

(2022) 11 CAL CK 0096
In the Calcutta High Court
Case No : Criminal Appeal No. 7 Of 2020

Mani Das

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision : 29-11-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302, 363
Code Of Criminal Procedure, 1973 — Section 164, 313

Citation : (2022) 11 CAL CK 0096

Hon'ble Judges : Debangsu Basak, J;Md. Shabbar Rashidi, J

Bench : Division Bench

Advocate : Manasi Roy, Partha Pratim Das, E. Dutta

Final Decision : Dismissed

Judgement

Debangsu Basak, J

1. The appellant has assailed the judgement of conviction dated September 26, 2019 and the order of sentence dated September 27, 2019 passed by the learned Additional District and Sessions Judge, First Track – 1st Court, Sealdah, South 24 Parganas in Sessions Trial No. 4(6) 2019 convicting the appellant under sections 302/201 of the Indian Penal Code, 1860. By the impugned judgement of conviction and the order of sentence, the appellant had been sentenced to imprisonment for life for offence under Section 302 of the Indian Penal Code, 1860 and pay a fine of Rs. 5,000, in default to undergo rigorous imprisonment for six months. The appellant had been sentenced for three years rigorous imprisonment for the offence under section 201 of the Indian Penal Code, 1860 and to pay a fine of Rs. 1,000 and in default of payment of which, the appellant was directed to undergo rigorous imprisonment for three months more. Both the sentences had been directed to run concurrently.

2. The minor daughter of the appellant had been murdered. Initially, the appellant had lodged a complaint with regard to kidnapping of her daughter with

the police on August 31, 2018. In her complaint, the appellant had stated that, there was a strain in the relationship with her husband. She had stated that, she was residing on the pavement in front of Deshbandhu Park with her two and half years old daughter(victim). On August 30, 2018, she was sleeping on the pavement as usual when upon waking up at 6 A.M in the morning, she could not find her daughter. She had complained that unknown people may have abducted her daughter.

3. On the basis of the complaint of the appellant, a police case being Ultadanga Police Station Case No. 144 dated August 31, 2018 in under Section 363 of the Indian Penal Code, 1860 was started on August 31, 2018.

4. The police had thereafter discovered the dead body of the minor daughter of the appellant. The dead body had been identified to be that of her daughter by the appellant. The police upon completion of the investigations had submitted a charge sheet against the appellant and one other. The Court had been informed that the other accused was a juvenile. The charges had been framed as against the appellant on June 15, 2019 under Sections 302/34 of the Indian Penal Code, 1860 and under section 201/34 of the Indian Penal Code, 1860.

5. The case of the prosecution is that, on August 30, 2018, the appellant had killed her daughter aged about two and half years intentionally and thereby committed an offence punishable under Section 302/34 of the Indian Penal Code, 1860 and that, the appellant had caused certain evidence of the offence of murder to disappear with the intention of screening the appellant from punishment and thereby committed an offence under Section 201/34 of the Indian Penal Code, 1860. The appellant had pleaded not guilty and was tried.

6. At the trial, the prosecution had examined 15 witnesses. The prosecution had tendered documentary evidence which had been marked as Exhibits - 1 to 15. The prosecution has also tendered material evidence at the trial. On completion of the evidence of the prosecution, the appellant had been examined under Section 313 of the Criminal Procedure Code. In the examination under Section 313 of the Criminal Procedure Code, the appellant had claimed to be innocent. She had declined to adduce any defence witness.

7. The prosecution had examined the Assistant Sub-Inspector of Police who was posted at the photography section of the detective department of Kolkata police as PW-1. PW-1 had stated that, he had taken photographs of the place of occurrence and the surroundings. He had tendered the photographs which were marked as material exhibits at the trial. He had been cross-examined. In his cross-examination, he has stated that, no relative of the victim identified the body to him.

8. The police official who had prepared the sketch map of the place of occurrence had been examined as PW-2 by the prosecution. He had tendered the rough sketch map of the place of occurrence which he prepared. Such rough sketch map was marked as Exhibit-1 and his signature as Exhibit 1/1. He had also

tendered the final map prepared on the basis of the rough sketch map which was marked as Exhibit-2.

9. A shop owner of the locality had deposed as PW-3. He had stated that, the appellant along with another person had come to his shop on August 30, 2018 at about 12 midnight. He had stated that he will not be able to recognise the person accompanying the appellant since he saw such person only once. He had been cross-examined where he had stated that, he sells country liquor without license and that he has good terms with the local police station for running such business.

10. The judicial magistrate in whose presence, the Test Identification Parade of the appellant was held at the Women Correctional Home had deposed as PW-5. He had tendered the certificate relating to the Test Identification Parade which was marked as Exhibit-4.

11. The sister of the appellant had deposed as PW-6. She had identified the appellant in Court. She has stated that, she knew the paramour who was a juvenile, of the appellant. According to her, the appellant and the juvenile were having an affair. Out of such a love affair, a female child had been born to the appellant. The appellant had a daughter of about three years from her first marriage. She had stated that, the juvenile told the appellant that he would not take the responsibility of the elder daughter of the appellant but he would take the responsibility of the child then in the womb of the appellant.

12. With regard to the incident of August 30, 2018 she had stated that, she was sleeping on a trolley at that night. The appellant had woken her up in the night and reported to her that her elder daughter was missing. Thereafter, they had started looking for the victim but could not find her. Thereafter, she had advised the appellant to go to the police station. After three days, the dead body of the victim had been found. She had been present at the hospital during the post-mortem.

13. An eyewitness who had seen the appellant with the juvenile on August 30, 2018 deposed as PW-7. He had stated that, he was out at about 2:30 A.M for purchasing fish. He had found a man and a woman entering a bye lane along with one kid who was naked. After two days, he had learnt that one kid was dead in a drain. Later on, the police had interrogated him when he narrated in details. He had identified the appellant in the correctional home, in presence of the magistrate. He had identified the appellant in Court also. He had identified the juvenile at the juvenile home also. In cross-examination, he had stated that, two criminal cases were pending as against him in the same police station.

14. The person who had accompanied the appellant to the police station at the time of lodging the missing diary of the victim, had deposed as PW-8. She had stated that, the appellant reported to her that her child was missing and that she took the appellant to the police station to lodge the missing diary. After lodging the missing diary, she had returned home. She had identified the appellant in

Court.

15. The person who first saw the dead body of the victim had deposed as PW-9. He had stated that, while he was entering his home at about 10/10:15 P.M he found a manhole of the road near his home to be open. He rushed towards it and noticed that something was there. He had informed the police station over the phone. Simultaneously, he had also informed his neighbours over the telephone. Within five minutes, 5 to 7 neighbours had assembled in front of his house. The police had also come. The police had lifted the manhole. He had left the place. He had been informed by the police officer that one body of the child was found in the drain when they lifted the manhole. He did not see such incident directly. The defence had declined to cross-examine him.

16. The Assistant Sub-Inspector of Police who had held the inquest of the victim deposed as PW-10. He had stated that the victim was identified by the appellant. He had identified the appellant in Court. He had tendered the inquest report in evidence which was marked as Exhibit-5.

17. The doctor who performed the post-mortem on the victim had deposed as PW-11. He had stated that, on September 1, 2018, he conducted the post-mortem of the dead body of the victim. He had tendered the post-mortem report prepared by him which was marked as Exhibit-6. In his opinion, the death was due to the effects of manual strangulation and homicidal in nature. He had stated that, there were injury marks on both sides of the neck with extra vasation of blood beneath the injury around the tissue of the neck. There had been some asphyxia sign found during the post-mortem examination. He had stated that on the basis of such findings, he arrived at the conclusion that the death was due to throttling. In cross-examination, he had stated that, the time of death, was estimated to be approximately between 48 to 72 hours prior in time than the post-mortem.

18. A minor who had overheard conversations between the appellant and the juvenile on August 29, 2018 had deposed as PW-12. He had identified the appellant in court. He had stated that, the juvenile was telling the appellant that they would kill the minor daughter of the appellant and then they would lead their conjugal life with the baby in the womb of the appellant. He had stepped out of the bush and asked the juvenile why they would kill the baby. The juvenile had told him that they would kill the baby and they would lead the conjugal life. He had also asked the appellant why should they kill the minor daughter whereupon, the appellant had threatened him with dire consequences if he interfered into the conspiracy. In cross-examination, he had stated that, he heard the voice of the appellant and the juvenile at that time and did not see their faces. He did not inform the matter to his parents.

19. An independent person who had seen the appellant and the juvenile on August 30, 2018 at about 1:30 A.M in the night had deposed as PW-13. He had stated that on August 30, 2018, at about 1:30 A.M in the night, his mother was

feeling pain in the abdomen and so he had gone out to bring medicine from opposite of R G Kar Medical College and Hospital. During the return journey, he had found the appellant and the juvenile carrying one baby on the lap of the juvenile. The baby had been without any clothing at Shyamlal Street. Subsequently, he had heard that one dead body of a baby was found at Shyamlal Street. He had identified the appellant at the Correctional Home in presence of the Magistrate. He had also identified the appellant in Court.

20. The police officer who had responded to the phone call of PW-9 deposed as PW-14. He had stated that, on August 31, 2018 at about 10:50 P.M he received a telephone call at the police station from PW-9 disclosing his address at Shyamlal Street, to the effect that the manhole located in front of his residence was partly open and that a part of the human body was noticed from such manhole. He had immediately informed the matter to the officer in charge of the police station who directed him to proceed with force. Accordingly, he had gone to the place of occurrence with other police personnel. On reaching the place of occurrence, he had found a gathering of men. On asking, PW-9 had approached him and disclosed his identity. PW-9 had taken him to the manhole. The police had gone to the manhole, opened it and brought out the decomposed body of the victim. The police had shifted the body to the R G Kar Medical College and Hospital. The doctor at the emergency ward of the hospital had declared the victim to be brought dead. He had tendered the death certificate which was marked as Exhibit-7. He had also tendered the admission report which was marked as Exhibit-8.

21. PW-14 had stated that, the appellant was the complainant of the complaint which was registered as the subject police case. The police had called the appellant to the hospital on August 31, 2018. She had come and identified the victim as her daughter. Thereafter, he had arranged for the post-mortem of the victim.

22. PW-14 had stated that, he took some photographs of the manhole and the body by his mobile. He had tendered the photographs so taken in evidence, which was marked as material Exhibit-III collectively.

23. The investigating officer had deposed as PW-15. He had testified about the process in which, he conducted the investigations. He had stated that, subsequent to the First Information Report being registered, he went to the spot, made inquiries with regard to the missing victim with the Pavement dwellers. Subsequent to the discovery of the dead body, he had attended the post mortem. He had consulted the autopsy surgeon. He had collected the death certificate of the victim. He had applied for addition of Sections 302/201 of the Indian Penal Code, 1860 before the jurisdictional Court which was allowed.

24. In his testimony PW-15 had stated that, he collected information that the appellant used to visit Sobhabazar Metro Station and that there was an affair between the appellant and the juvenile. He had recorded a statement of a

witness under Section 164 of the Criminal Procedure Code. He had arrested the appellant subsequent thereto as also the juvenile. He had forwarded the juvenile to the Juvenile Board. He had taken photographs and prepared a rough sketch map.

25. PW-15 had stated that, on coming to know that the appellant was pregnant, a pregnancy test was facilitated. He had identified the appellant in Court. He had stated that, he tried to trace out the husband of the appellant and found him at gate No. 4 of Sobhabazar Metro Station. According to him, the husband of the appellant was incapable of giving any answer. He had been cross-examined by the defence.

26. The appellant had been examined under Section 313 of the Criminal Procedure Code where she had claimed her innocence. She had stated that, her husband was with psychological problems and that his parents always kept him tied up.

27. It has been contended on behalf of the appellant that, there was no direct evidence of the involvement of the appellant. It has also been contended on behalf of the appellant that, the prosecution relied upon circumstantial evidence. The quality of the evidence of the prosecution had also been questioned.

28. The prosecution has relied upon circumstantial evidence to prove its case. PW-7 and 13 had seen the appellant and the juvenile with the victim in the night of August 3, 2018. The oral testimonies of PW-7 and 13 had corroborated each other with regard to the appellant and the juvenile being seen with the victim at the relevant point of time. PW-3 had also claimed that he saw the appellant and another person with the victim in the night of August 30, 2018.

29. It has been pointed out that, there were two criminal cases against PW-7 in the same police case and that there were every likelihood of PW-7 being persuaded to give evidence at the dictates of the police. Similarly, the oral testimony of PW-3 should be overlooked as he was in the business selling country liquor without license and is likely to act at the dictates of the police. Even if we are to overlook the evidence of PW-3 and PW-7 on such accounts, as has been contended on behalf of the appellant, the evidence of PW-13 who is an uninterested witness brings home the case of the prosecution. PW-13 had gone out of his house to buy medicine for her mother when he had seen the appellant, the juvenile and the victim together near about the same place from where the dead body of the victim was ultimately discovered.

30. PW-3 had seen the appellant and the juvenile along with the victim at about 12 midnight of June 30, 2018. PW-7 had seen the appellant, the juvenile and the victim at about 2.30 A.M in the night of August 30, 2018. PW-13 had seen the appellant and the victim at about 1.30 A.M on the same night on June 30, 2018. In view of the oral testimonies of PW-3, 7 and 13 the prosecution had been able to prove that, the appellant and the juvenile were last seen with the victim.

31. The post mortem report of the victim and the evidence of the doctor conducting the post mortem, puts the time of the death of the victim between 48 hours to 72 hours from the time of the post mortem. The appellant had lodged a police complaint with regard to the victim being missing on August 31, 2018. The opinion of the post mortem doctor with regard to the time of death, places the victim at the same time slot where the victim was last seen together with the appellant and the juvenile.

32. The prosecution had produced PW-12 who himself is a minor, to establish that the appellant and the juvenile conspired together to murder the victim in order to lead a conjugal life. The appellant was pregnant at the material point of time and the same appears from the pregnancy test of the appellant conducted by the police while the appellant was in custody. PW-15 had deposed as to the pregnancy of the appellant at the material point of time.

33. PW-15 had deposed with regard to the evidence relating to the affair between the appellant and the juvenile. The prosecution had therefore, established the motive for the murder. The appellant and the juvenile had conspired to murder the victim in order to lead a conjugal life. The husband of the appellant suffered from psychological problems and the appellant admitted that to be so apart from the evidence of the PW-15 to such effect.

34. In such circumstances, the prosecution had proved the charges against the appellant beyond reasonable doubt. We have found no ground to interfere with the impugned judgement of conviction dated September 27, 2019 and the order of sentence dated September 27, 2019. We affirm the same.

35. CRA 7 of 2020 is dismissed.

36. Trial Court records along with the copies of this judgement be transmitted forthwith to the appropriate Court for necessary compliance.

37. Urgent Photostat certified copy of this judgement and order, if applied for, be given to the parties on compliance of all formalities.

38. I agree.