

(2007) 09 CAL CK 0067
In the Calcutta High Court
Case No : C.R.A. No. 488 of 2003

Doctor Murmu and Another		APPELLANT
	Vs	
State of West Bengal		RESPONDENT

Date of Decision : 07-09-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34, 376(G)

Citation : (2008) CriLJ 2677

Hon'ble Judges : Kishore Kumar Prasad, J; Girish Chandra Gupta, J

Bench : Division Bench

Advocate : Minoti Gomes and Partha Sarathi Bhattacharyya, for the Appellant; Ashimesh Goswami and P.P. Kalyan Moitra, for the Respondent

Final Decision : Allowed

Judgement

Girish Chandra Gupta, J.—The accused Doctor Murmu and Donai alias Dolui the appellants were charged along with Iswar Tudu, Basai Murmu and Sukumar Saha u/s 302 of the Indian Penal Code read with Section 34 thereof for causing death of Sonamani Kisku; u/s 201 read with Section 34 of the Indian Penal Code for causing evidence of the murder to disappear and u/s 376(G) for committing gang rape on the victim Sonamani Kisku prior to putting her to death. The accused Iswar. Basai and Sukumar were acquitted. The accused Doctor Murmu and Donai were convicted by an order dated 9th September, 2003 for offence punishable under Sections 376(G) and 302 of the Indian Penal Code. By an order dated 10th September 2003 both the convicts were sentenced to suffer life imprisonment and to pay fine of Rs. 5,000/- and in default, to undergo further rigorous imprisonment of six months. It is against these orders that the present appeal has been preferred.

2. The prosecution case, as appearing from the First Information Report, briefly stated is as follows:

Sonamani Kisku, aged about 20 years, developed a love affair with one Sukumar

Saha, son of Dharendra Nath Saha and grandson of Anadi Saha who was the owner of Saurakuri Laxminarayan Oil Mill where Sonamani used to work. A salish was held and a written agreement was also executed evidencing that Sukumar agreed to marry the said Sonamani. On 1st April, 1990 the said Sonamani did not return from her work. On 2nd April, 1990 her dead body was found hanging from the branch of a Palash tree. The complainant Kalam Hembram, uncle of the victim, suspected that Sukumar with the help of some other people had murdered his niece and had thereafter hanged the dead body with the Palash tree.

3. From the evidence of P.W.2 Halba alias Moongli, it appears, that on 1st April, 1990 at about 6 p.m. when she, accompanied by Sonamani, was returning home from Saurakuri Rice Mill Donai intercepted them and asked Sonamani to accompany him. Sonamani refused to go. Donai insisted upon her going. Sonamani asked Halba to report the matter to her mother and she presumably accompanied Donai. Consequent to the information given by Halba, Phoolmani, the mother of Sonamani, and Dolu, the maternal aunt of Sonamani accompanied by Halba went to Deodanga jungle where Sonamani had been intercepted by Donai. Sonamani was not found there. They then went to Saurakuri Daangal and found both Sonamani and Sukumar and a few other persons present at that place. Sonamani and Sukumar were thereafter asked by Doctor Murmu to go to the Phoolberia Primary School where a salish was to be held. According to Halba all of them went to the Phoolberia Primary School where after protracted discussion it was settled that Sukumar would marry Sonamani. Sonamani with her maternal aunt Dolu returned to her house. Halba with her elder brother Golu also returned to their house.

4. Dolu, the maternal aunt of Sonamani the P.W.3 deposed that at about 11 p.m. they came back home. The house of Sonamani was in the neighbourhood of that of Dolu. Dolu deposed that in spite of knocking at the doors no one responded. At that time Doctor Murmu and Donai dragged Sonamani forcibly. She yielded but did not have a sound sleep. It was then drizzling. In the morning she got the information that Sonamani had been found hanging from the branch of a Palash tree.

5. She however has not disclosed any reason as to why she did not take Sonamani to her house when no one in the house of Sonamani responded. In her cross-examination she deposed that Doctor Murmu and Donai had merely asked Sonamani to accompany them. Dolu went on to add that she did not suspect any foul play because Donai is a near relation of Sonamani.

6. Rameshwar, the P.W.4, who happens to be the brother of the deceased Sonamani deposed that with the help of one Konda Kisku he brought down the dead body of Sonamani and while the dead body was being taken at the crematory the police came and seized the body. P.W. 1 Kalam Hembram the de facto-complainant has deposed that after bringing down the dead body from the branch of the Palash tree the dead body was first taken home and then was

taken to the cremation ghat at around 9 a.m. when the police seized the dead body.

7. It appears that upon seizure of the dead body an unnatural death case was started on 2nd April 1990 whereas the written complaint was filed on 3rd April, 1990 by the P.W. 1. The complaint was scribed by one Bimal Roy who is the P.W.5. P.W.4 Rameshwar the brother of the deceased volunteered that he had Kalam the P.W. 1 after having got information from Habla the P.W.2 and Dolu the P.W.3 about the cause of death of Sonamani had filed the FIR. In other words, the contents of the written complaint which was treated as the FIR was based on the information supplied by Habla and Dolu, the P.Ws.2 and 3 respectively. Bimal the P.W.5 has deposed that he had scribed the complaint as per the narration of facts made by Kalam and Rameshwar, the P.Ws. 1 and 4 respectively. The FIR was marked exhibit "3."

8. P.W.6 Phoolmani, the mother of the deceased, deposed that the Palash tree, with a branch whereof the victim was found hanging, was situated at a distance of few yards from her house. She also deposed that Donai was the husband of her sister Neelmani. She admitted that Donai did not have any strained relationship with her daughter Sonamani. She added that she believed firmly that Donai had killed her daughter Sonami. She did not disclose any reason or any basis for her such belief.

9. P.W.8 Ratan Mondal, an employee of the said Laxminarayan Oil Mill which belonged to the grandfather of the accused Sukumar Saha deposed that he was present at the salish when Sukumar was asked to marry Sonamani. He at first did not agree to the proposal. When he was repeatedly pressurized he consented to marry the girl after a month. Then the proposal and acceptance were recorded in two separate pieces of paper, xerox copies whereof were produced but they were not marked exhibits because the originals were not forthcoming. The xerox copies were marked for identification. The P.W.8 further deposed that he took Sukumar Saha back to the mill and because it was raining Sukumar remained inside the mill with him during the night. In the morning they heard about the death news of Sonamani.

10. No evidence whatsoever is on the record to establish that the appellants were the assailants of the deceased Sonamani. The learned trial Judge has convicted the appellant solely on the basis of the "last seen together" theory as would appear from his findings set out hereinbelow:

We find from the evidence as already discussed in details that Sonamani was dragged by accd. Donu Soren and Doctor Murmu from the door of her house at about 11 p.m. when it was drizzling. On the following morning Sonamani was found hanging from the branch of a tree. The medical evidence goes to show that Sonamani was ravished by several persons and thereafter she was murdered by strangulation. In between taking away the victim girl from the door of her house till finding of the dead body hanging from the branch of a tree there is no

supervening circumstances to exonerate the guilt of the accd. Donu Soren and Doctor Murmu. Those two accd. took Sonamai at such odd hours of night from the door of her house and on the following morning she was found dead and was found hanging from the branch of a tree and the medical evidence goes to show that there is scratch mark over her breast, out orifice of the vagina was found torn, fresh blood clot present there, multiple abrasion over buttock, waist and posterior aspect of thighs present and the death was due to strangulation. As the accd. Donu Soren and Doctor Murmu had taken away the victim it is for the accd. to explain where the victim was taken. I have already noted that there is no positive case of the defence. When it is amply proved by way of cogent evidence of legal character that the accd. Donu Soren and Doctor Murmu had taken away Sonamani from the door of her house and when the accd. cannot explain where she was taken and when the victim was found dead on the following day being strangled after gang rape and when there is no other supervening circumstances, I have no hesitation to hold that accd. Donu Soren and Doctor Murmu are responsible for commission of the offence under Sections 376(g) and 302, I.P. Code.

11. The reasoning of the learned trial Judge is perverse to say the least. In the first place there is no definite evidence that the deceased was last seen in the company of the appellants. P.W.3 in her examination-in-chief deposed that the victim was dragged by Doctor Murmu and Donai in the night at 11 p.m. on 1st April, 1990. She also deposed that she did not have a sound sleep in the night. Presumably she was concerned about the poor girl, if we take her deposition at its face value. But in her cross-examination she stepped down the alleged act of dragging to a mere request to accompany. She has added that she did not suspect any foul play because Donai was a near relation of Sonamani. She has not according to us told the truth which is further probalised from the fact that the mother of the deceased has sought to involve Donai alleging that she firmly believed that Donai had killed her daughter. When asked in the cross-examination to indicate any reason for her belief she could not assign any. It is curious that in the FIR the blame is upon Sukumar Saha. P.W.4, the brother of the deceased who stealthily wanted to dispose of the dead body deposed that the contents of the FIR was based on the information supplied by the P.Ws.2 and 3. Therefore at that stage the P.W.3 did not see any blameworthy conduct on the part of the appellants. At the trial she made a somersault and implicated Donai and Doctor when there is no evidence worth the name against these two persons.

12. Even assuming that Sonamani was last seen in the company of these two persons, the circumstances of the case must be wholly inconsistent with the innocence of the accused persons and wholly consistent with their guilt if they are to be convicted on the basis of the circumstantial evidence. If any authority is needed reference can be made to the judgment in the case of Nisa Stree Vs. The State of Orissa, and the judgment in the case of Rajinder Kumar and Another Vs. The State of Punjab, .

13. A significant suggestion was given on behalf of Sukumar Saha to Rameshwar, the brother of the deceased Sonamani. The suggestion is that Sonamani did not only, in fact, go back to her home but also she took her meal at that place. The suggestion was denied by the P.W.4. This denial is, we are inclined to think, difficult to believe. The young daughter had not come back and everybody else was sleeping peacefully at home is not a normal circumstance. The postmortem report proved the suggestion to the extent that undigested rice, dal and vegetable were found in the stomach of the victim. The victim died between 11 p.m. In the night and the dawn. The undigested food in the stomach could not have been the one taken by the deceased during her lunch. There is evidence on the record to show that between 6 p.m. and 11 p.m. she was facing the salish. Therefore, the possibility of Sonamani having gone back to her home and having taken her food thereat cannot be ruled out. The fact that the dead body of Sonamani was found hanging with the branch of a Palash tree from near the house of the victim herself is also a pointer militating against the involvement of the appellants. From the P.W. 16 the doctor's evidence we find that Sonamani died due to strangulation. The postmortem report depicts a horrible picture. She was subjected to inhuman torture before she was put to death. We are however convinced that there is no material on the record to connect the appellants with the crime. It is not even suggested by any of the witnesses that the appellants or any of them had any strained feeling against the deceased.

14. Mr. Goswami, learned Public Prosecutor submitted that as per the evidence of P.W.3 the appellants were last seen together with the victim Sonamani and therefore they owe an explanation as to what happened to the victim after they had taken charge of her. We already have indicated above that there is no convincing evidence to show that Sonamani was last seen in the company of Donai or Doctor Murmu. If the victim was last seen in the company of the appellants then the question arises why was that case not made out in the FIR particularly when the FIR was lodged on the basis of information supplied by P.W.3. It is the P.W.3 who deposed about the victim having been seen in the company of the appellants. Why was then the dead body stealthily sought to be disposed of? We already have indicated above the evidence of P.W.4 who happens to be the brother of the victim. He admits to have brought down the body from the tree and thereafter taken the body to crematorium. At the crematorium the police intervened and seized the body. Why was the attempt made to stealthily dispose of the body if the appellants were liable for her death. Mr. Goswami failed to give any reasonable answer. Similarly the question remains unanswered as to wherefrom the undigested food came into the stomach of the victim if she had not gone back her home.

15. For the reasons indicated above we are satisfied that there is no evidence to connect the appellants with the crime.

16. In the result the appeal succeeds. The order of conviction as well as sentences imposed upon the appellants are set aside. The appellants are in jail.

They are ordered to be released forthwith unless required in any other case.

17. Lower Court Records with a copy of this judgment to go down forthwith to the learned trial Court for information and necessary action. Urgent xerox certified copy of this judgment, be supplied to the learned Advocates for the parties, if applied for, on compliance of all formalities.

Kishore Kumar Prasad, J.

18. I agree.