(1997) CriLJ 1025

Calcutta High Court

Case No: Criminal Appeal No. 106 of 1993

Babloo Das alias Pranab Kumar Das		APPELLANT
	Vs	
The State		RESPONDENT

Date of Decision: June 21, 1996

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 300, 302, 307

Citation: (1997) CriLJ 1025

Hon'ble Judges: R. Bhattacharyya, J; D.B. Dutta, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. The instant appeal is directed against the Judgment of conviction and sentence passed in Sessions Case No. 53 of 1992 (Sessions Trial No. 1 of December 1992) of the 8th Bench of the City Sessions Court, Calcutta.

2. The prosecution story may, be stated as follows :-

A childless old couple consisting of an octogenarian husband named Durgacharan Das and his 65 year old wife named Aparna Das were living on the ground floor flat of the premises No. 4/1, Bagbazar Street, Calcutta, within P. S. Shyampukur. The appellant was known to the couple. He had a cycle repairing shop in the locality and was on occasional visiting terms with Durgacharan. On 17-1 -92 between 11 and 11.30 in the morning, Aparna was cooking in the kitchen On hearing an alarm raised by her husband, she came out of kitchen and rushed to the bed room to find her husband, Durgacharan lying in a pool of blood on the floor of the room. She also found the appellant assaulting her husband with a knife repeatedly. She raised alarm and the appellant gagged her mouth. She bit the left thumb finger of the appellant and received cut injury on her hand in a bid

to catch hold of the knife. The appellant threw heron the ground and stabbed her with knife, knife. A couple from the roof of the neighbouring house saw the assault by the appellant on Aparna inside the bed room through its window. They raised alarm and began to pelt brickbats and green coconut shells at the door of the bed room. The appellant then went out of the bed room and took to his heels. A number of persons from the neighbouring locality rushed to the bed room soon after the occurrence. Durgacharan was then already dead. Aparna was rushed to the R. G. Kar hospital by some of them. A police officer attached to Murder Section, D. D. Lal Bazar received a telephonic information from one Himadri Bose of the locality at about 11.45 a.m. to the effect that an old man was murdered and his wife was stabbed in the premises No. 4/1, Bagbazar Street. He conveyed this information over phone to Shyampukur P. S. While this information was being recorded, one Santosh Dasgupta of the locality arrived at the P. S. to give the information about the murder of Durgacharan. Both the informations were diarised in the G. D. entry No. 1090. A police party from Shyampukur P. S. led by the O. C. rushed to the place of occurrence. The dead body was sent for post-mortem examination. Another police officer from Shyampukur P. S., who arrived at the place of occurrence later, was sent to R. G. Kar hospital for recording the statement of the injured Aparna Das and on the basis of the said statement, the present case was started. Aparna lay admitted in the hospital for 15 days. In the afternoon of the date of occurrence, the son-in-law of the appellant, who is a police constable, returned to his house at 130, Bidhan Sarani from his guard duty at Reserve Bank of India and found the appellant in his house. The appellant confessed before him that he had committed the murder of Durgacharan Das. The son-in-law then took the appellant to Shyampukur P. S. and produced him. The appellant was then taken into custody in connection with the present case and the fact was recorded in the G. D. entry No. 1101.

3. During investigation, witnesses were examined u/s 161 Cr. P.C. and seizure was effected. Many of the seized articles were sent to Forensic Science Laboratory for chemical analysis. The services of a plan maker and a photographer were requisitioned for bringing to light the topographical features of the place of occurrence and its surroundings. After completion of the investigation, charge sheet was submitted against the appellant under Sections 302 and 307 of I.P.C.

4. Charges were framed against the appellant u/s 302 for the murder of Durgacharan and also u/s 307 for the attempted murder of his wife Aparna.

5. The appellant pleaded not guilty to the charges and his case was that he has been falsely implicated.

6. During trial, the prosecution adduced both oral and documentary evidence and exhibited seized materials. PW1 is the plan maker and Exts. 1, 2, 2/1 are his sketch, plan and blue print respectively while PW2 is the photographer and Exts 3 series to 13 are the relevant photographs. PW4 (Aparna Das), PW5 (Haridas Sadhukhan) and PW6 (Manju Sadhukhan) are the eye-witnesses of some part or the other of the occurrence. PW4 is

the surviving victim herself. Her evidence is that on hearing the alarm raised by her husband, she came out of the kitchen and rushed to the bed room. She gave a vivid account of what she saw and what happened after she had entered the bed room. She found only her husband and the appellant inside the room and nobody else. On entering the bed room, she found her husband lying in a pool of blood on the floor. She also saw the appellant assaulting her husband repeatedly with a knife. She also gave an account of the manner in which the assault was launched on her by the appellant. She raised alarm whereupon the appellant tried to gag her mouth. She bit the hand of the appellant. She tried to catch hold of the knife from the appellant''s hand and sustained cut injury in the hand. She also spoke of the knife assault that was made on her by the appellant. PW5 (Haridas Sadhukhan) and his wife PW6 (Manju Sadhukhan) are the next door neighbours who witnessed from the roof of their adjoining house a part of the occurrence inside the bed room of the victim couple namely the scuffle between PW4 and the appellant and also the assault on PW4 by the appellant. PW5 is the witness who raised alarm and pelted brickbats and green coconut shells at the door of the bed room in which the said assault on PW4 was being committed. PW5, PW6, PW7 (Namita Sain), PW9 (Sankar Chowdhury) and PW13 (Sibur Purkayastha) are amongst the inhabitants of the locality who assembled at the place of occurrence shortly after the occurrence. Of them, PW5 and PW6 saw the departure of the appellant from out of the bed room of the victim couple. On coming to the bed room, they found Durgacharan dead and PW4 lying injured and PW4 then narrated the incident to them. PW7 is another next door neighbour who also saw the appellant running away along the passage through which she was coming to the venue of the occurrence. She also saw Durgacharan lying dead and PW4 injured and to her as well PW4 narrated the incident. PW9 and PW13 heard PW5''s alarm saying that the appellant has committed the murder (Babloo Khoon Korrechey) and on coming to the place of occurrence they saw Durgacharan dead and PW4 injured. They removed PW4 to hospital and while she was being taken to hospital she reported the incident to them. PW 12 (Subhomoy Dey) is the son-in-law of the appellant who proved the extra-judicial confession that is said to have been made by the appellant. PWs 17, 20, 21 & 25 gave the medical evidence. Of them, PW17 (Dr. S. K. Lahiri) held the post mortem examination over the dead body of Durgacharan Das on 18-1 -92. He found multiple incised injuries on the chest and other parts of the body. The chest injuries pierced the skin, subcutaneous tissues and inter costal muscles and extended upto chest cavity, kidney, spleen and lung. According to him, the death was due to the injuries which were ante-mortem and homicidal in nature and the chest injuries could be caused by knife and were also sufficient to cause death. PW20 (Dr. S.K. Tribedi) examined the appellant on the night of 17-1 -92 and 18-1 -92 in the hospital after he was produced by police. He then found one elliptical bite mark on left thumb dorsal on interphalangial joint at the area-2" x 1" - with alternate abrasions and echymosis. PW25 (Dr. Pradip Sharma) is the doctor who initially examined PW4 immiedately after she was brought to the hospital. He found sharp knife injuries on the interior abdominal wall of the lumber region. PW4 reported to him at the time of her examination that the appellant stabbed her with a knife. He proves the medical certificate (Ext. 26) which was authored by him. PW21 is the

medical officer of the hospital who deposed with reference to the admission ticket of PW4 (that, is Ext. 26). The said document reveals that PW4 had undergone a surgical operation in the hospital. Her abdomen was opened by midline incision, her stomach injury repaired by automatic catgut, another stab (Rt. lower abdomen) sutured inside and abdomen closed in layers. It further reveals that there were injuries on her index finger and middle finger and also on her right hand and that the said injuries were repaired with silk.

7. Upon consideration of the evidence and other materials on record, the Ld. Trial Judge found the appellant guilty of both murder of Durgacharan and attempted murder on his wife Aparna Das, convicted him accordingly under Sections 302 and 307 of I.P.C. and sentenced him to rigorous imprisonment for life on each count.

8. We have sifted the evidence on record and heard the submissions made on behalf of the appellant and the respondent State.

9. That Durgacharan is dead is amply proved by the evidence on record and is also not disputed. That the death was a homicide is also not disputed and is sufficiently borne out by the overwhelming materials on record. From the nature, character and situs of the injuries that were found by PW 17 during the post-mortem examination of the dead body of Durgacharan, it is clear that the said injuries could not have been caused save and except with the intention of causing his death. That being so, the culpable homicide concerned can be safely characterised as one amounting to murder.

10. The fact that Durgacharan''s wife Aparna also sustained injuries during the occurrence is not disputed and is probed beyond doubt by the evidence on record. The nature and situs of these injuries, as revealed from the testimonies of the doctors PW21 and PW25 as also the corroborative evidence afforded by the medical certificate (Ext. 25) and the admission ticket (Ext. 26) which was authored by PW25, leaves no room for doubt that there was an attempt on her life and she sustained the injuries during the said attempt.

11. The question is as to whether the prosecution has been able to prove that the appellant was responsible for the murder of Durgacharan and also for the attempt to murder his wife Aparna.

12. There is direct evidence of PW4 in support of the knife assault on Durgacharan as well as herself by the appellant. Her evidence is clinching enough to implicate the appellant in both the assaults.

13. There is also direct evidence of PWs 5 and 6 who have witnessed the assualt on PW4 by the appellant from the roof of the adjoining house through a window of the bed room where the assault was being committed. The fact that PWs 5 and 6 could witness that part of the occurrence from the roof of their house appears to be quite probable and convincing in view of the other materials on record. The fact that PWs 5 and 6 witnessed

the assault from the roof was also corroborated by PW4 herself.

14. It is the positive evidence of PW6 that she saw none except the appellant going out of the bed room of the victim couple. Besides PW6, PWs. 5, 7, 9 & 13 also saw the appellant running away from the place of occurrence shortly after the occurrence.

15. PW4 reported to PWs. 5,6,7,9 & 13 about the participation of the appellant in both the assaults on Durgacharan Das and herself, shortly after the occurrence. PW4''s version of the incident implicating the appellant finds corroboration in her statement (Ext. 25) which she gave before the medical officer PW25 at the time of her initial examination in the hospital.

16. It is the positive evidence of PW4 that while she was being assaulted by the appellant she bit the finger of the appellant by her teeth. This evidence is corroborated by the evidence of the doctor PW20 who examined the appellant in the hospital on the night of the occurrence. PW20''s evidence further goes to show that the appellant himself disclosed to him that he sustained the injury on being bitten by PW4 with her teeth. He has denied the defence suggestion to the effect that such injury could be caused by means of cycle chain.

17. It was suggested to PW4 during her cross-examination that her grandson murdered her husband and injured her. But she had stoutly denied that suggestion. It transpires in her evidence that her grandson looks after her. If, really her grandson (and not the appellant) was the murderer of her husband and was responsible for the attempt on her life, there was no reason which could prompt PW4 to shield her grandson and falsely implicate the appellant.

18. There is also the extra-judicial confessions of the murder of Durgacharan by the appellant to none but his own son-in-law (PW12) who had absolutely no reason to fabricate the story against the appellant. The evidence of PW12 in support of the said extra judicial confession really inspires confidence.

19. Thus, on a careful analysis of the oral and documentary evidence as also the other materials on record, there is no room for doubt that it was the appellant who was responsible for the murder of Durgacharan and the attempted murder of his wife Aparna.

20. What really was the motive behind the crime has, however, not been brought to light. Now, there is always a motive behind a crime and it may so happen that the motive remains shrouded in mystery in a particular case. In view of the clinching direct and circumstantial evidence on record implicating the appellant with this murder and the attempted murder, absence of proof of any motive on the part of the appellant cannot be of any moment at all.

21. During the hearing of this appeal, the Ld. Advocate for the appellant argued that in view of the fact that the appellant and the deceased were on visiting terms and in view of

the fact that there was a scuffle between PW4 and the appellant inside the bed room as witnessed by PW5 and PW6, it would only be reasonable to infer that this homicide would fall within the Exception No. 4 of Section 300 of I.P.C. so as to amount to culpable homicide not amounting to murder. According to Exception 4, culpable homicide is not murder only if it is committed without premeditation, in a sudden fight, in the heat of passion, upon a sudden quarrel and, without the offender''s having taken undue advantage or acted in a cruel or unusual manner. We are afraid, the materials on record here do not suggest anything to warrant an inference that this homicide was committed in the circumstances contemplated under Exception 4 of Section 300 of I.P.C. In this view of the matter, the argument advanced on behalf of the appellant is totally devoid of any substance.

22. Thus, in view of our finding recorded above, we have no hesitation to hold that there is absolutely no justifiable reason to call for any interference with the impugned conviction as well as the sentence. In such view of the matter, the present appeal fails and is accordingly, dismissed. The conviction and the sentence appealed against are hereby affirmed.

R. Bhattacharyya, J.

23. I agree.