

(2007) 05 CAL CK 0031
In the Calcutta High Court
Case No : CRA No. 392 of 2005

Halema Bibi and Another

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 17-05-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 302, 34

Citation : (2007) 3 CHN 602

Hon'ble Judges : Kalidas Mukherjee, J;Alok Kumar Basu, J

Bench : Division Bench

Advocate : Pulakesh Bajpayee and Kabita Mukherjee, for the Appellant; Asimesh Goswami, Minoti Gomes and Pinaki Bhattacharya, for the Respondent

Judgement

Kalidas Mukherjee, J.—This appeal is directed against the judgment of conviction and sentence passed by learned Additional Sessions Judge, 3rd Fast Track Court, Malda in Sessions Trial No. 4(10) of 2003 corresponding to Sessions Case 215 of 2001 convicting accused Halema Bibi and Kalu Sk. and sentencing them to suffer imprisonment for life and a fine of Rs. 2,000/- each in default S.I. for one year each u/s 302/34 IPC.

One Md. Rejaul Karim lodged complaint with O.C., Gopalgunge I.C., Malda being accompanied by Dilwara Hussain, Azijul Haque and Halema Bibi, alleging that he solemnized the marriage between his nephew Md. Samsuddin aged 21 years and said Halema one year prior to the incident. On 18.06.97 at 10.00 p.m. both Halema and Samsuddin went to their bedroom to sleep after taking meal.

On 19.06.97 Halema as usual got up from the bed and started domestic work, but Samsuddin did not get up. The grand mother Jarina Bibi called Samsuddin but Samsuddin did not get up. Jarina Bibi then moved Samsuddin with hand and found that he was lying dead. There was mark of pressure around the neck of Samsuddin. There was also blood on the left eye. The villagers were called and the matter was narrated to them. The villagers also expressed doubt over the death of Samsuddin and they refused to bury the body. On being asked, Halema

Bibi at first did not speak anything. In the evening Halema Bibi confessed before the villagers including the informant that she along with her paramour Kalu Sk, killed Samsuddin on the previous night by pressing old saree around the neck and by way of strangulation. After the incident Kalu Sk. fled away and Halema Bibi was produced at the P.S. by the informant along with others. The deadbody of Samsuddin was lying in his house at the time of lodging the FIR. The incident was reported on 19.06.97 at 22.45 hours. After receipt of the complaint, the P.S. Case No. 99 dated 19.06.97 was started u/s 302/34 of the IPC. After completion of investigation the chargesheet was submitted. The learned Trial Court after considering the materials on record framed charges against the accused persons Halema Bibi and Kalu Sk. under Sections 302/34 and 120B IPC to which they pleaded not guilty and claimed for trial.

Prosecution in this case examined as many as 14 P.Ws. including the near relatives of the deceased, seizure witnesses, autopsy surgeon and the I.O. P.W.2 to P.W.6 and P.W. 10 & P.W.II were declared hostile.

2. The learned Trial Judge upon consideration of the materials on record was pleased to pass the impugned judgment of conviction and sentence holding that the circumstantial evidence unerringly pointed at the guilt of the accused. It was also observed by the learned Trial Court that there was extra-judicial confession of Halema to Jarina and others who gathers there. The learned Judge also observed that the motive of Halema to murder her husband-Samsuddin could be gathered from her confession to the villagers regarding her love affair with Kalu Sk. The learned Trial Court also considered the evidence of the autopsy surgeon and considering all the materials on record the learned Trial Judge passed the judgment of conviction and sentence as aforesaid.

3. Mr. Bajpayee, appears on behalf of the appellants. Mr. Bajpayee contends that the entire case of the prosecution rests on the extra-judicial confession of Halema Bibi and there is no direct evidence as to the alleged incident. It is contended that the circumstantial evidence is not sufficient to prove the charges against the appellants. Mr. Bajpayee contends that excepting alleged extrajudicial confession made by Halema Bibi there is no evidence against Kalu Sk. as to his involvement in the commission of the alleged offence. It is contended that if there is no evidence against Kalu Sk., in that case the alleged confession made by Halema cannot be used against her. Mr. Bajpayee contends that if the alleged extra-judicial confession is found to be not acceptable, in that case Halema cannot be held guilty, inasmuch as, it was not possible for Halema Bibi alone to kill her husband. It is contended that there is no evidence to show that the extra-judicial confession was made voluntarily. It is contended that there is no corroboration of the alleged extra-judicial confession made by Halema Bibi. Mr. Bajpayee contends that there is evidence to show that Halema Bibi was put under threat by the villagers as to the cause of death of Samsuddin. Mr. Bajpayee finally contends that having regard to the evidence on record the learned Trial Court was not justified in recording the order of conviction and

sentence. Mr. Bajpayee has referred to and cited a decision reported in Chandrakant Chimanlal Desai Vs. State of Gujarat, .

4. Mr. Goswami appears on behalf of the State respondent and submits that Kalu Sk. was the paramour of Halema Bibi and there was extra-judicial confession made by Halema Bibi voluntarily stating that she along with her paramour Kalu Sk. caused the death of Samsuddin by means of strangulation. Mr. Goswami contends that from the evidence it would appear that both the husband and wife were last seen together on the previous night when they went to sleep in their bedroom and on the following morning Samsuddin was found dead. Mr. Goswami submits that P.W.1 was corroborated by a close neighbour i.e. P.W.7 and P.W.9 and there is no ground to discard the extra-judicial confession made by Halema Bibi. Mr. Goswami contends that the learned Trial Court was justified in recording the order of conviction and sentence and there is no ground to interfere with the said order.

5. The prosecution case rests on circumstantial evidence and the alleged extra-judicial confession. Mr. Goswami relies on the evidence of P.W.1, P.W.7 and P.W.9. So far as circumstantial evidence is concerned, it appears from the evidence of the P.Ws. that Samsuddin and Halema Bibi at the night of 18.06.1997 slept together in their bedroom. As per the evidence of Jarina Bibi (P.W.9) the room was closed from inside. It is also in evidence that in the following morning, Halema Bibi woke up and started sweeping the courtyard with broomstick and then P.W.9 having found no sound from Samsuddin, entered into his room and thereafter pushing his body found that he was lying dead. It is the further case of prosecution that at first Halema Bibi did not say anything as to the cause of death of Samsuddin. Up to this stage, there is strong circumstantial evidence that both the husband and wife slept together in their bedroom and remained there till the morning. On this point there is consistent and convincing of P.W.1, P.W.7 and P.W.9. There is nothing to show that the room was accessible to others or there was any other intervening circumstances. Moreover, the marked silence of Halema Bibi in the morning is of great significance. When Samsuddin was found lying dead, there was no reaction from her. She also did not ask anybody for lodging the FIR. In view of such unusual indifference, apathetic attitude of Halema on the death of her husband, it can reasonably be said that her conduct was not in consonance with the ordinary human conduct. In spite of such strong circumstantial evidence, there is no explanation from her end and in the cross-explanation of P.W.1, P.W.7 and P.W.9 nothing has been elicited so as to cast any shadow of doubt upon their testimony. The surrounding circumstance unmistakably point at the guilt of the appellant Halema while considering the case from circumstantial angle of vision.

6. In the next place, as regards the alleged extra-judicial confession, it is the case of prosecution as set forth in the FIR that the villagers asked Halema Bibi about the cause of death of Samsuddin, but, at first she did not speak anything. It is also in the FIR that in the evening Halema confessed before the villagers

that she and her paramour Kalu Sk. together killed Samsuddin on the previous night by pressing old saree around the neck and by way of strangulation.

7. During trial P.W.1 stated that in the evening Halema Bibi told her that she along with Kalu Sk. with the help of cloth killed Samsuddin and she sat on the thigh of Samsuddin. It is in the evidence of P.W.7 that on enquiry by the people present there, Halema told that she had caused the death of Samsuddin along with her lover Kalu Sk.; that she had an illicit relation with Kalu Sk. who told her that in order to marry her they would have to kill Samsuddin and they hatched a plan. It is also in his evidence that Halema Bibi called Kalu Sk. on that night to their house and when he gave signal through window, she opened the door and Kalu entered the room; that Halema and Kalu Sk. fastened a saree around the neck of sleeping Samsuddin and pulled it and it was then about 1.00 a.m.

8. P.W.9 has stated that Halema Bibi was asked as to the cause of death of Samsuddin, but, she did not answer; thereafter in the evening Halema was weeping and told that she along with Kalu Sk. tied the neck of Samsuddin by a cloth and pulled it and thereby killed him; that she sat on the legs of Samsuddin.

9. The evidence of P.W.7 to the effect that as per the confessional statement of Halema there was illicit relation with Kalu Sk. and that Kalu Sk. told Halema Bibi to kill Samsuddin and that after giving signal through the window Halema Bibi opened the door. This part of extra-judicial confession as told by P.W.7 does not find corroboration from the evidence of P.W.1 and P.W.9. in other words, the alleged illicit relation/love affair between Halema Bibi and Kalu Sk. is absent in the evidence of P.W. 1 and P.W.9. Moreover, no other P. Ws. examined in the case, stated anything as to the alleged illicit relation/love affair between Halema Bibi and Kalu Sk. P.W. 7 in his cross-examination could not say whether he told the police that Halema Bibi had illicit relation with Kalu Sk. So, in view of want of corroboration from other P.Ws. regarding the alleged illicit relation with Kalu Sk., it would be not reasonable and safe to hold Kalu Sk. guilty on the basis of the said extra judicial confession of Halema.

10. The extra-judicial confession made by Halema Bibi, so far it binds herself, can reasonably and safely be relied upon, because of its voluntary nature and having regard to the strong circumstantial evidence as discussed above. The ratio of the decision cited by Mr. Bajpayee is not applicable in the different circumstance of the instant case. In the instant case even if there is no extrajudicial confession, the strong circumstantial evidence was sufficient to form the basis of conviction of Halema Bibi.

11. It is in the FIR and the evidence of the P.Ws. that a mark of pressure was found in the neck and blood in the left eye of Samsuddin. The autopsy surgeon (C.W.8) found the following injuries:

One ante-mortem bruise 1" * 1/2" at chin. Subconjunctival haemorrhage in left eye. One horizontal continuous blackish ligature mark round the neck below the level of thyroid cartilage. On dissection subcutaneous ecchymosis found and both

cornu of hyoid bone found to be sub-laxated. On dissection of the body I found the brain and its membranes congested, pleura congested, larynx and trachea congested. Both the lungs highly congested. Hemorrhagic patches on both the lungs. Exuding dark fluid blood on section. Right chamber of the heart full of dark coloured blood. Mouth, pharynx and oesophagus congested, found slightly digested rice in the stomach. I found chylous matter in the congested small intestine. Faecal matter in congested large intestine.

Liver, spleen, kidneys congested. Congested urinary bladder are partially full. I handed over wearing apparel and post-mortem blood to escorted constable. Probable time of death 40 hrs. back from time of autopsy. Time of autopsy 2.30 p.m. 20th June, 1997. Death in my opinion was due to effect of strangulation homicidal in nature.

12. So from the evidence of the autopsy surgeon it is clear that Samsuddin died because of strangulation which was homicidal and ante-mortem in nature. The incriminating articles have also been seized under proper seizure list vide Exhibit-1.

13. Having regard to the evidence on record and considering the submissions of Mr. Bajpayee and Mr. Goswami, we are of the considered view that learned Trial Judge was not justified in recording the order of conviction and sentence as against the appellant Kalu Sk. We are of the considered view that Kalu Sk. is not guilty of the charge and accordingly he is acquitted. Accordingly Kalu Sk. be released, if not wanted in connection with any other case. Let a copy of the judgment be sent to the Correctional Home where he is now detained.

14. So far as appellant Halema Bibi is concerned, the learned Trial Court was justified in recording the order of conviction and sentence and there is no ground to interfere with the said order. In the result, the appeal is allowed in part. The order of conviction and sentence recorded by learned Trial Court as against appellant Halema Bibi is confirmed.

15. Let a copy of this order along with the LCR be sent to the learned Trial Court immediately.

16. Urgent xerox certified copy, if applied for, be handed over to the parties as early as possible.

Alok Kumar Basu, J.

17. I agree.