
(2000) 02 SC CK 0068
In the Supreme Court Of India
Case No : Criminal Appeal No. 282 of 1999

Randhir Basu

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 07-02-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 306, 306(4)
Penal Code, 1860 (IPC) — Section 109, 120B, 201, 302

Citation : (2000) 1 ACR 516 : AIR 2000 SC 908 : (2000) 3 CALLT 74 : (2000) CriLJ 1417 : (2000) 1 JT 618 : (2000) 1 SCALE 483 : (2000) 3 SCC 161 : (2000) 1 SCR 646 : (2000) 1 UJ 446

Hon'ble Judges : S.N. Phukan, J;G.T. Nanavati, J

Bench : Division Bench

Advocate : Raju Ramachandran, S. Muralidhar, Hetu Arora, Jams J. Nadum Para and Neeru Vaid, for the Appellant; K.T.S. Tulsi, H.K. Puri, Ujjwal Banerjee, Rajesh Srivastava and S.K. Puri, for the Respondent

Final Decision : Partly Allowed

Judgement

G.T. Nanavati, J.—The Appellant and one Krishnanendu Jana were tried for committing murders of Subhash Chandra Pal, his wife Sulekha Pal, father Davendra Mohan Pal and mother Latika Pal in the Court of Sessions Judge, Barasat, North 24 Parganas in Sessions Case No. 4(5) of 1993. The learned trial Judge held that the Appellant committed the murders and Krishnanendu aided and abetted the Appellant in committing the offence. He accordingly convicted the Appellant under Sections 302 read with 120-B and 201 IPC. He convicted Krishnanendu under Sections 302 read with 109 IPC. He imposed death sentence on both of them.

2. Challenging their conviction and sentence the Appellant and Krishnanendu filed separate appeals in the Calcutta High Court. The learned trial Judge also made a reference to the High Court for confirmation of the death sentence. The appeals and the reference were heard together and were disposed of by a common judgment. The High Court confirmed the conviction and sentence of the

Appellant but gave benefit of doubt to Krishnanendu and acquitted him. As his conviction and sentence have been confirmed the Appellant has filed this appeal challenging the same.

3. The prosecution version, as held proved by the evidence of P.W.2 Sudipa, was as under:

(a) The family of Subhash Chandra Pal (deceased) consisted of his parents, wife and the only daughter Sudipa. They were economically well-off. Subhas Chandra Pal wanted to give good education to his daughter Sudipa and, therefore, used to engage private tutors also since Sudipa was in class VI. In 1988, when Sudipa was in class IX, her father engaged the Appellant as a private tutor to teach her certain subjects as he was residing hereby. Initially Sudipa used to go to his house, but after sometime the Appellant, with the consent of Sudipa's parents, started teaching her going to her house every evening.

(b) Sudipa was often ill-treated by her mother as she believed that Sudipa was responsible for all her physical sufferings which had started after her birth. She was not allowing her to mix with boys and girls with the result that she did not have any friend. She was also at times physically assaulted by her mother. Sudipa used to make complaints about the ill-treatment by her mother to the Appellant. The Appellant used to listen to her complaints and console her and thereby he had won the confidence of Sudipa. Sudipa also started believing that the Appellant was her real well wisher.

(c) As the relationship of Sudipa and Appellant became more and more close the Appellant started touching her body. He used to tell her stories which could influence her mind and also arouse romantic feeling in her. By the middle of 1990 they started moving out alone after remaining absent from their respective schools.

(d) On 24.9.1990 the Appellant had a headache when he was in the house of Sudipa, he had lied down on a sofa and Sudipa had rubbed Amritanjan balm on her head. This was seen by her mother. After the Appellant had left Sudipa's mother had beaten her for that reason. On two subsequent occasions also her mother had noticed the Appellant placing his hands on the back of Sudipa and because of that she was beaten by her mother. All these incidents used to be narrated by Sudipa to the Appellant. After hearing the last incident in September, 1990 the Appellant had told Sudipa that her mother really deserved to be taken to a hill and thrown down from the hill top.

(e) In November, 1990 her other teacher Ashutosh Chakraborty was discontinued. Believing that her father had done so at the instance of her mother, Sudipa became very agitated and complained about it to the Appellant. The Appellant took this opportunity to poison her mind by telling her that her mother was not eager to see improvement in her studies and to make her life a success and, therefore, if she wanted to come up in life she should remove her from this world.

(f) During the latter half of 1990 the Appellant had also started telling her about his financial difficulties and with her help he obtained a loan of Rs. 6,000/- from her father. When it was not possible for her to get money from her father she used to give him her ornaments like chain, ring etc. without the knowledge of her parents. On one occasion she removed cash from the house and gave it to the Appellant. On another occasion she gave Indira Vikas Patra worth Rs. 5000/-. Thus towards the end of 1990 Sudipa was under complete influence of the Appellant and she had started believing that Appellant was the only true friend interested in her welfare.

(g) Again when her mother told Sudipa not to appear in the 1991 examination and when Sudipa informed the Appellant about it, the Appellant had told her that if she really wanted to remain happy in life she should remove her from the world. When she had enquired as to how that can be done the Appellant had told her to mix 50 tablets of compose with the medicine which her mother was taking everyday. Initially, she agreed to that suggestion but could not muster enough courage to do so. In the beginning of January, 1991 the Appellant tried to persuade Sudipa to give some poison to her mother to get rid of her. On 18.1.1991 the Appellant's wife who had by then become aware of the illicit relationship of the Appellant and Sudipa had gone near Sudipa's house and had shouted loudly at the family members of Sudipa and openly stated that Sudipa was a bad girl and was having illicit relations with her husband. Sudipa's mother, therefore, had severely beaten her and wanted the Appellant to be removed as a teacher but her father intervened and the Appellant continued as Sudipa's teacher. This incident helped the Appellant in convincing Sudipa that she should not wait any longer and must take immediate steps to remove her mother from this world. This incident also led Sudipa to agree with the suggestion of the Appellant to give some poison to her mother. Thereafter there were attempts by Appellant and Sudipa to procure poison and get their effects tested. Initially some cyanide and mercury chloride were obtained from Krishanendu and experiments were conducted with the help of Krishnanendu. The Appellant had also given one bottle of water in which lizards were boiled to Sudipa and had instructed her to mix it in the drinking water of her mother as such water was also considered highly poisonous. The attempts to procure poison and get them tested continued till 16.3.1991. On 16.3.1991 it was decided to mix poison with "Kalojams" and give them to her mother. For this purpose "kalojams" were also purchased but Sudipa could not make up her mind and that attempt of the Appellant failed. On 18.3.1991 the Appellant told Sudipa to make her mind strong if she really wanted to prosper in life. He again went to her house in the evening and told her that after administering poison to her mother an electric wire should be wrapped around her body so that people would believe that she had committed suicide. When Sudipa refused to do such a thing the Appellant became angry and told her that there was no other way to get rid of her mother. So, Sudipa kept all the articles brought by the Appellant in the house and concealed them. On 20.3.1991 Sudipa and Appellant moved together from 10

A.M. till about 4.15 P.M. Sudipa then went home and the Appellant followed her at about 6.30 P.M. The Appellant told Sudipa that she should make her mind strong and do whatever was required to be done otherwise she would suffer for the rest of her life. He even threatened her that if she did not do what was suggested to her then he would remain away from her. The Appellant then gave her a packet of sweets containing "kalojams" and "sitabhog" and told her to mix poison with two "kalojams". Sudipa mixed some quantity of sodium cyanide with two "kalojams" and returned them to the Appellant. The Appellant then waited for the mother of Sudipa to come upstairs. By that time the Appellant had assured that the grand mother and grand father of Sudipa were on the ground floor and the father of Sudipa had gone out. At about 8.20 P.M. Sudipa's mother went on the first floor and entered the bed room where the Appellant and Sudipa were sitting. The Appellant told her that as promised earlier he had brought sweets for her and so saying placed one "kalojam" in the hand of Sudipa's mother. Sudipa could not bear this sight and went out of the room. At that time Sudipa's father was seen coming upstairs. She immediately went back to the bed room and told the Appellant about it. The Appellant then picked up one "kalojam" and one "sita-bhog" and told her to give those sweets to her father. Sudipa then went to her fathers room and placed them on the table. She then went down stairs to find out what her grand mother and grand father were doing. After finding them there she again went upstairs and when she peeped into her father's room she saw that her father had eaten those sweets and was gasping for breath. Seeing the precarious condition of the father she rushed to the Appellant and told him about it. She again went to her father's room and seeing that her father was almost collapsing asked the Appellant as to why he had killed her father. The Appellant told her that as her father had seen him giving "kalojam" to her mother and would have named him as the person who had given poisoned sweet, he was also required to be finished. He then asked her to follow his instructions and warned her that if she did not do so her death was also inevitable. Sudipa had become highly perplexed and did what the Appellant had told her to do. Seeing the grand parents coming up the Appellant asked Sudipa to leave the house immediately. When the grand mother reached the first floor the Appellant gave her one "kalogam" and when she asked for water the Appellant gave her water mixed with mercury chloride. Sudipa returned at about 9.30 P.M. When she enquired as to where her grand father was the Appellant told her that the grand father had also suffered the same fate as others. The Appellant then told her to follow his instructions and threatened her that if she did not do so all the people would blame her for the murders of those persons. Thereafter an attempt was made by both of them to conceal or destroy the articles used for killing the four persons and wash off finger prints of the Appellant. The Appellant then told her that he would leave the place after tying her up and after some time she should raise an alarm and tell others that some unknown persons had come to her house to meet her father and that she was tied up in that manner by those persons. The Appellant left Sudipa's house at about 11 P.M. As instructed by the Appellant Sudipa remained tied up for

sometime and raised cries thereafter. Hearing her cries the neighbours had come there and untied her hands. The police was called. Initially, Sudipa gave the same version which she was instructed to say to others by the Appellant. On the next day the Appellant remained with Sudipa and gave her instructions not to divulge the truth about the incident. Sudipa then stayed with different relatives for few days. During that period the Appellant used to meet and instruct her not to disclose the truth.

4. The police continued the investigation and on 9.10.1991 arrested Sudipa. On that day she came to know that the Appellant was also arrested. On 11.10.1991 she expressed her desire to confess and, therefore, she was taken to S.D.J.M. Barrackpore. The police then filed a charge sheet against the three accused persons including Sudipa on 20.12.1991. On 13.1.1992 an application was made to S.D.J.M. Barrackpore for granting pardon to Sudipa. The S.D.J.M. recorded the statement of Sudipa and granted pardon on 15.10.1992. As she was not thereafter examined as a witness as required by Section 306(4) Cr. P.C. she was again produced before the S.D.J.M. on 4.11.1992. She was examined on 4.11.1992 and 9.11.1992. The case was then committed to the Sessions Court and the trial proceeded against the Appellant and Krishnendu.

5. In order to prove its case the prosecution had relied upon the evidence of Sudipa (P.W.2) and other corroborating material consisting of oral testimony of other prosecution witnesses, documentary evidence, seized articles and circumstantial evidence. The learned Sessions Judge rejected the contention that the trial was vitiated as the mandatory requirement of Section 306(4) Cr. P.C. was not complied with. The learned Judge held that the evidence of P.W.2 stood corroborated on material particulars by the other independent evidence on record. Her evidence regarding ill-treatment by her mother was corroborated by the evidence of Jagadish Dutta (P.W.24) and Samiran Chakraborty (P.W.26). Her evidence that she was not allowed to mix with other boys and girls and, therefore, she did not have friends was corroborated by the evidence of Purnima Pal (P.W.25) and Anima Pal (P.W.32). Her evidence that the Appellant used to come to her house everyday in the evening was corroborated by the evidence of P. Ws. 26 and 32. The learned Judge believed the evidence of these witnesses as it had remained almost unchallenged. The evidence of Durga Rani Pal (P.W.5), Sumit Pal (P.W.22), Jagadish Dutta (P.W.24) and Purnima Pal (P.W.25) was also found acceptable and the learned Judge held that it corroborated the evidence of Sudipa that she and the Appellant were moving together alone and people used to talk about their relationship. Her version that she used to go out with the Appellant even during the school time and, therefore, used to remain absent from the school was corroborated by the evidence of Subrato Bhawal (P.W.7). Gautam Chaki (P.W.8) Rita Sen (P.W.19) and the attendance register (Ext.62). The absence of the Appellant from the school was also proved by the evidence of Madan Mohan Nath (P.W.18) and the attendance register (Ext.61). The fact that the Appellant was in financial difficulties and that Sudipa used to give her gold ornaments to him stood corroborated by the evidence of Dilip Kumar Karmakar

(P.W.13) and Exhibits 28, 28/1, 28/2, and 28/3. Her evidence that for getting rid of her mother the Appellant had purchased cyanide, mercury chloride and chloroform was held corroborated by the find of those articles from her house and the evidence of Kush Chandra Roy (P.W.41), seizure memo (Ext. 103) and the report of the Central Forensic Science Laboratory (Ext.140). Her evidence that for the purpose of finding out effectiveness of the poison which they had purchased some experiments were performed was partly corroborated by the evidence of Durga Rani Pal (P.W.5) and Gautam Chaki (P.W.8). Her version that cyanide was mixed with kalojam for giving them to her mother was also corroborated by the find of a packed of sweets (M Exth. 4) from her house. Her evidence that her mother and father ate poisoned Kalojam and that her grandmother and grand-father were also administered poison received corroboration from the medical evidence. On the point of attempts made to conceal or destroy the articles used for causing murders her evidence stood corroborated by the find of soap water (M Ext. 51/1), half burnt note book and the seizure memo. After appreciating her evidence the learned Sessions Judge held that it was safe to rely upon it as it not only stood corroborated on material particulars by independent evidence but was also found true and reliable. He, therefore, convicted both the accused as stated above.

6. The High Court, after re-appreciating the evidence, confirmed the findings recorded by the trial Court. It also did not find any substance in the contention that the mandatory requirement of Section 306(4) Cr. P.C. was not complied with. It, therefore, dismissed the Appellant's appeal.

7. It was contended by Mr. Muralidhar, learned Counsel appearing for the Appellant, that Sudipa was not "examined as a witness" as contemplated by Section 306(4) Cr. P.C. He submitted that Sudipa was examined by the Magistrate in his chamber and not in the open Court and at that time the accused were not kept present. Her evidence was subjected to cross-examination. In Support of his submission he relied upon the decision of this Court in Suresh Chandra Bahri v. State of Bihar . In that case this Court after pointing out the object and purpose of enacting Section 306(4) Cr. P.C. has held that since the provision has been made for the benefit of the accused it must be regarded as mandatory., It has observed therein that "the object and purpose in enacting this mandatory provision is obviously intended to provide a safeguard to the accused inasmuch as the approver has to make a statement disclosing his evidence at the preliminary stage before the committal order is made and the accused not only becomes aware of the evidence against him but he is also afforded an opportunity to meet with, the evidence of an approver before the committing Court itself at the very threshold...." "From this observation does not follow that the person who is granted pardon must be examined in presence of the accused and that the accused has a right to appear and cross-examine him at that stage also. As pointed out by this Court in that case the object is to provide an opportunity to the accused to show to the Court that the approver's evidence at the trial is untrustworthy in view of the contradictions or

improvements made by him during his evidence at the trial. Considering the object and purpose of examining the person accepting tender of pardon as a witness is thus limited. The proceeding which takes place before the Magistrate at this stage is neither an enquiry nor a trial. Therefore, the submission of the learned Counsel that Sudipa should have been examined as witness in open Court and not in the chamber and that while she was examined the Magistrate should have kept the accused present and afforded to them an opportunity to cross examine Sudipa cannot be accepted. The phrase "examination of a witness" does not necessarily mean examination and cross examination of that witness. What type of examination of a witness is contemplated would depend upon the object and purpose of that provision. Section 202 Cr. P.C. also contemplates examination of witness yet it has been held, considering the object and purpose of that provision, that the accused has no locus standi at that stage. However, it is not necessary to deal with this contention any further as the facts of this case do not support the contention. The record of the Magistrate which was perused by both the Court below and which we have also scrutinised carefully disclose that on 24.2.1992 Sudipa and both the accused were produced before the Magistrate for recording her statement u/s 306 Cr. P.C. On that day, the learned Magistrate, in presence of the accused, passed an order for producing Sudipa on 4.11.1992 for examining her as a witness. On 4.11.1992 both the accused were present in the chamber of the learned Magistrate and in their presence statement of Sudipa was recorded u/s 306(4) till 5.00 P.M. and the police was directed to keep all of them present on 9.11.1992 for recording her further statement. On 9.11.1992 her further statement was recorded. Copies of the evidence of Sudipa were supplied to both accused and that fact was ascertained by the learned Magistrate on 25.11.1992 when all of them were produced before him. The learned Magistrate had thereafter fixed 6.1.1993 as a date for cross-examination of Sudipa. On that day, an application was given on behalf of the Appellant for local inspection of the place of offence before cross-examining Sudipa. That application was granted and the accused were directed to be produced on 3.2.1993 for further cross-examination. The cross-examination of Sudipa was then for different reasons adjourned from time to time and the last date fixed for that purpose was 30.3.1993. On that day the advocate of the Appellant did not remain present. The Appellant declined to cross-examine her. The lawyer representing Krishnandu also declined to cross-examine her. Therefore, there is no justification in the grievance made by the learned Counsel that Sudipa was examined by the Magistrate in absence of the Appellant and the Appellant was not afforded an opportunity to cross-examine her. For this reason also it is also not possible to agree with the contention raised by him that the mandatory requirement of Section 306(4) was not complied with.

8. It was next contention by Mr. Muralidhar that Supipa's evidence contained many contradictions and improvements and, therefore, it ought not to have been accepted by the Courts below. All the contradictions to which our attention was drawn have been considered by the Courts below and they have been rightly

held to be contradictions on minor points, as they are with respect to the exact date, time or place when the events stated had taken place. In view of the fact that she was deposing before the Court with respect to the events which had taken place over a period of three years some inconsistencies of a minor nature can be regarded as natural. She has given more details while deposing before the Sessions Court, but they are not improvements of such a nature as would create any doubt regarding her trustworthiness. Mr. Muralidhar, however, specifically drew our attention to the fact that before the Magistrate she had not stated a word about the manner in which her grand-father and grand-mother were murdered on the date of the incident, whereas in her evidence before the Court she has referred to the talk which she had with the Appellant in that behalf. It appears to be an omission caused by oversight. The fact that her grand parents were also murdered at about the same time was not in dispute. The circumstance that Sudipa and Appellant alone were present in the house at the relevant time also stands established by the evidence on record. Therefore, it cannot be said that Sudipa was making a deliberate improvement with respect to the murders of her grand-father and grand-mother in order to falsely involve the Appellant. It was next submitted by Mr. Muralidhar that when Sudipa's evidence was recorded by the Magistrate u/s 306(4) she had deposed as if she was only a witness to the whole incident and had not taken any part in commission of the offence. He submitted that Sudipa has not stated who had mixed poison with "Kalojam" given to her mother. Having gone through her statement, we find that she has clear terms stated that she had applied poison to two "Kalojam" and one of these "Kalojam" was handed over by the Appellant to her mother in her presence. She had also stated that she had taken the plate containing one "Kalojam" and one "Sitabhog" given to her by the Appellant to her father's bedroom and had kept it on a table there. Thus, Sudipa had not made any attempt to hide or conceal the part played by her. Having carefully scrutinised her statement we find that she had given full and correct version of the incident. Her evidence before the Court was also consistent. Both the Courts below were, therefore, justified in accepting her evidence and recording the conviction of the Appellant.

9. One more submission made by Mr. Muralidhar for not accepting her evidence was that her evidence against Krishnendu has not been believed by the High Court and that would imply that she had not told the truth. We could have appreciated this submission if the High Court had rejected her evidence against Krishnendu on the ground that it was false or of doubtful nature. The High Court did not accept her evidence because it was of the view that it was unsafe to rely upon it in absence of independent corroboration. Therefore, non-acceptance of her against Krishnendu does not, in our opinion, introduce any infirmity in her evidence or create any doubt regarding her reliability as a witness.

10. It was lastly contention by Mr. Muralidhar that the Courts below were not justified in imposing death sentence upon the Appellant. The High Court has confirmed the death sentence on the ground that the Appellant committed four

murders "with the design of avarice". The High Court further observed that the murders were committed in a cruel and Calculated manner and they were committed with sinister design. What appears to have been out-looked by the Courts below is that the Appellant and Sudipa wanted only Sudipa's mother to be removed from this world. At no point of time the Appellant had planned to kill Sudipa's father and her grand parents. Sudipa was ill-treated by her mother and no other way could be seen for improving Sudipa's future. It was, therefore, out of helplessness and frustration that Sudipa and Appellant had decided to remove her. There was no other reason. Till Sudipa's mother was made to eat the "Kalojam" mixed with poison there was not even the remotest desire on the part of the Appellant to kill Sudipa's father or her grand parents. The subsequent events happened unexpectedly. The Appellant killed them out of confusion and fright that he would be named as the murderer of Sudipa's mother. If all these circumstances would have been taken into consideration probably the trial Court would not have imposed the death sentence upon the Appellant and the High Court would not have confirmed the same. Considering the facts and circumstances of the case, we are of the view that this is not a fit case in which the death sentence can be regarded as an appropriate punishment.

11. We, therefore, partly allow this appeal. We confirm the conviction of the Appellant for causing deaths of all the four victims, but reduce the sentence of death to the sentence of imprisonment for life.