
(2008) 09 CAL CK 0006
In the Calcutta High Court
Case No : C.R.A. No. 003 of 2008

Manoranjan Sil

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 08-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 302, 313, 374
Evidence Act, 1872 — Section 25, 8
Penal Code, 1860 (IPC) — Section 302, 304

Citation : (2008) CriLJ 4719

Hon'ble Judges : P.S Banerjee, J; Jyotirmay Bhattacharjee, J

Bench : Division Bench

Advocate : A.K. Ray and G. Binnu Kumar, for the Appellant; S.K. Mondal, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Banerjee, J.—This appeal as per Section 374 of the Criminal Procedure Code is directed against order passed by the Ld. Sessions Judge at Port Blair in connection with Sessions Case No. 13 of 2002 (Sessions Trial No. 31 of November, 2003).

2. By the said judgment, the appellant was found guilty for the offence u/s 302 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for life and also to pay fine of Rs. 5000/- in default, he was directed to suffer simple imprisonment for three months.

3. The fact leading to filing the instant appeal may be summed up thus:

One Surabala Harizan lodged one oral complaint before the police which was reduced into writing and the same was treated as FIR. In the said complaint which is genesis of the sessions trial, the de facto-complainant stated that the deceased Reeta, who was her daughter, married the present appellant without their consent and after the marriage, the said Reeta gave birth to a son. When

the alleged incident took place, Reeta was pregnant. It has been mentioned in the complaint that 12-13 days prior to the incident, the deceased left her matrimonial house alone. The appellant came to the house of his mother-in-law i.e. the de facto-complainant and kept his son in her custody and went away in search of his wife. 3-4 days thereafter, the appellant came to her mother-in-law's house with his wife Reeta. The said fact of missing of the deceased was duly entered into the G.D at P.S. When de facto-complainant asked for explanation from her daughter she answered that as her husband had doubt about her character and as she was assaulted by her husband she had to leave her matrimonial house. They were prevailed over by the de facto-complainant and subsequently they left her house with their child. On 20th November, 2001, she came back from Kadamtala and found her daughter Reeta and appellant in her house, Manoranjan i.e. the appellant disclosed his intention to live there with his son and wife to avoid further trouble in between them. On the same day there were repeated altercations in between the deceased and the appellant.

4. On the next day i.e. 21st November, 2001 at about 4 a.m., the accused who stayed there on the previous night told her that he intends to go at Nimbutala and accordingly left the house. At about 6.30 a.m. he returned to the house. At that time the deceased was washing her face. The de facto-complainant was preparing the food. The appellant asked his wife to provide him with food and for that Reeta entered in the kitchen. She heard quarrel in between the appellant and the deceased in low voice in the kitchen and thereafter she heard the cries of her daughter. Immediately, she rushed to the kitchen and on her way, her son-in-law dashed against her after coming out from the kitchen hurriedly. Thereafter the appellant fled away. The de facto-complainant found her daughter lying in the kitchen with bleeding injuries when she entered in the kitchen. She noticed one blood stained Dao/Ballam lying by the side of the victim. She came out from the room and narrated the incident to the neighbours and she thereafter, went to the house of Anil Bepari. Subsequently the P.S was informed over phone by the landlady. She arranged for a Jeep to take her daughter for medical treatment but in the meantime she succumbed to the injuries.

5. The police came there and reduced the oral statement of the de facto-complainant into writing which was read over and explained to her and the same was sent to P.S and was treated as FIR. After completion of Investigation, police submitted charge-sheet against the accused for alleged offence u/s 302 I.P.C.

6. Charge was framed against the accused u/s 302 of the Indian Penal Code on 5th July, 2002 and the accused denied the said allegations and took the defence of innocence and false implication.

7. The prosecution in order to prove the guilt of the accused, in all, examined 23 witnesses.

8. Articles as well as documents were duly proved and were marked as exhibits in the trial.

9. The accused did not examine any witness.

10. The Ld. Sessions Judge on the basis of evidence and materials on record found the accused guilty for the offence u/s 302 Cr.P.C and sentenced him to suffer imprisonment for life and also sentenced him to pay fine of Rs. 5000/- I.D. to suffer S.I. for three months.

11. Being aggrieved and dissatisfied with the findings of the Ld. Sessions Judge, the instant appeal has been preferred by the convict.

12. Before we consider the evidence and materials on record, we must say that in the instant case, conviction of the accused is based on circumstantial evidence.

13. It is needless to mention that in a case of circumstantial evidence, the court must be satisfied that the events leading to the chain of circumstances are proved beyond reasonable doubt.

14. Let us now consider how far the prosecution has been able to prove the case against the appellant on the basis of circumstantial evidence.

15. Shri A.K. Ray, Ld. counsel for the appellant challenged the order of the Ld. Sessions Judge mainly on the following grounds:

a) That the approach of the court was casual and the Ld. Sessions Judge should have been more cautious.

b) That the Ld. Sessions Judge wrongly relied upon the evidence of the PW-1 and PW-2, who are close relatives (mother and brother) of the deceased.

c) That the prosecution miserably failed to prove the nature of the weapon allegedly used by the appellant in murdering his wife.

d) That the court ignored the theory of "probability" regarding concealing the weapon, which is 13 inches long (Ballam).

e) That neither PW-1 nor PW-2 stated in their evidence that they found marks of blood on the wearing apparels of the appellant when he was fleeing away from the place of occurrence.

f) That the seized ballam which has been marked as material exhibit-III was not sent to the fingerprint expert.

16. Mr. Mondal, Ld. PP appearing for the State contended at the time of hearing that though the case is based on circumstantial evidence, the prosecution has been able to prove the case beyond reasonable of doubt on the basis of circumstantial evidence. He further contended that the alleged weapon (Ballam) was found by the side of the dead body of the victim and the same was seized. Mr. Mondal drew attention of the court to the fact that seizure of the said Ballam by the police with stain of blood is not disputed and the seizure list witnesses not only identified the said Ballam (material exhibit-III) during trial but also proved their signatures over the seizure list. At the same time Mr. Mondal contended

that in view of overwhelming evidence regarding user of the Ballam to murder Reeta, there was no need for sending the Ballam to the finger print expert. Mr. Mondal further contended that in this case the prosecution has been able to prove that the deceased and the appellant were found in the kitchen and at that time no other person was inside the kitchen. This fact is not denied. Mr. Mondal further contended that PW-1 i.e. mother of the deceased (Surabala Harizan) heard cries of her daughter and she rushed towards the kitchen and at that time the accused came out from the kitchen and dashed against her and fled away. This fact has not been denied by putting suggestion to the de facto complainant.

17. Let us now take the pleas as raised by Mr. Ray. We have already stated that Mr. Ray took the specific plea that the Ld. Sessions Judge committed error in relying upon the evidence of the de facto-complainant Surabala Harizan who has been examined as PW-1 and his son Madan Kumar Harizan who has been examined as PW-2. Mr. Ray strenuously argued for days together that there are discrepancies in the deposition of those two witnesses and for this he drew attention of the court that neither PW-1 nor PW-2 stated in their evidence that they found marks of blood on the wearing apparels of the appellant when he came out from the kitchen and dashed against PW-1. Mr. Ray drew attention of the court to the evidence of PW-21 (Uday Kumar) and on the basis of the same, he contended that the said witness also did not say that he found marks of blood on the wearing apparels of the appellant when he presented himself at Rangat P.S. at 7.45 am on 21.11.04. It was the contention of Mr. Ray that the prosecution took the specific plea that the accused after committing the alleged murder went to P.S and presented himself before the police. However, the police officer who was present there did not say that he found marks of blood on the wearing apparels of the appellant. We have perused the evidence of PW-1 and PW-2. It is true that the said two witnesses did not say that they noticed the marks of blood on the wearing apparels of the appellant. At the same time we cannot ignore the fact that the appellant after coming out from the kitchen dashed against the de facto-complainant while he was fleeing away hurriedly. At the same time we must keep it in mind about mental condition of the mother of the victim.

18. Non mentioning of the said fact in their deposition will not be sufficient for disbelieving their evidence specially considering the fact that PW-1 narrated the entire incident at the earliest opportunity to the police.

19. In view of the said position, the said plea as raised by Mr. Ray cannot be accepted.

20. Mr. Ray in course of his argument challenged the prosecution case that the victim was murdered by the appellant by using Ballam. He drew attention of the court to the evidence of PW-1 and on the basis of the same, he contended that the said witness was not sure about the nature of the weapon used in murdering the deceased. He contended further that some of the witnesses mentioned the weapon as Dao/Ballam/Knife Ballam. On the basis of the same, Mr. Ray

contended that the prosecution miserably failed to make out the case that the Ballam which was allegedly seized from the P.O was used in murdering Reeta.

21. It is fact that PW-1 some time mentioned the weapon as Dao/Ballam/Knife Ballam. At the same time we cannot ignore the fact that not only PW-1 but some other witnesses namely PW-5 identified the seized Ballam (material exhibit-III) during trial.

22. In this case, the autopsy surgeon has been examined as PW-13. The said doctor who held the post mortem over the dead body of the deceased found five injuries. He also found the left first rib fractured. He was of the opinion that death was due to direct injury on the vital organ such as lung which was caused by sharp object. He proved his report which was marked as exhibit 9. The said doctor was shown the material exhibit-III (Ballam) and thereafter he stated that the injuries could be caused by the said sharp cutting weapon. The said witness also proved his signature on the seizure list by which wearing apparels and ornaments of the deceased were seized by police.

23. It is worth mentioning that the I.O who has been examined as PW-22 identified the Ballam (material exhibit -III) in course of his examination. He stated categorically that the said Ballam was stained with blood at the time of seizure from the P.O.

24. It is to be mentioned that seized Ballam was sent for chemical examination and the report has been duly marked. The report which is at page 97 of the paper book goes to show that there was presence of human blood in the said ballam and wearing apparels. The report also goes to show that the wearing apparels of the accused tested positive for presence of human blood. The report of Central Forensic Science Laboratory, Bureau of Police Research and Development, Ministry of Home Affairs, Govt. of India at Calcutta is at page 99 of the paper book and the same goes to show that the Ballam/Dao and the wearing apparels of the accused and the victim were found positive for presence of human blood and the blood group was "B".

25. We have already stated that seizure of the Ballam from the P.O with stain of blood is not denied. It is also not denied that the wearing apparels of the deceased was seized along with wearing apparels of the accused. Those were sent for chemical examination and the report clearly proves the presence of human blood (group "B") in those articles.

26. Mr. Ray in course of his argument contended that the wearing apparels of the accused were seized subsequently and those were soaked with blood of the deceased to prove the case of the prosecution.

27. In this case the evidence of PW-21 is very vital. It is clear from his evidence that immediately after alleged murder, the accused went to Rangat P.S and presented himself before the police. He made some statement which is barred u/s 25 of the Evidence Act. However, the fact that he presented himself before the

Rangat P.S at about 7.45 am is not disputed and the same has been entered in the G.D which is duly marked.

28. It is also clear from the evidence of PW-22 that the said person was arrested at about 13.25 hours.

29. The said witness stated that at the P.S. the wearing apparels of the appellant were seized and those were stained with blood.

30. It is worth mentioning that the accused was forwarded after arrest to court and thereafter while he was in judicial custody he made confession before the Magistrate u/s 164 Cr.P.C which has been marked as exhibit -17. It is the that the accused retracted from the said confession. However, the court is to consider the said retracted confession with the evidence on record.

31. Mr. Mondal, Ld. P.P however, on the basis of evidence on record argued that the prosecution case has been proved beyond doubt and for this, he drew attention of the court to some special features namely

a) That the appellant and victim were last seen in the kitchen together and at that time no other person was present.

b) That the de facto-complainant rushed towards the kitchen after hearing cries of her daughter when the accused came from inside the kitchen, dashed against her and fled away.

c) That after entering in the kitchen, the de facto-complainant found her daughter lying with injuries and the weapon was found by the side of his daughter.

32. Mr. Mondal further contended that immediately thereafter the brother of the deceased saw the accused fleeing away from the P.O and the said witness also heard the cries of his elder sister.

33. Mr. Mondal drew attention of the court to the evidence of PW-2, wherein he stated that he was asked by the appellant to take his minor son (8 months old) outside the house and accordingly PW-2 went out side.

34. Relying upon the portion of the statement of PW-2, Mr. Mondal contended that the intention/motive of the accused appellant has been established. Mr. Mondal on the basis of evidence of PW-1 contended at the time of hearing that presence of deceased and appellant in the kitchen and none else has not been denied by putting suggestion to the witness (PW-1).

35. We have already stated that Mr. Ray took the specific case that it is impossible for a person to keep the Ballam concealed in his body. Mr. Ray further contended that how and when the weapon was procured by the accused could not be established. In this regard the evidence of PW-1 is very vital.

36. She stated in her evidence that the accused left her house at about 4 am and came back at about 6 30 am.

37. The story of concealment is to be accepted on the basis of evidence of PW-1, wherein she stated categorically that the seized ailm could be concealed easily. This portion of her evidence went unchallenged.

38. Mr. Ray, Ld. Counsel appearing for the appellant criticized the approach of the Ld. Sessions Judge on the ground that the reasons given by him in holding the accused guilty for the offence, under no circumstances can be accepted. He was critical of the Ld. Sessions Judge as he mentioned the I.O who is witness No. 22 for the prosecution to be an independent witness. It was the contention of Mr. Ray that the said witness can never be stated to be an independent witness as he was representing the State as a witness in the trial.

39. This point was raised by Mr. Ray as he was of the opinion that in the instant case, the prosecution did not produce any independent witness regarding commission of the offence by the accused.

40. Even assuming the fact that the Ld. Sessions Judge mentioned PW-22 as an independent witness, it has little impact. We are to consider whether the prosecution has been able to prove the case against the accused on the basis of evidence of the witnesses who deposed on behalf of the prosecution.

41. We have already stated that it is a case based on circumstantial evidence and the court is to judge the same on the basis of evidences on record. It is clear from the evidence of PW-1 coupled with the evidence of PW-2 that the prosecution has been able to prove beyond any doubt that the appellant and the victim were last seen together in the kitchen and there was none else at that time. We have also stated that after hearing the cries of her daughter from the kitchen, PW-1 i.e. de facto-complainant rushed towards the kitchen and on her way, she was dashed against by the accused who came out from the kitchen and fled away. Thereafter, the de facto-complainant came inside the kitchen and found her daughter lying there with injuries and there was none else. The said fact was corroborated by PW-2 to some extent. On the basis of the evidence of PW-1 and PW-2, it is proved beyond reasonable doubt that the deceased Reeta Seel was murdered inside the kitchen while she was there along with her husband i.e. the present appellant and no other person was present. Thereafter, the accused was found coming out from the kitchen and Reeta was found there with bleeding injuries when the de facto-complainant went inside the kitchen.

42. In our opinion, these circumstantial evidences are sufficient to prove that the murder was committed inside the kitchen while the appellant was there. It is nobody's case that the injuries which were found over the dead body of the deceased were self inflicting injuries and under no circumstances we can believe the same.

43. It is the prosecution case that the appellant presented himself at Rangat P.S at about 7.45 am and made some confessional statement which was entered in the G.D. We cannot consider the same as the said confession before the police is inadmissible as per Section 25 of the Evidence Act. However, the said person i.e.

the appellant was forwarded to court and there he made confession which was recorded by the Magistrate u/s 164 Cr.P.C. after he was duly cautioned. The said accused admitted in his statement u/s 313 Cr.P.C. that he made statement before the Ld. Magistrate which was recorded but at the same time stated that he had to make the said statement due to torture by the police.

44. On the basis of the interpretation of statute by Apex Court and other High Courts, it has become settled proposition of law that retracted confession cannot be the basis of conviction unless the said confession is corroborated by other evidences.

45. In the instant case, the confession which was made by the appellant before the Ld. Judicial Magistrate, First Class has been marked as exhibit. Non-examination of the Magistrate who recorded the statement u/s 164 Cr.P.C. cannot be the ground for disbelieving the said statement of the accused.

46. Mr. Mondal, Ld. Public Prosecutor in course of his argument contended that in a criminal trial there must be some contradictions in the evidence of the witnesses. However, as per submission of Mr. Mondal, the discrepancies or contradictions which were found with the evidence of the witnesses are minor in nature and under no circumstances, those can be stated to be vital which will demolish the entire prosecution case.

47. Before concluding his argument, Mr. Mondal contended that conduct of the accused which is very relevant u/s 8 of the Evidence Act is also to be considered by the court. For this he drew attention of the court to the prosecution case that at about 4 am on the day of incident, the accused left the house of PW-1 and came back again at about 6.30 am. Mr. Mondal also drew attention of the court to the statement of PW-2 wherein he stated that the appellant asked him to go out of the house with his (appellant) minor son. This, as per submission of Mr. Mondal is the motive to commit the offence in absence of any other person. Mr. Mondal also drew attention of the court to the fact that after the murder, the accused presented himself before Rangat P.S at 7.45 am and made some statement though the said statement is barred u/s 25 of Evidence Act.

48. Mr. Mondal also contended at the time of hearing that the accused appellant took the alibi that the brother of the appellant was found with the deceased in compromising position in the house of the de facto-complainant and when the appellant saw the same, his brother Ranjan Seel tried to kill him with the ballam and missed the target but hit the deceased for which she died. The said alibi was taken by the accused in his statement u/s 313 Cr.P.C. As the appellant took the said alibi, the onus shifted upon him to prove the same. However, the accused did not produce any witness to prove the said alibi.

49. Though, the accused was given the opportunity to produce the witness in support of his alibi, he did not avail of the same.

50. As such the admission by the accused that Reeta was murdered with the

ballam and his presence there is to be accepted.

51. Mr. Ray, Ld. counsel of the appellant relied upon the case in between Tanviben Pankaj Kumar Divetia Vs. State of Gujarat, . On the other hand Mr. Mondal relied upon the following cases.

1. Madi Ganga Vs. State of Orissa,
2. Bhagga and Others Vs. State of Madhya Pradesh,
3. Bishnu Prasad Sinha and Another Vs. State of Assam,
4. State of Maharashtra Vs. Suresh, ;
5. Sivakumar Vs. State by Inspector of Police, .

Let us now discuss the said cases, as referred by Ld. counsel for the parties.

52. In the case reported in Tanviben Pankaj Kumar Divetia Vs. State of Gujarat, the attention of the court was drawn to para 37 of the said judgment and on the basis of the same, Mr. Ray contended that even if it is found that the accused made false statement u/s 313 Cr.P.C., the same will not go against him.

52. We have perused the said judgment. The fact of the said case was totally different. There is no dispute that false statement made by the accused u/s 313 Cr.P.C. will not affect the defence case. However, in the instant case the appellant took the specific case of alibi and as per settled proposition of law, the accused is to prove the same. As such the said case has no manner of application in the instant case.

53. The case reported in Madi Ganga Vs. State of Orissa, relates to non-examination of the Magistrate who recorded the statement of the appellant u/s 164 Cr.P.C.

54. It is to be mentioned that Mr. Ray did not challenge the recording of the statement of the appellant u/s 164 Cr.P.C. by the Ld. Magistrate and as such the said case has little impact in the instant case.

55. In the case in between Bhagga and Others Vs. State of Madhya Pradesh, , the Hon"ble court held that examination of eye witnesses belonging to same family cannot be the ground for disbelieving their evidence.

56. In the case between Bishnu Prasad Sinha and Another Vs. State of Assam, 5 the Hon"ble court opined that where the accused accepted the confession in course of his examination u/s 313 Cr.P.C., the same can be fully relied upon.

57. In the instant case, the accused retracted from his confession in course of his examination u/s 313 Cr.P.C. and as such the said case has no manner of application in the instant case.

58. In the case in between State of Maharashtra Vs. Suresh, three prosecution witnesses found a minor girl who was about 4 years in the company of a man on

the day of incident. They were last seen together before the minor was murdered. The contention that there were inherent incredibility in the evidence of those witnesses were disbelieved by the Supreme Court.

50. In the case between Sivakumar Vs. State by Inspector of Police, practically the same point was discussed by the Hon''ble Apex Court.

60. Lastly, it was contended by Mr. Ray that the Ld. Sessions Judge was wrong in convicting the accused u/s 302 of Indian Penal Code as the evidence which was found in favour of the prosecution was not sufficient to establish the case u/s 302 of Indian Penal Code. Accordingly, it was his contention that the accused should have been convicted u/s 304 Part-1 of Indian Penal Code.

61. Ld. Public Prosecutor, Mr. Mondal raised strong objection against such plea. He contended that the evidence and materials on record clearly established the Intention of the appellant to commit murder and as such the Ld. Sessions Judge did not commit any wrong in convicting the accused u/s 302 of Indian Penal Code.

62. After considering the evidence of PW1, PW-2 and the medical expert who conducted the postmortem over the dead body of the victim, we are of the clear opinion that the intention to commit murder by the appellant has been established beyond shadow of doubt.

63. On the basis of evidence and materials on record and also on the basis of our discussions as stated in the body of this judgment, we are of the opinion that the Ld. Sessions Judge did not commit any wrong in holding the accused guilty for the offence u/s 302 of Indian Penal Code. We also upheld the sentence passed by the Ld. Sessions Judge for the offence u/s 302 of Indian Penal Code. As such we dismiss this appeal. The order of conviction and sentence passed by the Ld. Sessions Judge is hereby affirmed.

64. As the appellant is in jail, the Superintendent, District Jail is directed to intimate the convict about the fate of the appeal. A plain copy of this judgment be sent to the convict appellant by the Registrar, High Court at Calcutta, Circuit Bench at Port Blair.

Jyotirmay Bhattacharjee, J.

65. I agree.