
(2007) 09 CAL CK 0041
In the Calcutta High Court
Case No : C.R.A. No. 749 of 2004

Rabi Barman

APPELLANT

Vs

State of W.B.

RESPONDENT

Date of Decision : 07-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 300, 302, 304

Citation : (2007) CriLJ 4469

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

Bench : Division Bench

Advocate : Rash Behari Mahato and Rupa Bandopadhyay, for the Appellant; A. Goswami, Public Prosecutor Minoti Gomes and Kalyan Moitra, for the Respondent

Final Decision : Dismissed

Judgement

Girish Chandra Gupta, J.—The appellant-Rabi Barman, aged about 65 years, by an order dated 22nd January, : 2001 was charged u/s 302 for intentionally causing death of his wife Shanti Barman, aged about 27 years, on 2nd June, ; 1997. He was convicted by the learned Additional Sessions Judge, Fast Track Court, Cooch Behar by a judgment and order dated 21st August, 2004. By an order dated 23rd August, 2004 he was sentenced to suffer rigorous imprisonment for life as also to pay fine of Rs. 2,000/-, in default, to undergo further imprisonment for a period of three months. The appellant has come up in appeal.

2. The actual date of marriage between the appellant and his deceased-wife is not available. The FIR reveals that they were married about 8 years prior to the date of occurrence. The case of the prosecution briefly stated is that the deceased-Shanti led conjugal life with the appellant for 4" years but she did not conceive. At that stage she discovered that her husband Rabi had underwent a vasectomy operation and was therefore unable to procreate. She deserted her matrimonial home soon thereafter and came back to her brother's house. Rabi

came several times to take her home but she refused to go. In order to earn her livelihood she went Siliguri where she used to work as a maidservant. She came back to her brother's house about 10/12 days before the date of occurrence. On 2nd June, 1997 at about 7.30 a.m. in the morning while she was proceeding to one Bacchani Barman's house she came across her husband, who had been engaged in that village for last three or four days in some type of bamboo work. He had a dao (a sharp weapon used for cutting bamboo etc.) in his hand. Rabi caught hold of his wife by the tuft of her hairs, dragged her forcibly and dealt deadly blows with the dao upon her neck, back and head. As a result she died instantaneously. He was caught by the local people led by one Kokan and was confined in a room of an adjoining primary school.

3. P.W. 1 Basanta, brother of the deceased in his deposition has by and large supported the case appearing from the F.I.R. The P.W. 1, however, is not an eye-witness of the actual incident.

4. P.W. 3 at the relevant point of time was in a saloon. Hearing the hue and cry he came out and saw the appellant holding a dau in his hand. P.W. 6 Kalpana deposed that she was going to the field attached to the primary school. Shanti was at that time walking along the road. She met Shanti and talked to her. At that time or shortly thereafter Rabi came from the other direction. He caught hold of Shanti and assaulted her by a dao on the field by the side of the road. She saw 3 or 4 blows being dealt to Shanti. She was unable to bear the scene and fainted as a result thereof. Later on she came to know that, the assailant was the husband of Shanti. She identified the appellant on the dock. She deposed that Biren and Mablu were standing near the place of occurrence with there van rickshaws. She has admitted in her cross-examination that she was not previously acquainted with the appellant. There is no significant cross-examination directed against her deposition. P.W. 5 Biren deposed that he was chatting with Mablu Mia who is also a rickshaw puller at the Fokkorer Hut. Suddenly he heard a hue and cry. He also heard that an old man has murdered his wife with a dau. He saw the appellant fleeing with a dau in his hand. P.W. 7 Lalit was working under a Banyan tree. His attention was suddenly drawn by the hue and cry. He raised his head and found Rabi assaulting a woman with a dau on a field by the side of the road in front of the school. He was gripped by fear. He raised alarm. Local people assembled at the place. By that time Rabi had started running with the dau in his hand. He was chased by the villagers. He was caught and confined in the primary school. P.W. 2 Samanta deposed that the appellant was arrested from the school where he was kept confined. P.W. 2 scribed the complaint as per the narration of the P.W. 1 which has been marked Exhibit "1." The blood-stained dhuti and the dao which had stuck to it pieces of hairs were also seized. The dao and the dhuti have been marked material Exhibits "1" and "2" respectively. P.W. 3 Dhanat is an witness to the seizure of the aforesaid material exhibits. P.W. 4 Jyotindra deposed that Rabi was running with a dao in his hand and he was caught by one Kokan, who was a member of the Homeguard Force. It is Kokan at whose intervention the appellant was

caught and was confined in a primary school. In reply to the questions put to the appellant by Kokan, the appellant told that he had killed his wife. Kokan however could not be examined because he by the time the matter came up for trial had died. P.W. 5 has also materially corroborated the evidence of P.W. 4.

5. P.W. 8 Dr. Sanatan Ghosh conducted the post-mortem examination on the dead body of Shanti Barman, aged about 27 years. He found the following injuries.

(i) One sharp cut injury at the interior with left side of the neck 6" long x 4" deep cut up to throat and carotid vessels sufficient to cause death.

(ii) One sharp cut in the right side of neck in the posterior aspect 5" long X 3" deep.

(iii) One sharp cut in the right side of shoulder in the right posterior side of the shoulder 6" long X 4" deep.

There are other injuries such as : one at the abrasion in the left side of interior abdominal wall.

6. He opined that the injuries were sufficient to cause instantaneous death.

7. P.W. 9 S.I., B. Chetri who conducted the investigation deposed that on an oral information he went for an enquiry after recording a G.D. entry bearing No. 47 of 1997 dated 2nd June, 1997. He came to know that Rabi had killed his wife by a dau. Rabi was confined inside the school building. On the spot a written complaint was made over to him by Basanta Barman the P.W. 1. He forwarded the written complaint to the police officer for starting a case. He seized the blood-stained dhuti and the blood-stained dau. The dao had stuck to it pieces of hair. He collected scalp hair of the deceased and sent all the articles to the forensic laboratory. He collected the report which has been marked Exhibit "11." The FSL report contains the following findings:

Blood was detected on each of the exhibits marked "A" (Dau and hair collected from the dau), "B" (Dhuti), "C" (sample hair), "D" (Blood contain in glass vial)....

Hair collected from dau marked "A" and sample hair marked "C" were found to be of human scalp origin and morphologically they were found to be similar to each other.

8. In cross-examination the P.W. 9 admitted that although labels were prepared which have been tendered and marked exhibit but the same were not affixed to the dao and the dhuti after their seizure.

9. The evidence discussed above goes to establish

a) that the appellant on the date of occurrence was present in the village where Shanti resided.

b) He was working in that village for last 3 or 4 days, engaged in some kind of

bamboo work.

- c) There was strained relationship between the appellant and his deceased-wife.
- d) The appellant on the date of occurrence was about 60 years old whereas the wife was about 2-7 years old.
- e) The appellant was caught with a bloodstained dau in his hand. His dhuti was also bloodstained. He was confined in a room of the primary school from where he was arrested. The place of occurrence is situate in front of the school.
- f) From his examination u/s 313, Cr. P.C. it appears that the appellant has a son by some other wife of his who is residing at Delhi.

10. These circumstances have firmly been established and have not even been challenged by Mr. Mahato, learned Advocate appearing for the appellant. He submitted that both Kalpana and Lalit are chance witnesses. This criticism of Mr. Mahato does not appear to be correct.

11. Both Kalpana and Lalit are the residents of Dewankot, Joyduar. The primary school in which the appellant was confined is known as Dewankot Joyduar CS Plan Primary School. Therefore both these witnesses are the residents of the locality where the incident happened. Both these witnesses also saw the appellant dealing deadly blows, with the dao, to the victim.

12. Mr. Mahato further submitted that P.W. 6 had fainted and, therefore, her evidence may not be relied upon.

13. We are unable to agree with Mr. Mahato. P.W. 6 fainted because her nerves gave in and could not bear the ghastly spectacle created by the appellant. The fact that the P.W. 6 fainted is an additional reason why her evidence has become all the more trustworthy.

14. Mr. Mahato finally submitted that there may have been some serious provocation which led the appellant to deal the blows. There is nothing on the record to suggest any such provocation. No such case was made out even in his examination u/s 313 by the appellant nor was any such thing even suggested to any of the witnesses.

15. Mr. Goswami, learned Public Prosecutor submitted that the appellant, an old person, had a young wife who on the top of that had deserted him. He therefore had a motive for killing her and there can be no question of any provocation.

16. By introducing the theory of provocation Mr. Mahalo wants to bring the case within one of exceptions engrafted to Section 300 of the Indian Penal Code. The learned trial Judge appears to have considered the matter and expressed the following views in that regard:

Now the Court is to decide whether or not Section 304 of the IPC will be attracted instead of Section 302 of the IPC. The accused has committed a culpable homicide. A culpable homicide does not amount to murder if it is

committed without premeditation in a sudden fight at spur of moment. It is true that the accused was carrying the dao as he did in previous days to do some work on bamboos. He had no premeditated plan to kill his wife and he did not carry the said dao for the purpose. He met his wife accidentally on the road unfortunately he was holding a dao at that time. Upto this moment the accused had no premeditated plan to kill his wife.

But when the accused caught hold of her plait and started to drag her, the intention of causing death started to grow in his mind. He then started to assault upon his wife by the dao and hit her repeatedly and that too on most vital parts of the body on right and left side of neck and right side of the shoulder. The injuries were so deep that the neck was cut upto throat cutting carotid vessels causing instantaneous death. Had the accused struck with dao only once Section 304 of the IPC could have been invoked on the ground that he acted at spur of moment. But here the accused hit the deceased with the dao repeatedly on throat, neck, shoulder knowing fully well that the weapon like sharp cutting dao if used with force on neck would cause instantaneous death. The force of the blows were so much that the carotid vessels upto throat were cut. There is no defence case of the right of the private defence nor of sudden provocation on the part of the victim. This is a culpable homicide of the first degree u/s 300 of the IPC. The accused by hitting the deceased repeatedly expected the injuries which were likely to cause death having knowledge that the death would be the likely consequence thereof. The manner of assault was so cruel that one of the eye-witnesses fainted. This crudest manner of assault is preventing my conscience from invoking exception 4 of Section 300 of the IPC.

17. We are unable to find any fault with the reasoning adopted by the learned trial Court. We have in the circumstances no option but to refrain from interfering. In the result the appeal fails and is dismissed.

18. Lower Court Records with a copy of this judgment to go down forthwith to the learned trial Court for information and necessary action.

19. Urgent xerox certified copy of this judgment be made available to the learned Counsel for the parties on compliance of all formalities.