hearing the news he came to the house of the appellant and found the beheaded body of the child. He did not find the appellant or his wife in the house. Police came to the spot. He signed on the inquest. During cross examination, he stated house of the appellant and his house are intervened by one house. He did not inform the *Morol* (village head) about the incident. Appellant used to reside at Santhal Pargona and send money.

9. P.W 2 deposed he was informed of the incident by the local people. He came and saw the dead body of appellant's daughter. He also found one beheaded chicken and burnt *bidis*. He could not find the appellant and his wife. He lodged written complaint which was treated as F.I.R. He signed on the inquest. During cross examination he stated that his house was at a distance of 100 to 150 foot from the place of occurrence. Since two to three months prior to the incident, he had not seen the appellant.

10. P.W 3 signed on the inquest report.

11. P.W 4 is a Member of the Gram Panchayet. He had heard the appellant had murdered his daughter and surrendered to Police. He found the body of the appellant's daughter at the place of occurrence. He found the beheaded chicken and blood stains all over the ground. He signed on the inquest report. During cross examination he stated he did not meet the appellant's wife. She did not lodge any complaint.

12. P.W 5 is also a post occurrence witness. He signed on the seizure list. During cross examination he deposed he heard the appellant had surrendered at the police station after murdering his daughter. He further stated his house was adjacent to that of the appellant. On the fateful night he heard a loud noise. He found the brother and sister of the appellant at the spot.

13. P.W 8, A.S.I., Sanjib Kumar Mondal was posted as the duty officer in the night between 24.06.2010-02.06.2010 at Magra P.S. At 1.30 to 1.45 am a dark complexioned person with blood stained clothes and *Katari* came to the police station. He disclosed his name as Ashoke Murmu. He also disclosed he had murdered his daughter. He tried to kill himself but failed. P.W 8 detained him and informed the O.C. He diarized the incident (Ext. 7). He referred the appellant to Magra BPHC for treatment. He seized the *Katari*. He proved the seizure list. He identified the *Katari* in Court. *Katari* was

re-seized during investigation. He proved his signature on the said seizure list (Ext. 6/1).

14. P.W 9, A.S.I., Sukanta Hembram was on sentry duty. He corroborated P.W 8. He proved his signature on the seizure list. He identified the appellant in Court.

15. P.W 14, Home Guard, Pradip Ghosh was also present at Magra Police Station when the appellant surrendered. He proved his signature on the seizure list but could not recognize the appellant.

16. P.W 12 was the A.S.I of Police attached to Polba P.S. On the day of incident he was the duty officer. He received information from Magra Police Station that one Ashoke Murmu had surrendered at Magra Police Station and confessed that he had murdered his daughter with a *katari*. He informed the matter to the Officer-in-charge on patrol duty and diarized the incident.

17. P.W 13 was posted as A.S.I, Polba Police Station. He was on mobile duty. He received information about the incident of death at Oriapukur village. He rushed to the spot. He entered the house and found the body of a child lying with her throat cut. Thereafter, Officer-in-charge Polba Police Station came to the spot.

18. P.W 16 is the Officer-in-charge Polba Police Station. At 2.15 am he received information about a murder at Oriapukur village. He

rushed to the spot and found the dead body of the minor girl. Mangal Mandi, (P.W 2) lodged written complaint. He sent the written complaint to the Police Station for starting a case. He directed S.I. Dinabandhu Kurel, P.W 19 to take up investigation. He was informed the appellant had killed the minor girl.

19. P.W 17, Dr. Sukanta Manna is the Medical Officer who was posted at Magra BPHC at the relevant point of time. He treated the appellant. He recorded the history of the case as stated by the appellant, i.e. the appellant had cut the throat of his daughter with a *katari*. He found cut injury on the body of the appellant. He provided primary treatment and referred the appellant to Imambara Hospital. He proved the injury report.

20. P.W 15 is the P.M Doctor. He noted the following injuries on the body of the deceased i.e. Tuktuki Murmu:-

“Three types of wounds were found in and around the neck with fracture and dislocation of cervical spine.”

He opined death was due to the aforementioned injury, ante mortem and homicidal in nature. He proved the P.M report (Ext. 10). He deposed injury was caused by a sharp cutting weapon.

21. P.W 18 is the Judicial Magistrate who recorded the statement of Hira Murmu, mother of the deceased. He proved the statement (Ext. 12).

22. P.W 19, S.I Dinabandhu Kurel is the investigating officer. He deposed he visited the place of occurrence. He drew rough sketch maps with index (Exts. 13 and 13/1). He took photograph with the help of professional photographer, P.W 7. He held inquest over the body. He sent the dead body for P.M examination through Constable, Narayan Bhowmik, P.W 6. He collected the Post Mortem Report. He seized the wearing apparel, P.M. report, blood and viscera of deceased. He re-seized the *katari* from A.S.I Sanjib Mondal. He arrested Ashoke Murmu. He sent the seized articles for FSL examination. He submitted charge sheet. Upon receipt of FSL Report, he submitted supplementary charge sheet.

Arguments at the Bar:-

23. Mr. Mondal, senior counsel for the appellant contends evidence of PW 10, wife of the appellant and mother of the deceased is unreliable. None of the local witnesses found her at the place of occurrence. In her chief she stated she had fled before the incident occurred and during cross examination she claimed she heard the incident from her brother. Purported confession made before P.W 8 and recorded in the general diary (Ext 15) is hit by section 25 of the Evidence Act and inadmissible in law. Appellant had been taken into custody when his confession before medical officer (P.W 17) was recorded in the injury report (Ext 1). In view of section 26 of the Evidence Act, the said confession is also inadmissible. Learned trial

Judge erred in law in relying on the aforesaid confessional statement. There is no legally admissible evidence to prove the appellant had murdered his daughter. Hence, appellant may be acquitted.

24. Ms. Khan for the State submits PW10 is the wife of the appellant. Her presence at the place of occurrence is most natural. She was also attacked and took refuge in an adjacent house belonging to the uncle of the appellant. Due to trauma she had become senseless. Immediately after the incident appellant went to the police station with the blood stained '*katari*' and was detained by P.W 8. He had attempted to commit suicide and was treated at Magra BPHC by P.W 17. Body of the child with cut injury on the throat was recovered from the appellant's house. Manner and circumstance in which the appellant cut the throat of his daughter is corroborated by post mortem doctor, P.W 15. Hence, appeal is liable to be dismissed.

Analysis and findings :

a) Whether PW 10 is a reliable witness?

25. PW 10 is the mother of the minor child and wife of the appellant. She deposed she and her husband with their child were at the residence on the fateful night. Appellant slit the throat of her daughter with a scythe. Initially he tried to slit her throat. She fled away. Then he slit the throat of the child. She took shelter in an

adjacent house. From there she was brought to the house of her elder brother. The witnesses had made a prior statement before Magistrate. During cross examination she stated she was staying at her matrimonial home for 4½ years. Residences of the cognate and agnate of her husband were around her matrimonial home. After the incident she fled to the house of '*kakasasur*'. She had become senseless. She regained her senses in the house of her elder brother who told her husband had committed murder.

26. Mr. Mondal strenuously argues PW10 was not present when the incident occurred. Her presence was not noted by local villagers P.Ws 1 to 5. She did not inform the '*morol*' or local people about the incident. In her statement before Magistrate she claimed she had seen the incident. In Court, she changed her version and stated she had fled from the spot and heard the incident from her elder brother in whose house she had sought refuge.

27. P.W 10 is the wife of the appellant. Her presence at the residence on the fateful night with the appellant and the minor child is most natural. In her chief she deposed initially the appellant attacked her. She fled and the appellant slit her daughter's throat. She took refuge at the adjacent house. She became unconscious. She was shifted to her elder brother's house where she regained senses. During cross-examination she clarified she had taken refuge at the house of the uncle of the appellant.

Due to trauma she had become senseless. The tenor of her deposition brings out the terror and trauma of an unfortunate mother who had somehow escaped the brutal violence unleashed by her maverick husband. Even if one discounts her embellishment before Magistrate that she was in the room when the appellant attacked the child, her evidence taken as a whole undeniably shows her presence at the place of occurrence and the fact that the appellant tried to attack her immediately prior to murdering the child. Out of panic she had to take refuge in the house of the uncle of the appellant. She had become senseless. She regained her sense at her brother's house who informed her that her husband had killed her daughter.

28. Reading her evidence as a whole, it is evident due to trauma she had sought refuge in an adjacent house and had lost her senses. As a result, the local witnesses who had come to the spot did not find her in the house.

29. Being unconscious she was also unable to report the incident to anyone. Minor deviations in her evidence from her statement before Magistrate does not erode the crux of her deposition which proves on the night of the incident her husband, i.e. the appellant was present at the residence. She was sleeping with her child when her husband tried to attack her with the *katari*. Her version is most natural and inspires confidence. Her evidence read in juxtaposition

with the circumstance that soon thereafter the daughter's dead body with the cut injury on the throat was found in the house by local villagers unerringly points to the guilt of the appellant.

(b) Recovery of dead body and cause of death :-

30. P.Ws 1 to 5 are the local villagers. All the witnesses in unison state hearing hue and cry they went to the house of the appellant and found the dead body of the child with a cut injury on the throat. PWs 2 and 4 also noted a beheaded chicken and burnt '*bidis*' at the place of occurrence. PW 5 is the adjacent neighbour. During cross examination he stated he heard a loud sound at the night and going to the spot he had seen the relations of the appellant.

31. All these witnesses deposed when they had arrived at the spot neither the appellant nor his wife (P.W 10) was at the house. This circumstance is not inconsistent with the prosecution case. Initially appellant had attacked PW 10. Out of fear and trauma she had sought refuge in an adjacent house. Then the appellant killed the child. After the incident he tried to commit suicide and cut his own throat. In that condition he went to the police station and surrendered. This explains why local witnesses who subsequently came to the spot did not find either the appellant or PW10 at the spot.

32. Post mortem doctor corroborates the prosecution case and deposed the minor victim aged around five years had suffered injuries around her neck resulting in fracture and dislocation of cervical spine. He opined death was due to the above noted injury ante mortem and homicidal in nature.

(c) Post occurrence conduct of the appellant :-

33. After the incident the appellant appeared before PW8, ASI of police with a blood stained '*katari*'. PW8 deposed appellant confessed his guilt which was diarized in the GD entry book (Ext 3). The blood stained '*katari*' was seized (Ext.5). His deposition is corroborated by PW 9, another ASI of police who was doing sentry duty and PW 14, a home guard who signed on the seizure list. After the incident appellant surrendered before police has also been corroborate by local witnesses particularly PWs 4 and 5.

34. At the time when the appellant surrendered he had a cut injury on his throat. Consequently he was taken into custody and referred for medical treatment at Magra BPHC. PW17 treated him in the hospital. He proved the injury report (Ext 11).

35. Mr. Mondal rightly argues confession of the appellant recorded in the GD entry (Ext 3) and the injury report (Ext 11) are inadmissible in law. Sections 25 and 26 of the Evidence Act unequivocally state a confession made by an accused before a police officer or in the custody of police are inadmissible. In this

regard one may refer to the ratio in *Aghnoo Nagesia vs State of Bihar*¹. However, even if one discard the appellant's confession recorded in the GD entry or in the injury report, the fact that the appellant had come to the police station with a blood stained '*katari*' soon after the incident, is an incriminating circumstance which is admissible as conduct under section 8 of the Evidence Act.

(d) Recovery of '*katari*' and FSL report :-

36. During investigation '*katari*' recovered from the appellant by PW 8 was re-seized by investigating officer, PW 19. PW 19 deposed he sent the '*katari*' and other articles for FSL examination. FSL report (Ext 16) shows presence of blood on the '*katari*'.

(e) Incriminating circumstances proved against the appellant:-

37. From the aforesaid evidence the following circumstances are proved beyond reasonable doubt:

- (i) On the fateful night appellant and PW 10 were present along with their minor daughter at the residence;
- (ii) Initially, appellant tried to attack his wife PW 10 with a '*katari*'. Out of fear she fled to an adjacent house;
- (iii) Then, appellant killed his daughter by cutting her throat;

¹ 1965 SCC OnLine SC 109

- (iv) Thereafter, her husband tried to commit suicide by cutting his throat;
- (v) In that condition, he surrendered at the police station with the blood stained '*katari*';
- (vi) PW 8 seized the '*katari*' from the appellant;
- (vii) Appellant was taken into custody and referred to Magra BPHC. Injury report shows injury on his throat;
- (viii) Hearing hue and cry local witnesses came to the spot and found dead body of the minor child with cut injury on throat;
- (ix) Post mortem doctor PW 15 found cut injury on the neck which was ante mortem and homicidal in nature;
- (x) FSL report shows presence of blood on the seized '*katari*'.

Conclusion:-

38. These circumstances unequivocally prove that it was the appellant who had unleashed uncontrolled violence on his family members on the fateful night. Initially he attacked his wife and thereafter killed his daughter by cutting her throat with a '*katari*'. Thereafter, out of remorse he injured himself and surrendered at the police station. P.W 8, ASI of police seized '*katari*', took the appellant into custody and referred him for medical treatment. Seized '*katari*' was sent for FSL examination which shows presence

of blood. These circumstances unerringly points to the guilt of the appellant and rule out any probable hypothesis of innocence. For the aforesaid reasons, I uphold the conviction and sentence of the appellant.

39. Appeal is, accordingly, dismissed.

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

41. In view of disposal of the appeal, connected applications, if any, also stand disposed of.

42. Trial court records along with copies of this judgment be sent down at once to the learned trial Court as well as the Superintendent of Correctional Home for necessary compliance.

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

I agree.

[Shampa Dutt (Paul), J.]

[Joymalya Bagchi, J.]