
(2005) 01 CAL CK 0039
In the Calcutta High Court
Case No : C.R.A. No. 313 of 2003

Arup Singha Ray	Vs	APPELLANT
State of West Bengal		RESPONDENT

Date of Decision : 28-01-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304B, 498A

Citation : (2005) 2 CALLT 397 : (2005) 2 DMC 647

Hon'ble Judges : Pranab Kumar Deb, J;Alok Kumar Basu, J

Bench : Division Bench

Advocate : R.B. Mahato and S.K. Mahato, for the Appellant; Ashimesh Goswami and Minoti Gomes, for the Respondent

Final Decision : Dismissed

Judgement

Pranab Kumar Deb, J.—The death reference being 1 of 2003 was made following the conviction and sentence of Arup Singha Roy in connection with Sessions Trial No. 40 of 2002.

The appellant Arup Singha Roy also preferred an appeal being 313 of 2003 against the conviction and sentence u/s 302 Indian Penal Code. The death reference and the criminal appeal have been heard and disposed of together.

2. A specific case under Sections 498A/304B and 302 Indian Penal Code was registered following the shocking murder of a housewife and her baby. The case of the prosecution, as emerged from the First Information Report and unfurled during the trial, may be summed up as follows :-

3. The marriage of the appellant Arup Singha Roy with Urmila Ghosh was solemnised in the early part of 1997. A sum of Rupees fourteen thousand was paid to Arup Singha Roy by way of dowry in terms of the demand so made by the bridegroom. Initially, the couple led a happy conjugal life. The situation underwent a change when the husband started pressuring his wife to bring more money by way of dowry. The wife, called Urmila had to sustain physical and

mental torture in the hands of her husband. She narrated the woeful story of her sustaining torture and humiliation to her relations. All that her near relations could do was to offer consolation to her. The ordeal continued. The attitude did not improve even after the birth of her son. On 13.7.98 she had to take shelter in the house of her brother after being severely beaten by her husband. However, her husband took her back with the assurances that she would be properly looked after. Her life ended in a tragic note when on the night of 5.8.98 when she and her baby were brutally murdered by her husband.

4. The case u/s 498A, 304B and 302 Indian Penal Code was registered against the appellant on the basis of the First Information Report lodged by Sri Upendra Nath Ghosh, elder brother of deceased Urmila Ghosh. The investigation was taken up in right earnest. In course of the investigation, inquest and post mortem report were collected. All the available witnesses including the neighbours and relations were examined. On completion of investigation, chargesheet u/s 498A, 304B and 302 Indian Penal Code was submitted. It was then followed by commitment of the case to the Court of Session. On perusal of the case diary as well as hearing the submission of the lawyer of the respective parties, the Court below framed charges u/s 498A and 302 Indian Penal Code. The appellant, however, pleaded not guilty to the charges levelled against him. Accordingly, the trial commenced against him.

5. The prosecution examined as many as ten witnesses including the informants, the inmates of the locality, the doctor conducting the post mortem and the Investigating Officer who conducted the investigation and submitted charge sheet.

6. On scanning the evidence, the additional session Judge convicted and sentenced the appellant for commission of offence u/s 302 Indian Penal Code. The appellant was sentenced to death for commission of brutal murder of his wife and child. It was directed that accused would be hanged by the neck till death, subject to the confirmation by the Hon"ble Court. He was also convicted for commission u/s 498A Indian Penal Code. No separate sentence, however, was passed for commission of offence u/s 498A Indian Penal Code. Incidentally, he got an order of acquittal of the charge u/s 304B Indian Penal Code. The death reference came up for confirmation by the High Court. Meanwhile, the convict also preferred an appeal against the conviction and sentence.

7. Challenging the death sentence, the learned defence counsel has submitted that death sentence was awarded without having any direct proof as to commission of murder of a lady and child by the appellant. It is argued that the learned Judge relied on some stray incidents to constitute the chain of links for the purposes of justifying the death sentence on circumstantial evidence. Commencing on the extra judicial confession made by the appellant, it is submitted that such extra judicial confession was forcibly extracted on threat and intimidation. It has been argued that such extra judicial confessional statements cannot be regarded as voluntary statement of the appellant either. It has also

been contended that the story of the appellant being nabbed after a hot chase by the villagers cannot be believed, inasmuch as there was no reason for the appellant to run helter skelter in the week hours of the morning.

8. It is submitted that the learned Judge overlooked the aspect that the report of the analyst was not produced and placed at the time of trial, despite the fact that blood smeared earth, curtain and "Banti" were collected right from the place of occurrence. Had such report been produced, it would have shattered the popular myth that the murder was the handiwork of the poor husband.

9. The learned counsel for the State has argued that the Court below rightly relied on series of circumstances and facts that unerringly led to the only conclusion that the commission of offence of torture and murder had been perpetrated by the appellant and none else. Referring to the inquest report, it is submitted that the dead-body was found lying in the house of the appellant. It was in the house in question that the appellant lived with his wife and their only child. The recovery of the dead-body from well inside the house rules out the possibility of the murder being committed by someone else. There was also extra judicial confession made on behalf of the appellant. Many of the villagers have confirmed that the appellant in their presence confessed having murdered his wife and the child. The statement having been voluntarily made, the Court below, it is argued, rightly placed strong reliance on the extra Judicial confession of the appellant. Added to it, was the flight of the appellant from the place of occurrence to escape being arrested. All these facts and circumstances, it is contended by the learned counsel for the State, constitute a complete chain of evidence wherefrom the only conclusion as to the total involvement of the appellant in the commission of torture of his wife and commission of murder of his wife and own child can be drawn. The counsel for the State concludes his arguments, submitting that in view of such ghastly murder of the wife and own child being committed by the appellant, the Court below rightly awarded sentence of death. It, as contended by the learned counsel for the State, comes within the specification of "rarest of the rare" case.

10. The prosecution has relied on series on facts and circumstances to bring home the charges u/s 498A and 302 Indian Penal Code. It has been elicited from the statement of P.W. 1 & P.W. 2 that housewife was subjected to torture. Apprehensive of her life and security, the housewife called Urmila even lodged a complaint with the local police station. There were all indications that the convicts/appellant was not pulling on well with his wife, the strained relationship culminated in the brutal murder of the housewife and child. Apprehension of the housewife that her life was in real danger was a relevant fact that was rightly taken into consideration by the Court below in coming to a definite decision as to the guilt of the accused. The subsequent conduct of the appellant was also an important factor which weighed with the learned trial Judge in forming an opinion as to the guilt of the appellant. The inhabitants of the locality viz. P.W. 2 Hrishikesh Ghosh, P.W. 3 Dhananjay Sarkar and P.W. 6 Tapan Kr. Ghosh disclosed

that the appellant was not found in his house after the detection of the murder of his wife and son. It was claimed by P.W. 2 that the appellant could be nabbed from a road which was at a little distance from the place of occurrence. Criminal intention may be inferred from subsequent conduct of an accused. The fact that the convict took to his heels was rightly considered as an important chain of evidence for basing the conviction u/s 302 Indian Penal Code.

11. The neighbours of the appellant made certain startling disclosure during investigation and trial. They claimed that the appellant confessed having murdered his wife and son. P.W.2 Hrishikesh Ghosh, P.W. 3 Dhananjoy Sarkar, P.W. 6 Tapan Kr. Ghosh were amongst the neighbours who claimed that the appellant made a clean breast of his guilt in their presence. There is nothing on record to show that such confession had been made out of the inducement, threat or promise. There is no indication whatsoever that the appellant had inimical relationship with his neighbours. Nobody stood to gain by implicating him in a case of murder. There is no ground whatsoever for disbelieving the statements of the neighbours.

12. The conviction can be based wholly on voluntary and genuine confession. If it is found to be voluntary and authentic, corroboration by other facts and materials cannot be insisted on. As observed by the Apex Court in *Maghar Singh Vs. State of Punjab*, , if the Court believes the witnesses before whom the confession was made and it is satisfied that such confession was voluntarily, then conviction can be based on such evidence alone. In *State of U.P. Vs. M.K. Anthony*, , the Apex Court made the following observation:-

"It thus appears that extra-judicial confession appears to have been treated as a weak piece of evidence but there is no rule of law nor rule of prudence that it cannot be acted upon unless corroborated. If the evidence about extra-judicial confession comes from the mouth of witness/witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement of the accused; the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test, on the touchstone of credibility, if it passes the test, the extra-judicial confession can be accepted and can be the basis of a conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extra-judicial confession is reliable, trustworthy and beyond reproach the same can be relied upon and a conviction can be founded thereon."

13. In the instant case, as we have also pointed out, the confession was made before the villagers. There is nothing on record to show that the villagers nurtured ill feeling, grudge or animosity against the appellant. No threat, or intimidation or allurement was given to the appellant, as borne out by the

materials on record. The veracity of the statements could not be shaken even in their cross-examination. There is no explanation whatsoever as to why the neighbours would falsely implicate the appellant in a case of murder. The statements of P.W. 2, P.W. 3 and P.W. 6 having been found to be trustworthy, the trial Court rightly pinned faith in their statements. It was proved to be genuine and authentic. This important piece of evidence as to the appellant making a voluntary confession is rightly considered as an important link in the chain of circumstances.

14. Another important aspect deserves considerations. The deadbodies of the housewife and their baby could be recovered from the house of the appellant, as indicated in the Inquest Report. It has also been affirmed by the prosecution witnesses. Evidence is forthcoming to the effect that the appellant resided therein with his wife and only son. There is no suggestion that some other persons also resided in the house in question. The heads of his son and wife were nearly chopped off. The appellant did not sustain any injury whatsoever. This rules out the possibility of some rank outsiders sneaking into the room to commit such ghastly murder.

15. The Court below relied on several facts and circumstances as well as the extra judicial confession of the appellant for inflicting conviction and sentence u/s 498A and 302, Indian Penal Code. There were several important links in the chain of circumstances. The solid unbroken links in the chain of circumstances have not been snapped. The complete chain of circumstances unerringly point to the active involvement of the appellant in the commission of murder of his wife and only son. There could be the only hypothesis as to the guilt of the appellant and no hypothesis other than the guilt of the appellant can be perceived. The Court below rightly convicted the appellant for commission of offence u/s 498A and 302, Indian Penal Code on such strong circumstantial evidence. Accordingly, we uphold the conviction u/s 498A and 302, Indian Penal Code.

16. Now comes the question of awarding death sentence. In awarding a sentence, the Court is generally required to consider amongst other things the magnitude of the offence, the conduct of the offender, the impact of sentence on the society and the mitigating circumstances.

17. As per provision of Section 354(3) of the Code of Criminal Procedure, special reason must be given in case of sentence of death. The way the brutal murder of the wife and the son had been executed prompted the Court below to award the extreme death sentence. It was considered to be a "rarest of the rare" case.

18. There is no straight jacket formula for awarding death sentence. Each case depends on its own merits. As observed by the Apex Court in *Bachan Singh v. The State of Punjab*, reported in 1980 SCC 580, a real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in "rarest of the rare cases" when the alternative option is unquestionably foreclosed."

19. The Court will be required to strike a balance between aggravating and mitigating circumstances in making a choice between life imprisonment and death sentence, as highlighted in the case of Bachan Singh v. The State of Punjab, reported in 1980 SCC 580.

20. In the instant case, the heads were nearly chopped off with sharp cutting weapons, as indicated in the post mortem report. It was definitely a brutal act on the part of the appellant. It has emerged from the statements of the relations of the deceased wife that there was cordial relationship between the husband and the wife. It then swung from happiness to tears. The wife was threatened with dire consequences, The deceased Urmila Ghosh made successive diaries, explaining her precarious conditions. She had reasons to feel insecure. The convict made an abortive attempt on the life of his wife, as indicated in the general diary. There are indications that he was not behaving like a normal prudent man. His intention, as it gathered from the First Information Report and the general diary as well as statements of his in-laws, was to set up a business of his own. He pressurised his wife to bring money from her relations. Frustrated at his efforts to secure money for running a business, he started behaving in irrational manner. It was not a cold blooded murder, nor was it pre-planned. There are extenuating circumstances, justifying imposition of lesser sentence. The crime was not actuated by any lust, vengeance or gain. The convict claimed that he was in a state of insanity, although he had not been able to produce document to convince the Court below that he was atleast on a state bordering on insanity. There is no reason whatsoever for the murder of his own child. He was not acting in a rational and prudent manner. He did not kill his dear and near, actuated by any lust, sense of vengeance or for gain. There are indications that he was hard pressed for money. Irrationality developed in such economic plight. The brutal act notwithstanding, it does not, in our view, fall within the specified category of "rarest of rare". The act does not call for imposition of extreme penalty. Sentence of imprisonment for life, in our view, will meet the ends of justice.

In the result, the criminal appeal is dismissed and the death reference is refused.

The order of conviction recorded by the learned Judge against the appellant u/s 498A and 302 Indian Penal Code is hereby confirmed. The appellant is sentenced to suffer R.I. for life and to pay a fine of Rupees 2000/- in default R.I. for another one year for committing offence u/s 302 Indian Penal Code.

Issue modified jail warrant accordingly at once in the name of the Superintendent of Jail where the appellant is lodged. Let a copy of this judgment and order be forwarded to the learned trial Judge.

L.C.R. be transmitted to the Court of the learned trial Judge forthwith. A copy of this judgment be also handed over to the learned advocates for the appellant as expeditiously as possible, free of cost.

A.K. Basu, J.

21. I agree.