

(2006) 07 CAL CK 0073
In the Calcutta High Court
Case No : C.R.A. No. 102 of 2001

Santosh Kr. Chamaria, Dilip Kr. Chamaria and Arun Kumar
Chamaria

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 24-07-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 306, 34, 348

Citation : (2006) 4 CHN 225

Hon'ble Judges : Tapas Kumar Giri, J;Alok Kumar Basu, J

Bench : Division Bench

Advocate : Sekhar Basu, Joymalya Bagchi and Kaushik Gupta, for the
Appellant;Kazi Safiullah, Swapan Kr. Mallick and Rupa Bandopadhyay, for the
Respondent

Final Decision : Allowed

Judgement

Alok Kumar Basu, J.—This appeal is directed against the order of conviction and sentence recorded by the learned Sessions Judge, 10th Bench of the City Sessions Court at Calcutta in connection with Sessions Trial No. 1(4) of 1996 corresponding to Sessions Case No. 44 of 1995.

2. All the three appellants faced charges u/s 348 and also u/s 302/34 of the IPC and after conclusion of trial, the learned Sessions Judge convicted all the appellants u/s 348 and also u/s 306/34 of the IPC and they were sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs. 5,000/- in default to suffer simple imprisonment for five months for the offence u/s 306/34 of the IPC and they were also sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs. 1,000/- in default to suffer simple imprisonment for 30 days for the offence u/s 348 of the IPC.

3. The prosecution case in brief was that one Mahendra Singh was a darwan under the appellants in respect of their godown-cum-office and on 25.2.1995 at about 8. a.m. in the morning said Mahendra Singh was found hanging in a

kitchen attached to the godown-cum-office of the appellants situated at 119B, M.G. Road.

4. Appellant Santosh Kr. Chamaria informed Jorasanko P.S. about the incident and S.I. Ashok Kr. Chatterjee of Jorasanko P.S. on getting the information from Santosh Kr. Chamaria came to the place of occurrence and being suspicious of a foul play behind the unnatural death of Mahendra Singh, S.I. Chatterjee interrogated one Dilip Arya, an employee of the appellants in presence of two other employees of the appellants namely Bijoy Singh and Sunil Singh and from the statement of Dilip Arya it was revealed that the appellants entrusted Mahancjra Singh for encashment of a cheque amount of Rs. 4,000/- and Mahendra Sinsjh after encashment of the money did not return the same to the appellants and for that reason, Mahendra Singh was detained and subsequently he was brought to 119B, M.G. Road where his hands and legs were tied with a rope and he was also assaulted by the appellants for non-payment of the money and ultimately Mahendra Singh was confined at 119B, M.G. Road and on the next morning, Mahendra Singh was found hanging from the ceiling of the kitchen attached to the godown-cum-office of the appellants at 119B, M.G. Road.

5. S.I. Chatterjee after recording the statement of Dilip Arya started a case against the appellants and subsequently Detective Department of Calcutta Police took up the investigation of the case and on completion of investigation after finding a prima facie case u/s 348/302/34 of the IPC against the appellants, chargesheet was submitted for their trial in open Court.

6. The learned Sessions Judge, on persual of necessary papers placed before him and after hearing both prosecution and the accused persons, framed charges both u/s 348 as well as u/s 302/34 of the IPC against all the appellants who pleaded innocence and claimed for trial.

7. During trial, prosecution examined 17 witnesses which included P.W. Mahesh Bajoria, P.W. Jugal Kishore Bajoria, P.W. Ram Singh, P.W. Dibakar Singh, P.W. Pradip Kr. Ghosh, P.W. Ashok Kr. Chatterjee and P.W. Bijoy Kr. Das.

8. Prosecution, during trial, also produced the statement of Dilip Kr. Arya which was treated as FIR of the case, the post-mortem report prepared by witness Pradip Kr. Ghosh and some seizure lists.

9. It is pertinent to mention that Dilip Kr. Arya who gave statement to S.I. Ashok Kr. Chatterjee and on the basis of which the present case was started was not examined by prosecution during trial and prosecution also did not examine either Sunil Singh or Bijoy Singh in whose presence the statement of Dilip Arya was recorded by S.I. Ashok Kr. Chatterjee.

10. The learned Sessions Judge, as it appears from its judgment placing his reliance on the post-mortem report and also on the statement of Pradip Kr. Ghosh P.W. 12 who conducted the post-mortem examination formed his opinion that Mahendra Singh suffered a homicidal death and the injuries noticed on his

person during post-mortem examination were of anti-mortem in nature. The learned Sessions Judge, however, in his judgment observed that for want of sufficient evidence no conclusion could be made that the appellants had any role behind the homicidal death of Mahendra Singh.

11. The learned Sessions Judge, after considering the prosecution evidence as a whole and after hearing submissions of both prosecution and the defence, came to the conclusion that even if there was no evidence to hold conclusively that appellants were responsible for the homicidal death of Mahendra Singh, since Mahendra Singh was found hanging from the ceiling with the help of a rope and since for all practical reasons it can be concluded that Mahendra Singh committed suicide, prosecution evidence clearly established a case beyond all reasonable doubt that the appellants instigated the commission of suicide of Mahendra Singh and on such reasoning, the learned Judge convicted the appellants both u/s 348 and also for the offence u/s 306/34 of the IPC.

12. Appearing in support the present appeal, Mr. Basu assisted by Mr. Bagchi submits before us that on perusal of the judgment impugned in this appeal one is bound to notice serious contradictions in the reasoning of the learned Judge and in the process of his appreciation of prosecution evidence to hold the appellants guilty u/s 348 as well as u/s 306/ 34 of the IPC.

13. Mr. Basu contends that admittedly appellants were asked to face a trial u/s 302/34 of the IPC for the alleged homicidal death of Mahendra Singh, but, the learned Sessions Judge without assigning any reason and without affording any opportunity to the appellants charged his approach towards the prosecution case by holding the appellants guilty u/s 306/34 of the IPC.

14. Mr. Basu contends that in this case the FIR itself has not been proved since Dilip Arya who gave the statement and which was treated as FIR was not examined without any explanation from the prosecution side. Mr. Basu contends that in this case although Bijoy Singh was examined as a witness on 25.2.1995 as per the statement of S.I. Ashok Chatterjee P.W. 16, said Bijoy Singh was also not examined without any explanation.

15. Mr. Basu contends that even if there is no challenge regarding the prosecution case that Mahendra Singh was found hanging in the kitchen of the godown-cum-office of the appellants and even if it is accepted that Mahendra Singh was an employee of the appellants, there must be cogent and convincing evidence to hold the appellants guilty of the offence u/s 348 and also u/s 306/34 of the IPC.

16. Mr. Basu submits that after investigation and mainly relying on the post-mortem report of P.W. Pradip Kr. Ghosh chargesheet was initially submitted u/s 302/34 of the IPC and the learned Trial Judge also framed charge accordingly against the appellants. Mr. Basu submits that in the ultimate analysis the learned Trial Judge, however, did not accept the prosecution case that Mahendra Singh suffered a homicidal death and the learned Trial Judge himself attend the

prosecution case according to his own whims to that u/s 306/34 of the IPC and even there was no prayer from the side of prosecution at any stage of the trial and before pronouncing of the judgment to alter the charge.

17. Mr. Basu contends that when the learned Judge on perusal of prosecution evidence decided to convict the appellants u/s 348 as well as u/s 306/34 of the IPC, there must be sufficient evidence on record to substantiate both the charges. Mr. Basu submits that P.W. 3 and P.W. 4 being the witnesses on the spot did not support the prosecution case that Mahendra Singh was confined after application of force for recovery of the money allegedly misappropriated by him and there is nothing in the statements of P.W. 3 to P.W. 4 to support the prosecution case that Mahendra Singh was subjected to physical torture and mental pressure for which in all probability he could have committed suicide. Mr. Basu contends that P.W. 7 and P.W. 8 are the only two witnesses to speak about presence of appellants at the place of occurrence, but, even if we give full credit to the statements of those two witnesses, prosecution cannot expect an order or conviction relying on the statement of those two witnesses when there was nothing in the statement to indicate as to how and under what circumstances Mahendra Singh came on the place of occurrence and whether Mahendra Singh was subjected to any physical torture by the appellants at any point of time before his death.

18. Mr. Basu contends that in the strict sense of law there was no scope for the learned Judge to alter the charge from Section 302/34 to Section 306/34 of the IPC and, that apart, in the body of the judgment the learned Judge amply demonstrated the dilemma and contradictions in the matter of appreciation of prosecution evidence and at the same time, the learned Judge without having any iota of evidence for the charge of abatement of suicide convicted the appellants without any reason and evidence and for all these reasons, the judgment impugned in this appeal must be set aside and the appellants must be held to be not guilty of the charges for which they have been convicted and they must be acquitted.

19. Mr. Mallick appearing for the State respondent contends that admittedly charge was framed against the appellants u/s 302/34 of the IPC along with Section 348 of the IPC and the main reason for framing charge u/s 302/34 of the IPC was the opinion of the witness Pradip Kr. Ghosh who conducted post-mortem examination over the deadbody of Mahendra Singh and prepared the post-mortem report. Mr. Mallick contends that the learned Trial Court while accepting the post-mortem report at the same breath did not find sufficient evidence to hold the appellants guilty of the offence u/s 302/34 of the IPC and on this issue the State cannot make any submission for the simple reason that it did not prefer any counter-appeal for not convicting the appellants u/s 302/34 of the IPC.

20. Mr. Mallick, however, submits that in his opinion so far prosecution evidence is concerned, the learned Judge did not commit any error either in fact or in law by holding the appellants guilty both u/s 348 as well as u/s 306/34 of the IPC.

21. To substantiate his point Mr. Mallick contends that deadbody of Mahendra Singh was found in the premises under the control and occupation of the appellants and, that apart, S.I. Ashok Chatterjee found the body hanging from the ceiling which prima facie established that Mahendra Singh committed suicide.

22. Mr. Mallick submits that from the evidence of P.W. 7 and P.W. 8, it can be reasonably concluded that appellants brought Mahendra Singh by force to their godown-cum-office and when prosecution proved with the help of Bank Manager and others that Mahendra Singh encashed Rs. 4,000/- and Mahendra Singh did not deposit the same with the appellants, the prosecution case that Mahendra Singh was subjected to torture for realization of the money cannot be disbelieved and this torture was sufficient to compel Mahendra Singh to commit suicide and judging the entire fact from that angle, the learned Judge was perfectly justified in convicting the appellants both u/s 348 as well as u/s 306/34 of the IPC.

23. We have considered submissions of both the sides in the background of prosecution evidence as available with record.

24. On careful consideration of the prosecution evidence and after hearing submissions of both the sides, we find that although the appellants faced trial u/s 302/34 of the IPC and although the learned Judge in the body of the judgment observed that Mahendra Singh suffered a homicidal death, ultimately the learned Judge did not support the prosecution case u/s 302/34 of the IPC and the learned Judge suddenly came to the conclusion that Mahendra Singh committed suicide and the appellants were guilty for the charge u/s 306/34 of the IPC without framing a formal charge and without affording the appellants to take their defence against that charge.

25. In this case from the record we find that thamoost important witnesses of the prosecution namely Dilip Kr. Arya, Bijoy Singh and Sunil Singh were not examined and even there was no explanation from the side of prosecution for non-examination of these vital witnesses. From the statement of P.W. I6, S.I. Ashok Chatterjee we find that Dilip Arya gave the factual background for starting a specific case against the appellants, but, curiously enough, Dilip Arya was not examined and naturally, the statement on the basis of which the case was started cannot be given any credibility.

26. Now, even if we ignore all the legal technicalities, the basic question for disposal of this appeal would be whether the learned Judge had sufficient evidence before him to convict the appellants u/s 348 as well as u/s 306/34 of the IPC.

27. From a bare reading of Section 348 as well as Section 306/34 of the IPC we find that prosecution was required to prove that Mahendra Singh was confined for extracting statement for recovery of the money and Mahendra Singh was instigated in such a manner that he potnmitted suicide by hanging.

28. Coming to the prosecution evidence we find that P.W. 3 and P.W. 4 being the

most competent persons did not support the prosecution case that Mahendra Singh was brought to the P.O. by force, he was confined there by force and he was subjected to any torture either physical or mental. P.W. 7 and P.W. 8 made a general statement about presence of the appellants at the place of occurrence, but, on careful consideration of their evidence, we are not inclined to hold that appellants by force brought Mahendra Singh or they tortured Mahendra Singh in any manner whatsoever.

29. Thus, having regard to the prosecution evidence as discussed by us and after considering submissions of both the sides, we find that there was practically no evidence to support the conviction of the appellants either u/s 348 or u/s 306/34 of the IPC and we are constrained to hold that the learned Sessions Judge without evidence and merely on conjecture and surmise recorded his conviction order which cannot be supported in law.

30. Thus, we find merit in the present appeal and we allow the appeal accordingly.

31. The order of conviction and sentence recorded against the appellants u/s 348 and u/s 306/34 of the IPC is hereby set aside. The appellants are found not guilty u/s 348 and u/s 306/34 of the IPC and they stand acquitted.

32. The appellants are already on bail and hence, they are discharged from their respective bail bonds with immediate effect.

33. Send a copy of the judgment along with records to the Trial Court at once for information.

34. Xerox certified copy of this judgment and order be supplied expeditiously on application of the appellants after complying with all necessary formalities at the earliest.

Tapas Kumar Giri, J.

35. I agree.