
(2008) 07 CAL CK 0058
In the Calcutta High Court
Case No : Criminal Appeal No. 307 of 1989

Durga Prasad Sarkar

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 09-07-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 232, 313

Evidence Act, 1872 — Section 106

Penal Code, 1860 (IPC) — Section 300, 302, 313, 498A

Citation : (2008) 3 CALLT 289 : (2008) CriLJ 4218

Hon'ble Judges : Tapas Kumar Giri, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Pranati Goswami and S.N. Hussain, for the Appellant; Asimesh Goswami, Ratna Ghosh and Basanti Pal, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.—On January 9, 1987 a lady by the name of Archana alias Putul was killed by throttling in her in-laws' place. On a combined reading of the evidence as well as the complaint the following facts reveal.

At about 9.00 P.M. on January 9, 1987 in the night the villagers were gossiping on the chala of Basudev Ghosh. They were, Kanial Kinkar Ghosh complainant, Anadi Kumar Bagdi, Tamal Krishna Bagdi and others. Mahim Ranjan Sarkar and Durga Prasad Sarkar, the accused abovenamed informed them that an untoward incident occurred in their house. On a query made by them Durga told that he had killed his wife Archana by throttling and the dead body was lying on the upper floor of the house. All of them rushed to the house of Durga and found the body of Archana lying on the bed. They also saw blood coming out from her mouth slightly. They came to know that the incident occurred due to quarrel arising out of family affairs. On the next day, i.e., January 10, 1987 Kamal lodged a written complaint with the Officer-in-Charge, Nanoor Police Station in the district of Birbhum. The said complaint was received by the camp office at

Bora at 11.45 PM on January 14, 1987. The Nanoor Police Station registered the case on the basis of the said complaint. On perusal of the FIR it is found that the incident was reported at about 1.45 A.M. on January 11, 1987.

2. Durga was arrested along with his mother, Rajlaxmi. They were charged under Sections 498A and 302 of the Indian Penal Code. However, Rajlaxmi was acquitted u/s 232 of the Criminal Procedure Code as no evidence came out as against Rajlaxmi. Durga, however, faced the trial.

3. Altogether thirteen witnesses were examined by the prosecution. Defence, however, did not produce any witness. At the time of framing of the charge the accused was examined u/s 313 of the Criminal Procedure Code. He, however, did not offer any explanation as to how his wife had died. He merely denied the charge brought against him.

4. Kamal being the P.W. 1 deposed that while they were gossiping with Tamal, Anadi, Dhiren and others while sitting in the shop room of Basudeb, Mahima Ranjan accompanied by Durga came and reported the incident to them. After coming to know of the incident they called village chowkider and sent him to the house of the accused. They also noticed that the dead body was lying as a normal person in sleep. They also saw blood coming out from the mouth. Kamal asked Durga "Mere felli". Durga replied "Hum". On being asked Durga categorically told him that he had killed his wife by strangulation. In cross-examination Kamal deposed that he did not send any written information to the Police. According to him, Ananda Prasad intimated the Police. The complaint was written by him after arrival of the Police and after the dead body had been inspected. He also deposed that it was not possible to him to recollect the exact words uttered by Durga. He categorically denied that Durga for the first time confessed about the incident after arrival of the Police or that being a member of the Panchayat he exercised his influence to extract such confession from Durga.

5. Being P.W.2, Tamal almost corroborated the incident as deposed by Kamal. Anadi being the P.W.3 deposed in the same line. Village Chowkidar being P.W. 5 deposed that as instructed by Kamal he went to the house of the accused and sat by the side of the dead body till the Police came late at night. Madan being P.W.6 although declared hostile deposed that Durga told him that he had killed his wife by strangulation. He also deposed that he met the Police on the way to Police Station and narrated the incident to the Police. Binapani being P.W. 7 was the mother of the victim. She deposed that Durga married Archana 8/9 years ago. Neither Durga nor his mother Rajlaxmi took care of her daughter. The brother of the victim Mihir being P.W.8 deposed that Durga and Archana had no cordial relationship between them. Archana was being assaulted by her husband. They came to know about the death of Archana from the Police Station. The Investigating Officer Shri S. Majumder being P.W. 11 deposed that one Ananda Prasad Sarkar intimated about the death and the then Officer-in-Charge started an unnatural death case. Thereafter he accompanied the Officer-in-Charge to the place of occurrence where one written complaint was handed over to the Officer-

in-Charge which was in turn handed over to him for registration of the case. He also identified the written complaint. P.W. 11 was the Officer-in-Charge of the Nanoor Police Station at the relevant time. He also deposed in the same line with Majumdar. He held in quest over the dead body as identified by the Village Chowkidar. He arrested Durga Prasad as well as Rajlaxmi and submitted charge-sheet on July 20, 1987. In cross-examination he deposed that he did not examine Ananta Mani Sarkar, Hari Pada Mondal, Kashinath Mondal, Kripa Sindhu Chatterjee, Sunil Mondal and Basudeb Mondal. P.W. 13 was the Doctor. He did the post mortem of the dead body of the victim. He found bleeding from her mouth apart from aberration of right fore head and mark of injury on neck on both sides. He was of the opinion that the death occurred due to throttling, it was anti mortem and homicidal in nature. In cross-examination the Doctor deposed that if throttling was done by bare hand the mark of injury would be apparent whereas if it was done with the help of cloth no external injury would be detected. He categorically deposed that in either of the cases it would result in congestion in larynx and lungs.

6. The learned Judge held the accused guilty of the charge brought against him and observed that the offence was proved u/s 302 of the Indian Penal Code. The learned Judge, however, observed that the offence so brought against the accused u/s 498A was not proved and the accused was acquitted from the said Charge. The accused was ultimately sentenced to imprisonment for life.

On analysis of the evidence we find the following facts proved in evidence:

- i) The victim was in her marital home at the time of her death.
- ii) The victim died due to throttling.
- iii) Accused approached the villagers and informed them about the death and sought their help.
- iv) Accused confessed before the villagers that he had killed his wife.
- v) Even if his confession is not taken into account accused did not offer any explanation during his examination u/s 313 of the Code of Criminal Procedure as to how the death had occurred.

7. Ms. Pranati Goswami, learned Counsel appearing for the appellant tried to demonstrate the anomalies that crept in the evidence. Such anomalies, if any, according to us, were minor in nature and did not raise any doubt in the mind of the Court while analysing the evidence as above. Ms. Goswami also highlighted the fact that the inquest report as well as the post mortem report were not tendered in evidence. We, however, find that the Police Officer who held the inquest categorically deposed to the said extent. No cross-examination was made on that score. No suggestion was given that he did not hold the inquest. Similarly the concerned Medical Officer who held the post mortem categorically deposed as to the result of the examination.

8. It is true that both the inquest report as well as the post mortem report should have been tendered as exhibit. We, however, do not find any specific recording on that score. Assuming those two vital documents were not tendered as exhibit since the unnatural death was proved and the Medical Officer categorically opined that death was due to throttling it was admittedly a case of homicide. The victim was in her house along with the accused. No outsider was present at the time of occurrence. Hence, the accused owed an explanation as to how the death had occurred as it was within his special knowledge within the meaning of Section 106 of the Evidence Act, 1882.

9. In the case of *State of Uttar Pradesh v. Laxmi* reported in 1998, Supreme Court Cases (Criminal), Page-929 the Apex Court observed as follows:

The law is that burden of proving such an exception is on the accused. But the mere fact that the accused adopted another alternative defence during his examination u/s 313 of the Indian Penal Code without referring to Exception I of the Section 300 of IPC is not enough to deny him of the benefit of the exception, if the Court can cull out materials from evidence pointing to the existence of circumstances leading to that exception. It is not the law that failure to set up such a defence would foreclose the right to rely on the exception once and for all. It is axiomatic that burden on the accused to prove any fact can be discharged either through defence evidence or even through prosecution evidence by showing a preponderance of probability.

9.1 In the case of *State of Maharashtra and Others Vs. Ravi Prakash Babulalsing Parmar and Another*, the Apex Court observed that in a case based on circumstantial evidence in absence of eye witness there is another principle of law which is to be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused offers no explanation the same becomes an additional link in the chain of circumstances to make it complete.

In the case of *Raj Kumar Prasad Tamarkar v. State of Bihar and Anr.* reported in 2007 3 SCC 716 the Apex Court considered a case where at the time of occurrence the deceased and the accused were in the bed room and the terrace adjoining the same. There was no other person. The cause of death was unnatural. In such circumstances the burden of proof lay upon the respondent to show under what circumstances the death was caused to the victim.

10. Applying the aforesaid law in the present case we are of the view that even if the extra judicial confession made by the accused is not taken into account the fact that the dead body was recovered from her marital home and the victim was admittedly with the accused immediately before her death warranted an explanation from the accused as to the cause of death. Admittedly the accused neither offered any explanation nor produced any evidence in his defence. In fact, he did not offer any explanation in his defence save and except claiming himself to be an innocent person. In our view, considering the facts of the

present case mere denial of charge was not sufficient. Since the accused did not offer any explanation as to how the death had occurred adverse interference must be drawn against him and the chain of circumstances leading to the unnatural death of the deceased is thus complete.

11. The learned Judge held him guilty of the offence u/s 302 of the Indian Penal Code on the basis of his confession. We have examined the evidence on that score. We have also examined the fact as well as evidence keeping aside such confession and have come to the same conclusion.

12. The appeal thus falls and is hereby dismissed. The bail granted earlier is cancelled. Sureties are directed to produce the accused forthwith before the Court below. Let copy of this judgment along with the lower Court records be sent down.

Urgent xerox certified copy will be given to the parties, if applied for.

Tapas Kumar Giri, J.

13. I agree.