



2023 INSC 1015

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No.3405 OF 2023
(Arising out of SLP(CrI.)No.10495 of 2022)

MARKASH JAJARA

... APPELLANT

Versus

THE STATE OF ASSAM & ANR.

... RESPONDENTS

J U D G M E N T

1. Leave granted.
2. The Gauhati High Court has dismissed the jail appeal, vide the impugned judgment dated 12.03.2019, preferred by the appellant against the judgment and order dated 03.10.2016, passed by the learned Sessions Judge, Jorhat whereby the appellant was held guilty of having committed the murder of his son-in-law, namely, late Markush Borja and sentenced to undergo life imprisonment with a fine of Rs.10,000/- with the stipulated imprisonment of six months on default of payment of the fine amount in Sessions Case No.188(J-T)/2015, arising out of Titabar P.S. Case No.65/2015.
3. The above-stated FIR, under Section 302 IPC, was registered on the receipt of an ejahar submitted by P.W.8 (Well Borja), on the same day, to the effect that his younger brother - Markush Borja had been assaulted and killed by the appellant with a bamboo stick. The occurrence took place inside the house of the appellant. The informant had gone to the house of the appellant

and found his brother, who had been staying with his in-laws for the last 3/4 months, lying dead.

4. Following the registration of the FIR, the appellant was arrested and a chargesheet under Section 302 IPC was filed against him. The prosecution examined nine witnesses including the wife of the appellant - Mononit Jajara (P.W.5) and his daughter - Sarani Boria (P.W.6). The appellant's wife supported the prosecution's case to the extent that her son-in-law was killed by the appellant. However, she did not witness the occurrence as she could not enter the house out of fear. The statement of the appellant's daughter, who is the wife of the deceased (P.W.6), has a direct and material bearing on the fate of this appeal. Hence, we propose to reproduce her statement in *extenso*, which reads as under:

"I know accused Sri Markash Jajara who is present in the dock of the court today. The accused is my father.

I also knew deceased Markush Borha who happened to be my husband.

The incident occurred about one & a half years back. On the date of incident I alongwith my husband proceeded towards the house of our parents as they were suffering from illness.

On the date of incident I was present at my work place. When I returned back home at about 4 P.M. I came to know that my husband had been murdered by my father [accused].

Out of fear I did not enter into the house. When police arrived at our house then only I entered into my house. I noticed the dead body of my husband lying in the floor of the kitchen of the house.

I questioned my father about the incident and he confessed before me that he had murdered my husband. Police took the dead body of my husband to the hospital for post-mortem examination. My father was also taken to the police station.

CROSS-EXAMINATION : ON BEHALF OF ACCUSED

I do not know anything about the incident. I did not witness the incident.

We reside separately from our parents. My parents

resided alongwith my brother and his wife.

My husband was an alcoholic person. Prior to the date of incident my husband used to quarrel with me as well as with my father after consuming alcohol.

My father murdered my husband as he used to ill-treat me after consuming alcohol. My father confessed before me that he had murdered my husband with a piece of bamboo."

5. The other material witness examined by the prosecution includes P.W.8 (Well Borja) - the brother of the deceased, who is also admittedly not an eye witness. Having come to know that his brother had been assaulted by the appellant, he reached the place of occurrence and saw his younger brother lying dead on the floor.

6. It may also be mentioned at this stage that as per the postmortem report, the deceased suffered the following injuries:

"1. Laceration of size 7 cm x 1 cm x muscle deep is present over right forehead, 3 cm from mid-line and 2.5 cm above eyebrow.

2. Laceration of size 2 cm x 1 cm x muscle deep is present over left mastoid region.

3. Laceration of size 2 cm x 1 cm x muscle deep is present just below the chin and placed obliquely."

7. Dr. Ved Prakash Gupta, who conducted the autopsy of the dead body, entered into the witness box as P.W.4 and while acknowledging the postmortem report prepared by him, opined that "the injury sustained over the head by the deceased is fatal to cause instantaneous death."

8. The Trial Court on consideration of the above-stated evidence held the appellant guilty of committing an offence under Section 302 IPC and consequently, sentenced him to undergo life imprisonment.

9. It appears that owing to his poor financial conditions, the appellant's appeal was forwarded by the Jail Authorities and with the able assistance of an *amicus curiae*, the High Court on re-evaluation of the entire evidence came to the following conclusion:

"14. In view of the facts and circumstances, which are well supported by the witnesses, we disagree with the submission of the learned Amicus Curiae that the conviction of the accused appellant was based on suspicion only. We also disagree with the submission of the learned counsel that the word of the "confession" has to be recorded in the exact words of the accused specifically when it is extra judicial confession. At para 8 of the judgment of the Hon'ble Apex Court passed in the case of Ajay Sing -Vs- State of Maharashtra reported in (2007) 12 sec 341, it has been stated that though it is not necessary that the witness should speak the exact words, but there cannot be vital and material difference. This very sentence shows that it is not necessary that the witness should give the exact words spoken by the accused who confessed but it would be sufficient if the material and vital parts of the confession has been stated by the witness. In this case, under the facts and circumstances, the fact that the PW-6 has stated in her deposition that her father confessed to her that he had murdered her husband when she questioned him is sufficient enough as the same is clear, specific, unambiguous and trustworthy."

10. As regards the defence plea taken by the appellant that there was no eye witness to the occurrence and that the alleged confession made by him before his daughter (P.W.6) could not be relied upon, the High Court found no merit in those contentions and opined that:

17. Further, the PW-6 (daughter of the accused) stated that "I questioned my father about the incident and he confessed before me that he had murdered my husband" and PW-1 has stated that "the accused confessed before the villagers that he had committed the murder of his son-in-law with the help of bamboo lathi. The statements of the two witnesses are simple, clear and unambiguous and they clearly conveyed that the accused appellant had confessed that he had committed the murder of the victim

deceased. It is true that the exact words of the accused appellant were not stated by the two witnesses but the material substance of the fact stated by the accused have been conveyed. Moreover, the defence did not question the two witnesses on the same and not even tried to either controvert or discredit their statement. Thus, we find no reason not to believe the statement of the witnesses.

Further, the confessional statement of the accused as stated by the two witnesses is well supported by the circumstantial evidence that the incident took place in the precinct of the house of the accused- appellant himself and, the accused-appellant was alone with the dead body of the victim at the time of the incident"

11. We have heard Mr. Gaurav Agarwal, learned counsel appearing on behalf of the appellant as well as Mr. Nalin Kohli, learned Senior Additional Advocate General, State of Assam, and carefully perused the material placed on record.

12. The short question that arises for consideration is whether the offence attributed to the appellant falls within the ambit of Exception I of Section 300 IPC which defines "murder". Exception I reads as follows:

"Exception 1. -When culpable homicide is not murder. - Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:-

First.-That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.-That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

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Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.”

13. We ought to analyse the aforementioned issue with reference to the statement of P.W.6 (Sarani Boria), daughter of the appellant, as reproduced in para 5.

14. It may be seen that the Trial Court as well as the High Court have heavily relied upon the statement of the daughter of the appellant - Sarani Boria (P.W.6) to hold him guilty of committing the murder of his son-in-law predominantly in view of his purported confession made before his daughter.

15. In our considered view, the statement of P.W.6 - Sarani Boria needs to be appreciated in its entirety. In her cross-examination, P.W.6 has candidly admitted that her husband was an alcoholic and he used to quarrel with her and also with the appellant after consuming alcohol. She has affirmatively deposed that the deceased used to ill-treat her after consuming alcohol.

16. It seems to us from the version of P.W.6 that the deceased was an alcoholic and he used to misbehave not only with his wife but also with her family members. This version deserves appreciation in its right perspective. Such being the conduct of the deceased, the appellant's only concern was to protect the life and dignity of his daughter, who was his only child. Reading the evidence on record, it is perceived that the appellant just wanted to create some kind of psychological fear and restraint in the

deceased's mind, so that he could no longer assault or humiliate the appellant's daughter. The appellant and the deceased were the only ones present in the house at the time of occurrence. The daily consumption of liquor by the deceased was an apparent factor that exhorted the appellant to assault the deceased not with an intent to commit his murder but only to force the deceased to mend his ways and mend his drinking problem. The appellant seemingly attacked the deceased without any intention to commit his murder. It was rather a crude attempt to forcibly change the deceased's habits and help the appellant's daughter to have peaceful and dignified life.

17. The appellant's motive at best was to prevent the deceased from misbehaving with his daughter after consuming alcohol. The manner in which the occurrence appears to have taken place inside the house, does indicate that the appellant lost his self-control on account of persistent provocation and suddenly thrashed his son-in-law with the bamboo stick. It is a case where provocation seems to be brewing up since the deceased shifted to the appellant's house. It acquired enormous gravity with each recurrence of humiliating stances of the appellant's daughter. The fatal occurrence was seemingly the final culmination of loss of the power of self-control. The fact that the deceased was living as a 'ghar javai' with the appellant, sufficiently indicates that the appellant did not have any pre-meditated intention to commit the murder of his son-in-law. But for the continuous harassment of the appellant's daughter by the deceased who was a habitual drunkard, the appellant would not have lost his senses suddenly.

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The simmering discontent of a frustrated and hapless father unfortunately led him to strike the deceased with a bamboo stick. The series of provocative acts attributable to the deceased indeed laid the foundation of sustained provocation.

18. In the facts and circumstances of the present case, as noticed above, it appears to us that the act of the appellant in causing injuries to the deceased falls within the expression of 'culpable homicide' which does not amount to 'murder'. We hold accordingly. The impugned judgments of the Trial Court as well as the High Court are modified to that extent.

19. We have considered the submissions of learned counsel for the parties on the quantum of sentence. In our considered opinion, the ends of justice would be adequately met by converting the sentence of life imprisonment awarded to the appellant to rigorous imprisonment of ten years. The sentence as awarded by the courts below stands modified accordingly. The appeal is allowed in part. The appellant shall be released on completion of the requisite and reduced period of sentence, if he is not required in any other case.

20. As a sequel thereto, pending interlocutory applications, if any, also stand disposed of.

.....J.
(SURYA KANT)

.....J.
(DIPANKAR DATTA)

NEW DELHI;
NOVEMBER 03, 2023.