

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

C.R.A. (DB) 30 of 2022
With
CRAN 1 of 2023

Som Bahadur Dorjee @ Dalu
-Vs-
The State of West Bengal

For the Appellant : Dr. Arjun Chowdhury, Adv.
Ms. Pratusha Dutta Chowdhury, Adv.
Ms. Tulip Saha, Adv.,
Mr. Koushik Kumar Kanu, Adv.,
Ms. Riya Agarwal, Adv.

For the State : Mr. Aditi Shankar Chakraborty, Ld. APP,
Mr. Abhijit Sarkar, Adv.,
Ms. Namrata Das, Adv.

Heard on : 21.01.2025

Judgment on : 21.01.2025

Joymalya Bagchi, J.:-

1. Appellant has assailed judgment and order dated 29.08.2022 passed by Additional Sessions Judge, Fast Track 2nd Court, Alipurduar in connection with Sessions Trial No. 18 of 2018 arising out of Sessions Case No. 428/2017 convicting the appellant for commission of offences

punishable under sections 302/326/307 of the IPC and sentencing him to suffer rigorous imprisonment for life and pay a fine of Rs. 20,000/-, in default, to suffer rigorous imprisonment for 2 years more for the offence punishable under section 302 IPC, to suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 10,000/-, in default, to suffer rigorous imprisonment for one year more for the offence under section 326 IPC and to suffer rigorous imprisonment for 10 years and to pay a fine of Rs. 10,000/-, in default, to suffer rigorous imprisonment for one year more for the offence punishable under section 307 IPC with a further direction all the sentences shall run concurrently.

Prosecution case:-

2. Prosecution case alleged against the appellant is as follows : -
3. On 26.11.2016 around 8.30 P.M one Akash Dorjee (PW 9) aged about 11 years rushed out of his house with a cut throat injury and went to the house of his neighbour Rithey Lama. One Bablu Hossain (PW 5) was present there. He narrated the incident to them. Local villagers including Panchayat Member Nanu Lama informed the Police. Police came to the spot and accompanied by the Panchayat Member went into the house of the appellant. They found appellant's daughter Pratigya Dorjee (the deceased) aged about 6 years lying with a cut injury. Appellant also had a cut injury. Local people shifted Pratigya and Akash (PW 9) to Jaigaon Primary Health Centre. Pratigya was declared dead and Akash was referred to Alipurduar District Hospital for better treatment. Local people had also brought the appellant to the hospital. Appellant

wrote a confessional statement in presence of the Medical Officer (PW 7) and Staff Nurse (PW 8). The sister of the appellant (PW 1) lodged written complaint resulting in registration of Jaigaon Police Station case No. 315/16 under section 326/307/302. During investigation appellant was arrested. The offending weapon i.e. knife was recovered from his residence. Akash made statement before Magistrate. Charge sheet was filed against him. Charges were framed under section 302/326/307 of the Indian Penal Code. Appellant pleaded not guilty and claimed to be tried. In course of trial prosecution examined 10 witnesses and exhibited a number of documents. Defence of the appellant was one of innocence and false implication. In conclusion of trial, the Trial Judge convicted and sentenced the appellant as aforesaid.

Arguments at the Bar :-

4. Dr. Chowdhury for the appellant contends PW 9 is not an eyewitness. He deposed his father had assaulted him and he ran away. He had not seen the assault on his sister, the deceased. Grandfather was present in another room of the house. He has not been examined. Panchayat member viz., Nanu Lama who informed the police has also not been examined. His confessional statement was made in presence of police officers (PWs 4 & 7) and is hit by Section 26 of the Indian Evidence Act. Apart from the inadmissible confession, nothing is placed on record to show that the injury on the appellant is an self inflicted one. Prosecution case suffers from various infirmities and the conviction is liable to be set aside.

5. Learned Additional Public Prosecutor contends PW 9 is an injured witness. He is the appellant's son and was present at the place of occurrence. Appellant is a practising *Tantrik*. On the fateful night he assaulted his son who suffered cut throat injury and thereafter murdered his young daughter. Out of remorse, he was tried to take his life. Appellant along with the injured children were shifted to hospital where his daughter was declared dead. Appellant confessed his guilt before the doctor. Prosecution has proved the case beyond doubt. Accordingly, appeal is liable to be dismissed.

Evidence on record:-

6. PW 9 Akash is the injured witness. He deposed he is the appellant's son. He deposed the house consists of two rooms. In one room he along with his father and sister (since deceased) use to reside. In the outer room his grandfather used to stay. On the fateful night, they had gone to bed. Around 8 P.M his father woke him up and asked him to look through the window to find whether someone was there. When he went to the window his father attacked him with a *kukri* on his throat. Due to such assault he suffered injuries and fled the spot. When he returned with the local people he found his sister Pratigya lying dead. His father had also suffered injury. He was treated at Hospital. He made statement before the Magistrate. During cross examination, he stated his father was a mason by profession. He was also a *Tantrik*.

7. PW 5 Bablu Hossain deposed on 28.11.2016 he had gone to the residence of one Rithey Lama. Akash came to the residence of Rithey and

stated he and his sister Pratigya had been assaulted by his father. Local people informed the Police. They brought him and his sister to Primary Health Centre. Pratigya expired at the hospital. Akash was referred to Alipurduar Hospital. Police sealed appellant's house. One month later Police opened the house and recovered a *Chaku* (knife), *Mala* (Beed) and a deer's horn wrapped in a cloth. Police stated appellant had told them that the weapon was lying in the house. He signed on the seizure list.

8. PW 1 is appellant's sister. She deposed appellant had killed his daughter and assaulted Akash. Akash went to the house of Rithey Lama and informed the incident to Bablu Hossain (PW 5). Panchayat Member, Nanu Lama informed the Police. They went to the house and found appellant's daughter Pratigya lying dead. Appellant also tried to commit suicide. Appellant and Akash were referred to Alipurduar Hospital. She lodged written complaint. She also signed on the inquest.

9. PW 4 was posted as S.I. of Police at Jaigaon Police Station at the time of the incident. He deposed on 28.11.2016 he received information that a person by the name of Som Bahadur Dorjee had assaulted his two children. He along with other Police officials went to the residence of Som Bahadur Dorjee. He found the daughter of the appellant lying on the floor with injury. He also found Akash Dorjee (PW 9) hiding to protect himself. Appellant was in the room with injuries. Local people shifted the injured along with the appellant at Jaigaon Primary Health Centre. Appellant's daughter Pratigya was declared dead. Appellant and his son were referred to Alipurduar District Hospital. In his presence

appellant wrote a confessional statement on the rear of the outdoor ticket. He seized the ticket. He proved the seizure list.

10. Biraj Mukherjee (PW 6) was posted as Officer-in-charge of Jaigaon Police Station. He deposed receiving telephonic information from Panchayat member, he went to the place of occurrence. He found local people assembled there. He came to know appellant assaulted his daughter and son. They had taken her to Jaigaon Primary Health Centre. He went to the hospital. Appellant was present in the hospital with cut throat injury. He wrote a confessional statement in Nepali language in the outdoor ticket. PW 4, the Second Officer seized the statement. PW 1 lodged complaint which was endorsed for investigation to PW 10.

11. Dr. Subhajit Halder (PW 7) is the Medical Officer who was attached to Jaigaon PHC. He deposed on the relevant date he had examined Akash Dorjee. Akash had suffered sharp cutting injury on throat. His companion stated that his father had assaulted her with a sharp cutting weapon. Injury was grievous. He proved the injury report (Ext.9). Appellant's daughter was brought to the hospital and declared dead. He also examined the appellant. He had suffered sharp cutting injury on throat. He was unable to speak. He wrote a confessional statement on the outdoor ticket in his presence. PW 7 signed on the statement (Ext.5/2).

12. Priyanka Sarki (PW 8) is the staff nurse who also deposed appellant wrote confessional statement which was seized by police. She signed on the seizure list. She was declared hostile.

13. Sreejendra Nath Roy (PW 10) is the Investigating Officer. He deposed he examined witnesses. Appellant wrote confessional statement at Jaigaon PHC on the OPD ticket. The ticket containing the statement was seized by PW 4 (Ext.6). He seized the offending weapon from the appellant's residence. He proved the seizure list (Ext.7/1). He collected injury report of Akash. He collected the post mortem report (Ext.12). Akash made statement before Magistrate. He collected the statement. He submitted charge sheet.

Analysis & findings:-

14. Analysis of the evidence on record in the backdrop of the submission of the parties would show the prosecution case primarily hinges on the injured witness Akash Dorjee (PW 9). Akash is the appellant's son. He along with his sister viz., Pratigya Dorjee were sleeping with the appellant in the room. Their grandfather was in the outer room. Appellant woke Akash up and told him to see through the window whether someone had come. When Akash was looking through the window, appellant suddenly attacked him with a *kukri* causing cut throat injury. Akash rushed to the house of his neighbour Rithey Lama. Bablu Hossain (PW 5) was in the house. Bablu deposed Akash narrated the incident to them. Thereupon, local people informed police. Police Officer attached to Jaigaon Police Station (PW 4) came to the spot and they went inside the house and found appellant's daughter lying on the floor with cut throat injury. Appellant had also suffered injuries on his

throat. Appellant along with two children were taken to hospital where Pratigya Dorjee was declared dead.

15. PW 9's version unequivocally proves appellant was the only person in the room where he and his sister Pratigya had suffered cut throat injuries.

16. PW 9's version is corroborated by a local witness (PW 5) as well as the appellant's sister (PW 1), the de-facto complainant. PW 4 is a Police Officer who came to the spot. He went into the room and found Pratigya lying with a cut throat injury. He also noted Akash Dorjee was present with injury. Appellant also had an injury in his throat. He deposed appellant and the victims were taken to Jaigaon PHC where Pratigya was declared dead.

17. The aforesaid witnesses are corroborated by Medical Officer (PW 7) of Jaigaon PHC. He proved the cut throat injury of Akash Dorjee. Post mortem report (Ext.12) also proves Pratigya had died due to a sharp cutting injury which is homicidal in nature.

18. Finally, weapon of offence which was kept hidden inside the appellant's house was also recovered by the investigating officer.

19. Prosecution also relies on the appellant's confessional statement recorded in the OPD ticket (Ext.9). Evidence on record particularly that of PWs 4 and 7 show that appellant was in control and custody of the police officers when he was taken to Jaigaon PHC where he wrote the said statement. Section 26 of the Indian Evidence Act, inter alia, bars confession by an accused who is in custody of police. Given this

situation, we agree with Dr. Chowdhury the confessional statement is hit under section 26 of the Indian Evidence Act and is inadmissible. Although I do not accept the confessional statement, it is relevant to note that the appellant during his examination under Section 313 of the Code of Criminal Procedure admitted that he had assaulted his son and daughter. In this backdrop, I have no hesitation to hold the appellant had caused life threatening injuries on Akash (PW 9) and his sister Pratigya resulting in the latter's death.

20. I am also unimpressed by Dr. Chowdhury's submission that prosecution has failed to explain the injuries on the appellant. Unequivocal evidence on record shows it was appellant and Pratigya who were inside the room when the appellant suffered cut throat injury. Pratigya is a six year old child who had died due to a cut throat injury. It is not the appellant's case that a third party had entered the room and assaulted him. The aforesaid clinching circumstances clearly establish beyond doubt the fact that it was the appellant who had struck himself with the knife after having committed brutal assault on his two children resulting in the death of his daughter.

Conclusion:-

21. In the light of the aforesaid discussion, I hold the prosecution case against the appellant is proved beyond doubt.

22. Appeal is accordingly dismissed.

23. Conviction and sentence of the appellant is upheld.

24. Period of detention suffered by the aforesaid appellant during investigation, enquiry and trial shall be set off against the substantive sentence imposed upon him in terms of Section 468 of BNSS, 2023.

25. In view of the above, the application being CRAN 1 of 2023 is also disposed of.

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

27. 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.)