

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

C.R.A. 32 of 2010

Ashoke Ghosh

-Vs-

State of West Bengal

For the Appellants : Mr. Himanshu De, Sr. Adv.
Mr. Soumen Kumar Dutta, Adv.
Mr. Amal Krishna Samanta, Adv.

For the State : Ms. Zareen N. Khan, Adv.
Mr. Asoke Das, Adv.

Heard on : 14th February, 2022

Judgment on : 14th February, 2022

Joymalya Bagchi, J. :-

Sadhana, the unfortunate housewife was married to Ashoke, the appellant herein in the month of Jaistha, 1398 B.S. i.e. May, 1991. Three months after the marriage she was subjected to mental and physical torture. She was admitted to the hospital in a case of poisoning and took refuge at her father's residence. The appellant herein, filed a divorce suit against her. The divorce proceeding continued for ten years. Finally, through persuasion

from the Court, the matter was compromised and Sadhana returned to her matrimonial home. One and half years later, a female child, Puja, was born to the couple. Thereafter Ashoke started torturing Sadhana again. Unable to bear such torture, she complained to her brothers. On 30.08.2007 i.e. on 12th day of Bhadra, 1414 B.S., Ashoke came to the residence of Ram Prasad Mondal (P.W. 1), elder brother of Sadhana and informed that there were disturbances between him and Sadhana. He demanded a sum of Rs.50,000/- and threatened his in-laws he may leave Sadhana but not his family members. On the next day, i.e. on 31.08.2007 at 8 a.m. P.W. 1 received a phone call from Sadhana pleading him to take her back, failing which, she may be killed. The phone call was abruptly disconnected. Upon receiving such call, P.W. 1 with others went to the matrimonial home of Sadhana and found her dead body was lying in the verandah of the house. On the complaint of P.W. 1, first information report was lodged against the appellant and other in-laws namely Abhoy Ghosh, (elder brother-in-law of the victim), Mamata Ghosh (wife of Abhoy), Ban Behari Ghosh (younger brother-in-law), Kabita Ghosh (mother-in-law) and Shibani Ghosh (married sister-in-law) under Sections 498A and 302/34 of the Indian Penal Code. Inquest and post mortem were held over the dead body of the victim. Appellant was arrested and charge-sheet was filed. Charges were framed under Sections 498A/302/34 of the Indian Penal Code against the appellant and other accused persons.

In the course of trial, prosecution examined nine witnesses and exhibited a number of documents. Defence of the appellant was one of

innocence and false implication. It was the specific defence of the appellant that the victim committed suicide after bolting the room from inside. He was not present at the house when the incident occurred. On hearing the information, the appellant along with one Mahadeb Ghosh (D.W. 2) entered the room by removing the false ceiling and brought down the dead body. To probabilise such defence, appellant examined himself as D.W. 1 and one Mahadeb Ghosh as D.W. 2.

In conclusion of trial, learned trial Judge by impugned judgment and order dated 19.12.2009 convicted the appellant for commission of offence punishable under Sections 498A/302 of the Indian Penal Code and sentenced him to suffer imprisonment for three years and pay a fine of Rs.5,000/- in default, to suffer imprisonment for one year for the offence punishable under Sections 498A of the Indian Penal Code and to suffer imprisonment for life and pay a fine of Rs.10,000/-, in default to suffer further imprisonment for one year more for the offence punishable under Section 302 of the Indian Penal Code. Both the sentences to run concurrently. By the self-same judgment and order, the Judge acquitted the in-laws of the charges levelled against them.

Hence, the present appeal.

Mr. De, learned Senior Counsel appearing for the appellant, argues there is no direct evidence that the appellant had murdered his wife. On the other hand, circumstances appearing from the materials on record show that the victim had suffered unnatural death in the bedroom which was locked from inside. Subsequently, the appellant reached the place of

occurrence and after removing the false ceiling had entered the room and brought down the dead body. These circumstances have not been explained away by the prosecution and, therefore, the conviction of the appellant which is based on vague surmises and conjectures ought to be set aside. It is further argued that no finger prints on the neck and chin of the victim had not been taken. Daughter of the deceased had also not been examined. The appellant is, therefore, entitled an order of acquittal.

In response, Ms. Khan, learned Counsel appearing for the State, submits that the victim housewife suffered homicidal death in her bedroom. Post mortem doctor (P.W. 6) has unequivocally stated that the death was due to strangulation by ligature. Bruises were also found over the head of the deceased which shows that she was subjected to physical assault before she was strangled to death. The medical evidence clearly rules out any hypothesis of accidental or suicidal death in the present case. Apart from the minor daughter, Puja, (who was aged five years at the time of occurrence) appellant was the only person who stayed with the housewife in the room where the incident occurred. Defence plea that he was not present at the place of occurrence and had subsequently entered the bedroom by removing the false ceiling of the room instead of breaking the lock of the door clearly establishes the fact that the appellant after committing the murder had locked the room from inside and had left the room in similar manner. This circumstance in addition to other circumstances on record clearly establishes the prosecution case beyond doubt.

From the submissions made on behalf of the parties, it appears that the prosecution case is based on circumstantial evidence. In order to prove the circumstances against the appellant prosecution has examined the following witnesses:-

Relatives of the deceased:

Three brothers of the deceased were examined as P.W. 1, 2 and 3 respectively.

P.W. 1, Ram Prosad Mondal, is the eldest brother of the deceased and informant in the instant case. He deposed the victim was married to the appellant in May, 1991. Soon thereafter, she had been subjected to torture. As a result, she was hospitalised due to consumption of poison and took refuge in their residence. Divorce proceeding was instituted by the appellant which continued for a decade. Finally, through the intervention of the Court, the matter was reconciled and the victim returned to her matrimonial home. A child was born to the couple who was aged five years at the time of the incident. Appellant again started to torture the victim. She was assaulted repeatedly and was not given proper food. On the day prior to the incident, the appellant visited his residence and stated that there was disturbance between them. He demanded a sum of Rs.50,000/- and threatened that he may leave his wife but not his family members. On the next day i.e. on 31.08.2007 around 8 a.m., P.W. 1 received a phone call from the victim pleading to rescue her, otherwise she would be murdered. Abruptly, she disconnected the phone. P.W. 1 and others rushed to her matrimonial home and found she was lying dead in the verandah. They noticed marks of

swelling on her head. He lodged complaint which was written by Robin Mondal. He proved his signature on the complaint. He also put his signature on the inquest report.

Evidence of P.W. 1 has been substantially corroborated by his brother, P.W. 2 (Sanatan Mondal) and P.W. 3 (R. H. Mondal).

Neighbour of the appellant:

P.W. 4, Dhanapati Mondal, is a neighbour of the appellant. He deposed that the appellant was married to Sadhana 16 to 17 years ago. He was declared hostile and was cross-examined. In the course of cross-examination by the defence, he stated that on the first floor of the house of the appellant there was a bathroom adjoining the bed room of the couple. There is a false ceiling made of weeds which is a common ceiling covering both the bed room and bath room. Hearing the news, he rushed to the house of the appellant and found that the latter and Mahadeb Ghosh had entered the room by removing the false ceiling and thereafter by opening the bolt from inside dead body of Sadhana was taken out by the appellant. Thereafter, the dead body was kept on the ground floor verandah.

Medical evidence:

P.W. 6 is the post mortem doctor who held post mortem over the body of the deceased. He found various injuries on the body of the deceased and opined death is due to the effect of strangulation by ligature, ante mortem and homicidal in nature. He proved the post mortem report (Exhibit 4). On query from the investigating agency, he clarified that the death was homicidal. Three blunt force injuries were found over head. There was

evidence of nail scratches over neck and chins. Finger prints could not be detected during autopsy.

Police witnesses:

P.W. 7 is the Inspector of police who received the FIR and drew up the formal F.I.R. P.W. 8 was a S.I. of police who attached to Ausgram PS at the material point of time. He held inquest over the body of the deceased. He proved the inquest report. P.W. 9 is the investigating officer. He deposed, during investigation he visited the place of occurrence, drew rough sketch map (Exhibit 7). He took photographs of the deceased. He examined witnesses under section 161 Cr.P.C. He did not find any sign of suicidal hanging. He arrested the appellant. He collected post mortem report and filed charge-sheet.

Circumstances emanating from the prosecution evidence:

Analysis of the aforesaid evidence shows that the victim was married to the appellant 16/17 years ago. Her matrimonial life was a tumultuous one. Soon after the marriage, she was subjected to torture and was admitted to hospital. Thereafter, she took refuge at her paternal home and the appellant filed divorce proceeding against her. Upon intervention by the court, the matter was reconciled and the couple reunited. Soon thereafter, a daughter was born to the couple who was five years at the time of occurrence. However, her matrimonial life again suffered a jolt when the appellant started torturing her. She was assaulted and not given proper food. On 30th August 2007 the appellant came to the residence of P.W. 1 and stated that there were dispute between Sadhana and himself. He

demanding a sum of Rs. 50,000/- . He threatened that he may leave his wife Sadhana but not his relations. On the next day at 8 a.m., P.W. 1 received a desperate phone call from Sadhana pleading to take her back lest she would be murdered. Abruptly she disconnected the phone. Thereafter, P.W. 1 and others rushed to the residence of the appellant and found the dead-body of the deceased lying in the verandah.

P.W. 6, post mortem doctor upon examination of the victim, opined that the death was due to effect of strangulation by ligature, ante mortem and homicidal in nature.

Other incriminating circumstances emerging from defence case:

In the backdrop of the aforesaid facts, appellant argued that the victim committed suicide in her bedroom after bolting the door from inside. Appellant was not in the house at the time of occurrence. He was present in his shop and after hearing the news, entered the room through the roof and brought down the dead body.

Mr. De, in support of the defence plea referred to the inquest report wherein it was recorded that according to the villagers, the deceased put a rope on her neck and died due to quarrels at the matrimonial home. In addition thereto, he referred to the cross-examination of P.W. 4 as well as the deposition of the appellant, D.W. 1 and D.W. 2.

The appellant has examined himself as D.W. 1. He deposed on the day of occurrence, he was in his grocery shop situated by the side of his house. He heard a shout of his daughter and rushed to his residence. Her daughter reported that her mother had told her to go out and bolted the door

from inside. Thereafter, he along with Mahadev Ghosh, his neighbor, went into the adjacent bathroom and after removing the false ceiling of the room entered the room. He noticed his wife was hanging with the help of a saree and her feet were touching the ground. He unbolted the door and carried the body of his wife to the veranda. He called a local physician who declared the victim dead. He stated that he would examine his daughter and doctor in support of his defence. However, instead of examining his daughter or the doctor, he examined his neighbour Mahadev Ghosh as D.W. 2. Mahadev deposed on 31.8.2007 around 9 a.m Ashoke called him to his house. He found the room in the first floor bolted from inside. Ashoke's daughter was weeping. No other inmate was found in the house. Ashoke went through the bathroom which was adjacent to the bedroom, removed the false ceiling of the room and unbolted the room. He found Sadhana hanging with the help of a saree. Her feet was touching the ground and she was brought to the ground floor veranda. A quack doctor, Arun Dutta was summoned who declared her dead.

It is further argued that the aforesaid evidence receives corroboration from the evidence of another neighbour, P.W. 4 who was declared hostile by the prosecution.

As there is no direct evidence with regard to murder it is important for this court to see whether aforesaid defence evidence snaps the chain of circumstances and creates a probable hypothesis of pointing to the innocence of the appellant or not. Deeper analysis of the defence by the appellant, would show the defence is based on two premises. Firstly, the

appellant proposed that the victim had committed suicide and secondly, he took a plea that he was not present in the house at the time when the incident occurred.

Plea of suicide appears to be ruled out in the factual matrix of the case. P.W. 6, post mortem doctor noted not only a ligature mark but also blunt force injuries on the head of the deceased. He also noticed nail scratches around the neck. Based on these findings, he unequivocally opined that the death was due to strangulation, ante mortem and homicidal in nature. Cross-examination of post mortem doctor did not elicit any inconsistency or contradiction in his opinion. In the backdrop of such unequivocal and well-reasoned opinion of the post mortem doctor P.W. 6 a vague observation in the inquest report and that too derived from the opinion of villagers none of whom were present at the time of occurrence that the victim had put a rope round her neck and died is of no consequence. Appellant claimed his daughter told him that her mother told her to go outside and bolted the door from inside. He did not examine his daughter (who was in his custody) to probabilise such version. On the contrary, medical evidence establishes beyond doubt that the victim was murdered by strangulation. Hence, I am convinced that the victim suffered homicidal death in the room where the couple resided.

If the victim was murdered in her bedroom which was locked from inside, who possibly could to be her assailant. In this regard, post-occurrence conduct of the appellant has supplied a vital link in the chain of circumstances. Appellant deposed in Court he had rushed to his residence

after hearing a cry of his daughter. She told him that her mother had asked her to go out of the room and thereafter bolted the door from inside. Hearing this, the appellant resorted to a curious course of action. Instead of breaking the lock and entering the room (as any ordinary person would) the appellant entered the room by removing the false ceiling of the said room. Such defence plea instead of probabilising the innocence of the appellant, has boomeranged on him by adding an additional incriminating circumstance bolstering the prosecution case. Firstly, defence plea of suicide appears to be a concocted one. Post mortem doctor, P.W. 6 by referring to various injuries found on the deceased unequivocally opined that the victim suffered homicidal death. Even the defence witnesses stated feet of the victim was touching the ground which improbabilise suicide. Appellant also did not examine his daughter to prove his defence that the victim had asked the child to go out and lock the room from inside. These infirmities expose the falsehood of the defence plea and adds to the chain of circumstances establishing the prosecution case. Secondly, conduct of the appellant in entering the room through the adjoining bathroom by removing false ceiling of the bedroom clearly proves his special knowledge with regard to ingress to or egress from the room through this circuitous hidden route when the door is bolted from inside. This manner of ingress/egress into the room without disturbing the locked door cannot, by any stretch of imagination, be known to any third party or outsider. Thus, it was the appellant alone who know how to come out of the locked room by removing the false ceiling through the adjacent bathroom. This vital and incriminating circumstances clearly

proves only the appellant could have murdered his wife behind closed doors and after hanging her dead body from the ceiling could have surreptitiously left the room by removing the false ceiling from the roof without disturbing the lock on the door. Thereafter, when hue and cry was raised, he came out of his grocery shop situated adjacent to the house and brought down the body of the deceased giving an impression that she had committed suicide.

Non-examination of the minor child:

It has been argued that that the minor girl was the most vital witness who has been withheld by the prosecution. Hence the prosecution case ought not to be believed. I am unable to accept such proposition. The minor child of the couple was barely five years when the incident occurred. Evidence has come on record after the incident she was in the control and custody of the appellant. It is trite law a child is ordinarily prone to tutoring. When a minor witness was in the control and custody of an accused it is all but natural that she would be subjected to undue influence and/or tutoring by the accused and, therefore, the prosecution may consider it unsafe to examine her. It is for the prosecution chose its own witnesses to prove the case. If circumstances in a case like the present one give rise to an impression that a vulnerable witness is under the malefic influence of an accused, it would give sufficient justification to the prosecution not to examine her. Such course should not cast an adverse influence on its case. On the other hand, analysis of the defence evidence, it was the appellant who wanted to examine his daughter to prove she had told him that the deceased had asked her to go out of the room and closed the door from

inside. However, he ultimately refrained from doing so presumably, as plea of suicidal hanging had been wholly discredited by the medical evidence on record. Under such circumstances, putting the minor on the dock, would see the risk of her breaking down under the pressure of cross-examination and divulging the truthfulness eroding the defence case. Hence, non-examination of the minor instead of adversely affecting the prosecution case creates a gaping hole in the unfolding of the defence case version of suicidal hanging.

Conclusion:

Hence, I am of the view that the prosecution has been able to prove the following circumstances which unerringly point to the guilt of the appellant

(a) Appellant was married to the deceased and subjected her to torture. As a result, deceased had withdrawn from the company of the appellant and divorce proceeding was instituted by the latter.

(b) On the intervention of the Court, matter was reconciled and the couple reunited. A child was born to them but the appellant continued the torture upon the deceased.

(c) On 30.8.2007 appellant went to the residence of P.W. 1 and demanded Rs. 50,000/-. He threatened he was ready to leave his wife but not to his relations. Thus, the appellant had motive to commit the crime. On the fateful day at 8 a.m. the deceased made phone call to P.W. 1 requesting him to take her away failing which she would be murdered. Abruptly she disconnected the phone.

(d) P.W. 1 and others rushed to her matrimonial home and on reaching there found her body on the veranda of the ground floor P.W. 1 noted swelling on her head.

(e) Post mortem doctor (P.W. 6) found various injuries including ligature mark over the neck. He opined death was due to strangulation by ligature and ante mortem and homicidal in nature. Defence took a false plea of suicide which is wholly discredited by the aforesaid medical evidence and other attending circumstances. This false plea with regard to the cause of death of the victim is an additional link in the chain of circumstances pointing to the guilt of the guilt.

(f) Post-occurrence conduct of the appellant in entering the locked room by removing the false ceiling on the roof shows his exclusive knowledge of how to come out of the locked room through this surreptitious alternate route without breaking the lock. By no stretch of imagination, such knowledge could be attributed to any third party or outsider. Hence, it was the appellant alone who could have come out of the locked room through this unconventional route after murdering his wife and hanging her body from the ceiling.

(g) Thereafter, appellant went to his grocery shop which was adjacent to his house to create an impression he was not in the house at the time of occurrence. Only when hue and cry was raised, he came to the spot and brought down the body to pass off the murder as one of suicide.

These circumstances have been duly proved and unerringly point to the guilt of the appellant and ruled out any probable hypothesis of guilt.

Thus, the prosecution case has been proved against the appellant beyond doubt.

Conviction and sentence recorded against the appellant is accordingly upheld.

The appeal is, accordingly, dismissed.

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

Copy of the judgment along with LCR be sent down to the trial court at once for necessary compliance.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)