
(2006) 02 CAL CK 0057
In the Calcutta High Court
Case No : C.R.A. No. 316 of 1997

Ashim Kumar Chakraborty and Another APPELLANT
Vs
State RESPONDENT

Date of Decision : 24-02-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34, 498A

Citation : (2006) 2 CHN 464 : (2006) 1 ILR (Cal) 315

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

Bench : Division Bench

Advocate : Milon Mukherjee, Phiroj Edulji and R. Nandy, for the Appellant; Kazi Safiullah, Id. P.P., Swapan Mallick and Bhaswati Paul, for the Respondent

Final Decision : Dismissed

Judgement

Pranab Kumar Deb, J.—The violence against the womanhood continues unabated despite strong condemnation and outcry. This is an another sad story of a young housewife being charred to death within few months of her marriage. The prosecution case, as disclosed in the FIR and narrated during the course of the trial, was to the effect that since the inception of her marriage with the appellant Ashim Kumar Chakraborty, the young housewife Rumi Chakraborty had to face humiliation and hardship in her matrimonial house. She was quite often rebuked for her physical incapacity to domestic work. She was severely castigated after she had lost one of her ear rings. Despite promise being made by her relations to make another ring, the situation did not improve. Her ordeal continued. It reached the climax when on 07.05.94 at about 3-30 in the afternoon, her mother-in-law and husband reported to her father Subrata Kishore Chowdhury that his daughter had committed suicide by setting her ablaze. On receiving such information, her father and other relations rushed to her matrimonial house. On reaching there, they found the door of the bathroom closed. They pushed through the door into the bathroom to find her still ablaze. The body was taken out of the bathroom and thereafter it was sent to the hospital by an Ambulance.

Finding the body ablaze with the appellants doing nothing to rescue the daughter, the informant had a firm conviction that his daughter had been murdered by the appellants.

2. With the incident being reported to the local police station, a specific case was registered against the appellants. In course of the investigation, the place of the incident was visited by the Investigating Officer. A sketch map of the place of occurrence with index was prepared. The Investigating Officer also took measurement of the door of the latrine of the bathroom. He followed it up by taking photographs of the place of occurrence. Some of the incriminating articles found at the spot were also seized. The accused persons, who were found at the place of occurrence, were also arrested. The inquest of the dead-body was made on the following date. The investigation went on with the examination of the available witnesses. The post-mortem report and as well as other reports were collected. Eventually, on collection of all those materials, chargesheet was submitted.

3. Both the appellants were charged with commission of offence under Sections 498A IPC, 302/34 IPC and 201/34 IPC. They were charged with having committed the offence u/s 498A IPC by subjecting the housewife called Rumi Chakraborty to continuous physical and mental torture. They were charged with having committed murder. Finally, they were charged with having committed the offence u/s 201/34 IPC for having caused disappearance of evidence by concealing the corpse of the deceased Rumi Chakraborty in the latrine of their quarter. The appellants, however, denied all the accusations levelled against them. The trial commenced with their denial of the charges. In course of the trial, the prosecution side examined as many as seventeen witnesses. Amongst the notable witnesses were the relations and neighbour of the deceased, the doctors who examined the body from time to time and the police officers who participated in the investigation. Two witnesses also deposed on behalf of the defence. Placing strong reliance on the evidence of her relations and some of the neighbours and the factum of death as evidenced by the post-mortem report, the learned Judge was pleased to convict both the appellants for commission of offence u/s 302/34 IPC. Both of them were sentenced to rigorous imprisonment for life and to pay fine of Rs. 6,000/- each, in default, to suffer further rigorous imprisonment for two months. The appellants, however, were exonerated of the charges u/s 498A and 201/34 IPC.

4. Aggrieved by the conviction and sentence, the appellants have preferred the appeal.

5. Assailing the conviction and sentence u/s 302/34 IPC. Mr. Mukherjee, senior counsel, contends that in view of the apparent inconsistency in the judgment, the order of conviction and sentence cannot be supported. In acquitting the appellants of the charge u/s 498A, IPC, the Trial Court disbelieved the contention of the prosecution that the appellants took the life of a young housewife for her repeated failure to do domestic work in their house. The Trial Court also

disbelieved the story of the prosecution that the appellants were sore with the housewife for her doing silly things such as loosing ear rings etc. The motive the murder not having been accepted by the Trial Court, there was no reason for the Trial Court to hold that the appellants had been actuated by strong intention to get rid of her. Referring to the case of *Omwati v. Mahendra Singh and Ors.* reported in AIR 1998 SC 249, Mr. Mukherjee has argued that when prosecution puts a specific case as to motive of the crime, the evidence regarding the same has got to be considered. Mr. Mukherjee argues that motive plays an important and significant part in a case based on circumstantial evidence. That important aspect not having been established by evidence on record, there should not have been any conviction and sentence.

6. Mr. Mukherjee has contended that the prosecution in order to entangle the appellants introduced certain facts for the purpose of making the Court believe that no effort whatsoever was made by the appellants to rescue the housewife. Attempt was actually made on behalf of her near relations to show that the deadbody was sent to the hospital only after their arrival at the spot. The medical report (Ext. 7), however falsified their claim. Through P.W. 13 Dr. Biswanath Roy came the information that the deceased with cent percent burn injury was brought to the hospital at about 16-20 hrs. by the appellant No. 1 Ashim Kr. Chakraborty. The statement of P.W. 13 Dr. Biswanath Roy has exposed the falsity of the statements of the informant and some other witnesses on behalf of the prosecution. Despite prompt action being taken, the housewife did not survive. Struck with grief, the appellants straightaway went to the house of the informant to break the news of the demise of his daughter in a tragic incident. The appellants did what were expected from the in-laws. They did nothing which could be called unnatural or unethical.

7. Commencing on the approach of the Trial Judge as to the appreciation of the medical report, Mr. Mukherjee has submitted that the Trial Court altogether overlooked the inherent defects in conducting the post-mortem examination. Since it was the death of a housewife within seven years of marriage, the post-mortem examination ought to have been conducted by two doctors simultaneously. Furthermore, it was required to be conducted in day time. Deviating from norms, the post-mortem was conducted by P.W. 16 Dr. Saibal Gupta in failing light. Despite such irregularities being committed, the Trial Judge pinned absolute reliance on such post-mortem examination. Commenting on the role of P.W. 16 Dr. Saibal Gupta, Mr. Mukherjee contends that Dr. Saibal Gupta performed the dual role of an Investigating Officer and a doctor. By visiting the spot and interrogating the witnesses P.W. 16 Dr. Saibal Gupta usurped the role of the Investigating Officer. No concrete opinion as to the cause of death could be formed by him after examination of the deadbody. He reserved his final opinion till further inspection of the spot. Those were clear manifestations of his hesitancy. With vacillating mind, the doctor visited the spot and interrogated the witnesses. By taking an active part in investigation, he formed a definite opinion about commission of murder of a young housewife Rumi Chakraborty. Since the

post mortem report was not based on the symptoms and the chemical features, it ought to have been straightaway rejected by the Trial Court, as urged by Mr. Mukherjee.

8. Criticising the post-mortem report prepared by P.W. 16 Dr. Saibal Gupta, Mr. Mukherjee submits that there was no rationality in preparation of the report. The report, it is contended, was not based on facts and materials, rather it was reflection of personal feeling. Ignoring the tenets of medical jurisprudence, Dr. Gupta resorted to his own imagination to prepare a distorted report. From the mere existence of bruise or contusion or even the protruding of the tongue one cannot infer it to be a definite case of murder. The doctor conducting the post-mortem report also did not take into account that absence of soot in larynx and trachea might be for different reasons.

9. Since the entire skin had been peeled off, there was no question of any marks of bruise or contusion on the body itself. Making a dig at the observation of P.W. 16 Dr. Gupta that murder was committed by strangulation, Mr. Mukherjee submits that in the event of strangulation, there would have been at least scratch mark or any other mark of force on the skin. Non existence of any such distinguishing marks or features shatters the myth that the appellants had strangled the housewife, as urged by Mr. Mukherjee.

10. Making a strong plea for total discard of the report of Dr. Gupta, Mr. Mukherjee contends that Dr. Gupta could not cite any authority in support of his conviction that the death was caused by strangulation. The expert also did not take the help of Histology in forming his opinion. Had there been strangulation, there would have been damages on both parts of the hyoid bone. Both the parts of hyoid bone not having been fractured, it would definitely go against the view that murder was committed by strangulation. Regarding the absence of soot in trachea and larynx, Mr. Mukherjee contends that in case of instantaneous death, soot might not be found within the trachea and larynx.

11. It is contended on behalf of the appellants that desperate bid was made to save the housewife by breaking open the door. There was clear indication that the door had to be broken open to get entry into the latrine. Had the murder been committed well inside the latrine, there would not have been any question of breaking open the door. These aspects, according to Mr. Mukherjee, escaped the attention of the Trial Judge. What the Trial Judge did was to blindly follow the observation of the doctor conducting the post-mortem examination. Since the report itself was not based on reason, no importance ought to have been attached to such a report.

12. Defending the conviction and sentence, Mr. Kazi Safiullah, learned Public Prosecutor, has submitted that imprisonment for life against the appellants has been rightly awarded for their nefarious role in murdering the newly married wife by strangulation. Negating the contention of Mr. Mukherjee that there was no symptoms of strangulation. Mr. Kazi Safiullah has submitted that there were

enough indication that the death was not accidental or suicidal. There were marks of bruise and contusion on vital parts of the body. There was absence of soot in the trachea and larynx as well. Tongue was found protruded. There were also other symptoms as well in the body which went against the proposition that the death was either accidental or suicidal.

13. Drawing our attention to the position of the deadbody at the time of recovery. Mr. Safiullah has submitted that it was not possible for a living person to sit upright on a chair while she was still on fire. The impulse would force her to move to and fro. Listless body was found in upright position on a chair. This is possible only in the event of corpse being planted thereon. Furthermore, no effort was made by the appellant to save his wife. The appellant allowed the body to be scorched. This is also another circumstance which conclusively proves that the appellants were instrumental in causing the murder of the housewife.

14. The case rests on strong circumstantial evidence. There is also strong medical evidence to supplement the strong circumstantial evidence. Certain discernible facts and circumstances do emerge from the statements of P.W.1 Subrata Kishore Acharya Chowdhury, P.W.4 Bani Acharya Chowdhury and P.W. 5 Suprabha Kishore Acharya Chowdhury. Some revelations have also been made by P.W. 3 Binapani Acharya Chowdhury and P.W. 2 Shyamal Banerjee. The witnesses have disclosed that the housewife called Rumi Chakroborty was not leading a happy conjugal life with the appellant Ashim Kr. Chakroborty. On the date of the incident at about 15-30 hrs. the appellant and his mother came to the house of P.W.1 Subrata Kishore Acharya Chowdhury with the intimation that his daughter had committed suicide by setting herself ablaze. Acting on such information, P.W.1 Subrata Kishore Acharya Chowdhury, P.W.4 Bani Acharya Chowdhury and P.W. 5 Suprabha Kishore Acharya Chowdhury rushed to her matrimonial house. On entering the latrine of the quarter, they found the housewife called Rumi Chakroborty on a chair with her lower portion still on fire. The deadbody was brought out from the latrine and thereafter the ambulance was called. The local people assembled only after their raising hue and cry. It also emerges from the statements of P.W.1 and P.W.4 that the doors of the quarter were loosely shut. The witnesses entered into the latrine by pushing it.

15. It is quite evident from the statements of P.W.1, P.W.4 & P.W.5 that there was no occasion for them to break open the doors in the bedroom and the latrine. From the statement of the Investigating Officer, we gather the information that the latch of the latrine was found intact. All these facts and circumstances definitely go against the proposition that the housewife committed suicide well inside the latrine after locking it from inside.

16. On being informed of the incident, the informant and two other relations rushed to the matrimonial house of his daughter. The informant and his brother and sister-in-law found Rumi Chakroborty on the chair with her lower portion still ablaze. The quarter in question was in occupation of the appellants and the deceased. Nothing was done by the appellants to drag the body from the inferno.

They let the housewife called Rumi Chakroborty to be charred to death. Instead of making any attempt to retrieve the body of the lady, they went out to inform her father and other relations of the tragic incident. The entire act was committed in such a surreptitious way that even the neighbours did not get hint of it. As disclosed by the informant, the neighbours came in hearing the scream and outcry. Step was taken to send the body to the hospital on an ambulance. At about 3-30 p.m. the appellant and his mother intimated to the informant of the death of his daughter. They hurried to the spot on receiving the news. The deadbody was sent to the hospital on an ambulance after it had been taken out from the latrine in their presence. If the statement of P.W. 3 Dr. Biswanath Roy is to be accepted, the body was brought to the hospital at about 16-25 hrs. with cent percent burn injury. His disclosure that the patient was brought to the hospital by her husband Ashim Kr. Chakroborty, as such, cannot in any way go to attest the assumption that her husband, the appellant, was quite sincere and enthusiastic about the treatment of his wife. As we have already noted, the body was literally charred to death with the appellants watching and observing it from the adjacent room. A lady sustaining cent percent burn injury was expected to scream in view of singeing burn injury. Strangely enough, the neighbours and other inmates of the quarter could not get any idea of the entire incident. They came in only on hearing the scream and outcry of the informant and others. The entire episode was executed in a very hush manner. Furthermore had the housewife really set herself ablaze, the impulse would have forced her to pace up and down the room at least. A lady sustaining cent percent burn injury cannot sit quietly on a chair. Proper appreciation of all these facts and circumstances had been made by the Trial Court in arriving at a firm conclusion that the death was not outcome of an accident or suicide. The distinguishing features and the circumstances ruled out the possibility of suicide. Had there been an accident, there would have been some trail of destruction. There would have been noisy explosion as well. Nothing of that sort happened. The latrine remained as it is. There was no indication the huge columns of smoke billowed out. It is nothing on record to show that the adjacent rooms were also affected. The plea that the death was either accidental or suicidal, as such, cannot be accepted. It was just a futile attempt on the part of the appellants to absolve themselves of their liability.

17. The Trial Judge also placed strong reliance on the corroborative medical reports for coming to a definite opinion about the commission of murder. The deadbody was handled by three doctors namely P.W. 12 Dr. Prasanta Kr. Majumdar, P.W. 13 Dr. Biswanath Roy and P.W. 16 Dr. Saibal Gupta. P.W. 16 Dr. Saibal Gupta conducted the post-mortem examination. He also performed the role of a Forensic Expert as well. When the deadbody was brought to Durgapur Sub-Divisional Hospital. P.W. 13 had the occasion to examine it. P.W. 13 Dr. Prasanta Kr. Majumdar found the whole body burnt with complete destruction of skin and subcutaneous tissues exposing the muscle on right thigh. The tongue was found protruded. It struck him that it was not a case of suicidal burn.

Accordingly, he referred to the case to the Forensic and State Medicine, Burdwan Medical College for expert's opinion.

18. The post-mortem was conducted by P.W. 16 Dr. Saibal Gupta. On examination of the deadbody, he found:

- i) Contusion on the left side of the chest wall.
- ii) Contusion over front of left leg below left knee joint.
- iii) Contusion over the front of the right forum
- iv) Contusion on the front right side neck.
- v) Contusion over left front of neck.

19. On deep dissection, he found the evidence of contusion on left hyoid bone with abnormality. There were also contusions over uvula and epiglottis.

20. There were post-mortem burn injury well over front of chest and abdomen, whole of face, head, front and back of neck with peeling off skin at places. There were post-mortem injuries as well on thighs, legs, shoulders, arms, back of chest and buttocks. There was absence of soot in larynx and trachea. Considering all these features and symptoms, the doctor conducting the post-mortem examination came to the firm opinion that the death was due to the combined effects of manual strangulations of neck, use of blunt force over chest and burn injury over head, neck and chest. The doctor opined that it was ante-mortem and homicidal in nature.

21. From the report of the Expert, it is abundantly clear that whole body literally had burn injuries. There was absence of soot in larynx and trachea. There were contusions on several parts of the body. All these features would not have been prominent if it was really outcome of an incident or resulted from self-immolation. Nobody ever claimed that the deadbody was forcibly dragged out from the latrine. It is therefore hard to accept the view of P.W. 13 Dr. Biswanath Roy that contusions might occur as a result of dragging of body along the surface. There being apparent marks of violence, such logic cannot be accepted.

22. The incident of murder was preceded by acts of cruelty on the housewife. It is on record that the housewife faced humiliation over her physical deformities. She was also reprimanded for loosing ear ring. The relationship was far from being cordial. Since there was no element of demand of dowry, the appellants were exonerated of the charge u/s 498A IPC Exoneration of the charge u/s 498A IPC, however, is not a ground for believing that there was no motive behind the murder. That they were sore with the housewife was evidenced by their conduct. The motive may be considered as an important element in a case based on circumstantial evidence. As observed in State (Delhi Administration) Vs. Shri Gulzari Lal Tandon, , where the case of the prosecution rests purely on circumstantial evidence, motive undoubtedly plays an important part. An accused can be convicted on circumstantial evidence only if the circumstances are wholly

inconsistent with the innocence of the accused. Here we find strong circumstantial evidence to sustain the charge of murder. There is supporting medical evidence as well. The motive behind the crime also cannot be ignored. All the facts and circumstances have been properly chained and linked up. Since all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused persons, inference of guilt can be made. Having regard to all facts and circumstances, we do concur with the view of the Trial Judge that appellants committed the murder of the housewife. Thus, we do not find any merit in the appeal.

23. In the result, Criminal Appeal being C.R.A. No. 316 of 1997 is dismissed, affirming the conviction and sentence passed by the learned Additional District Judge in connection with sessions Trial No. 11 of 1997.

24. The appellants who are now on bail, are to surrender before the Trial Court within 15 days of passing of this order to serve out the sentence.

25. Send the L.C.R. along with a copy of the judgment to the Trial Court with the intimation that non-bailable warrants are to be issued against the appellants to secure their detention in the event of the appellants not surrendering within 15 days of passing of this order.

26. Urgent Xerox certified copies are to be issued to the appellants, free of cost.

Alok Kumar Basu, J.

27. I agree.