
(2011) 04 GAU CK 0018
In the Gauhati High Court
Case No : Criminal Appeal (J) No 6 of 2005

Shri Suman Rajowar

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 05-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2011) CriLJ 2984 : (2011) 4 GLR 355 : (2011) 3 GLT 375

Hon'ble Judges : Madan B. Lokur, C.J;A.K. Goswami, J

Bench : Division Bench

Advocate : Rita Das Mazumdar, for Amicus Curiae, for the Appellant; D. Das, Addl. PP, for the Respondent

Judgement

A.K. Goswami, J

1. This criminal appeal is directed against the judgment dated 8.12.2003 passed by the learned Additional Sessions Judge, (Ad-hoc), Sivasagar, in Sessions Case No. 23(S)-S/2003, convicting the accused Appellant u/s 302/201 IPC and sentencing him to suffer imprisonment for life and to pay a fine of Rs. 3,000.00, in default of payment of fine, to undergo rigorous imprisonment for six months for committing the offence u/s 302 IPC and to undergo rigorous imprisonment for 5 years and to pay a fine of Rs. 2,000.00, in default of payment of fine, to undergo rigorous imprisonment for four months for committing the offence u/s 201 IPC.

2. One Shri Sankar Kurmi who at the relevant point of time, was the Secretary of the Kaliapani Gaon Village Defence Party, lodged an ejahar before the Office-in-Charge, Geleky Police Station, on 27.3.2002, stating that the wife of the Appellant, namely, Sabita Rajowar was missing for quite some time and to discuss the matter, a meeting was held in the village and in the said meeting, the Appellant had confessed that he had killed his wife and also had buried her dead body. Accordingly, Geleky Police Station Case No 18/2002 under Sections

302/201 IPC was registered. After completing the investigation, the investigating officer laid the charge sheet dated 30.9.2002 against the Appellant for having committed offences punishable under Sections 302/201 IPC. The case being exclusively triable by the Court of Sessions, the learned Chief Judicial Magistrate, Sivasagar, committed the case to the Court of Sessions, Sivasagar, where initially Sessions Case No 20(S)-S/2003 was registered. Charge under Sections 302/201 IPC was framed against the Appellant. The charge being explained to him, the Appellant pleaded not guilty and claimed to be tried. Subsequently, the record of the Sessions Case was transferred to the Court of the learned Additional Sessions Judge, (Ad-hoc), Sivasagar, wherein Sessions Case No 23(S)-S/2003 was registered.

3. In order to establish the prosecution case, 14 witnesses were examined. The defence had adduced no evidence.

4. PW- 1, who was a resident of the same village as the Appellant, in his deposition stated that he did not see the Appellant's wife for about 20 - 25 days and saw the Appellant moving about with his 4- 5 year old girl child. He asked Suman, the Appellant, about the mother of the child. Many other villagers had also made inquiry with regard to the absence of Sabitri and in response to their query, the Appellant had informed that Sabitri had gone to her parents' house. But even after lapse of considerable period of time when Sabitri was not to be seen, the villagers sent one Shri Tileswar Kurmi to the house of parents of Sabitri for confirmation. Shri Tileswar Kurmi came back with the news that Sabitri had not gone there at all. On being confronted with this information, the Appellant told them that Sabitri had eloped with a Bihari person. The villagers were not satisfied with his reply and, therefore, they took him to the police station and simultaneously an ejahar dated 27.3.2002 was submitted by him which was written by a teacher. On being interrogated, in presence of the villagers and the Officer-in-Charge of the police station, the Appellant confessed to have killed and buried his wife in a dry portion of the pond located in his compound. On that very day, the Appellant led the police and him to his compound and pointing towards a corner of the pond where there was no water, stated that he had buried the dead body of Sabitri in that area. As darkness had descended, they went back home and in the next morning, they once again had gone to the said place along with Magistrate and Sweeper and the decomposed body with offensive smell was exhumed. He also stated that the Appellant had produced a bamboo stick with which he had killed Sabitri. The police had seized the same and he was a witness to the said seizure being effected by seizure list, Ext- 2. In cross-examination, he stated that he had not seen when the Appellant had produced the lathi from inside his house.

5. PW- 2 who is also a villager, has more or less echoed the version of PW- 1 up to the confession made by the Appellant in the police station. According to him, the Officer-in-Charge of the police station asked him to come to the house of the Appellant on the next morning and he had accordingly visited the place in the

next morning. On being pointed by the Appellant the place where he buried Sabitri, her dead body was exhumed by the Sweeper. He was also a witness to the Ext- 2 and the inquest report, Ext- 3.

6. PW- 3 had given an account which is broadly similar to PW- 2. He had stated that decomposed dead body of Sabitri was disinterred from the arid part of the pond and he was also a witness to the seizure list, Ext- 2. He had stated that by the time he had reached the Appellant's house, the police and many other villagers had already gathered there.

7. PW- 4 had married Sabitri's elder sister. He deposed that suspecting that the Appellant might have killed Sabitri, he was handed over to the police and on being shown by him, the police had disinterred the decomposed body of Sabitri from the pond.

8. PW-5 is the wife of PW- 4 and the elder sister of Sabitri. She also deposed in the same line as her husband PW- 4. She also stated that Sabitri's daughter was being looked after by her.

9. PW- 6 also deposed towards Sabitri being missing for a long period of time. On suspicion, the Appellant was handed over to the police. He had witnessed the recovery of decomposed body from the pond on being shown by the Appellant. He was a witness to the seizure list, Ext- 2 and the inquest report, Ext- 3.

10. PW- 7 is the younger brother of the deceased Sabitri and he also deposed the sequence of events as described by the other prosecution witnesses up to the point of recovery of the dead body at the instance of the Appellant. He further claims that he took part in disinterment of the dead body which had given a very foul smell.

11. PW- 8 is the maternal uncle of the Appellant. He also confirmed that the Appellant had shown the place where the dead body was interred and he was standing at a distance when the dead body was disinterred by the Sweeper and PW- 7.

12. PW- 9 is the doctor who had conducted the post mortem examination, Ext- 4. The doctor did not find any external injury on the body. According to him the cause of death could not be ascertained and, therefore, the viscera was preserved in saline water and the same was handed over to the police for chemical analysis.

13. PW- 10 is the Magistrate who accompanied the police along with other officials. PW- 10 also confirms that the Appellant had led them to the spot where he had buried Sabitri. However, he had said that it was the Appellant who had dug out the dead body which was a decomposed one. He had also held inquest over the corpse. In cross-examination, he had said that the Appellant had told him that he had assaulted his wife to death with a lathi and had buried her in a pond.

14. PW- 11 is the Sweeper engaged by the police for the purpose of exhuming the dead body.

15. PW- 12 deposed towards Appellant telling in the village meeting that Sabitri had eloped with a Bihari person. After the body was recovered, he came to know about the fact that Sabitri was killed and buried there.

16. PW- 13 is the Deputy Director of Forensic Science Laboratory who had examined the viscera of the deceased. According to him, both the samples gave positive test of organo chlorine pesticides and he proved his report as Ext- 5.

17. PW- 14 is the Investigating Officer of the case. According to him, the Appellant had told him that he had killed his wife with a lathi and the lathi was also shown by the Appellant inside his house and, accordingly, he seized the same. He also stated that the Appellant had informed him that he had buried the dead body in the pond of his compound and he along with others recovered the dead body after the Appellant had led them and showed the place where he had exactly buried his wife's dead body.

18. The Appellant was examined u/s 313 Code of Criminal Procedure and the picture that emerges from his examination is that he had owned up the fact that he buried the dead body of Sabitri. But he had stated that he had neither killed Sabitri nor confessed to have killed Sabitri. He also denied producing of the lathi, Material Ext- 1. According to him, Sabitri had committed suicide by consuming some poison.

19. We have heard Ms Rita Das Mazumdar, learned Amicus Curiae and Mr D Das, learned Additional Public Prosecutor, Assam.

20. Learned Amicus Curiae submits that the prosecution has totally failed to establish that it was the Appellant who had committed the murder of his wife. According to her, this is not a case of murder but a case of suicide because the prosecution case was built on the edifice of Appellant assaulting his wife with a lathi which was also seized on being produced by the accused. Doctor's post mortem report did not show any mark of violence or injury on the dead body. The learned Amicus Curiae, pointing to the materials on record, submits that perhaps the prosecution has been able to establish the charge u/s 201 IPC. She submits that there is no contradiction in the testimony of prosecution witnesses with regard to disinterment of the dead body of Sabitri from the dry area of the pond on being pointed out by the accused. Learned Amicus Curiae placed reliance on the decision of the Apex Court in *Palvinder Kaur Vs. The State of Punjab* (Rup Singh-Caveator),

21. In *Palvinder Kaur* (supra), the Apex Court had pointed out that cases are not unknown where death is accidental and the accused has acted in a peculiar manner regarding the disposal of the dead body for reasons best known to himself. One of them might well be that he was afraid of a false case being started against him. Life and liberty of persons cannot be put in jeopardy on

mere suspicion, however strong, and they can only be deprived of these on the basis of definite proof. In that case, as found by the High Court, not only were the Sub-Inspector of Police and Police Constables and other witnesses guilty of telling deliberate lies but the prosecution was blameworthy in introducing witnesses in the case to support their lies and that being so, the Apex Court held that it would be unsafe to convict the Appellant on the material that is left after eliminating the perjured, false and inadmissible evidence.

22. The learned Additional Public Prosecutor, Assam, on the other hand, submits that the Appellant was not telling the truth at all points of time. There is no manner of doubt that it was he who had buried the dead body of Sabitri in the dry area of the pond and it was at his instance and on being shown by him that the dead body was recovered. Learned Additional Public Prosecutor also argues that attending facts and circumstances would point to the guilt of the Appellant in committing the murder of Sabitri and, therefore, the judgment and sentence passed by the learned trial Court should not be interfered with.

23. So far as charge u/s 201 IPC is concerned, we are satisfied that the Appellant is guilty of the offence u/s 201 IPC. There is overwhelming unimpeachable evidence on record to that effect.

24. PW- 9 could not ascertain the cause of death of Sabitri. The evidence of PW-13, however, pointed out the positive test of oregano chlorine pesticides in the viscera. The possibility of death of Sabitri after taking poison cannot be ruled out. It is always for the prosecution to bring home the charge beyond reasonable doubt. The prosecution has endeavoured to bring home the charge u/s 302 IPC against the Appellant by adducing evidence to suggest that the Appellant was giving misleading information - he, at one point of time saying that Sabitri had gone to her parents' house and on some occasions suggesting that she had eloped with a Bihari person, coupled with the incriminating fact that the dead body was recovered from the pond of his house at his instance. These, according to the prosecution, lead to the irresistible inference that it was the Appellant who had murdered Sabitri.

25. Suspicion, however, cannot be the basis of conviction. The conduct of the Appellant in burying the body in the corner of the pond in his compound and offering different explanations to the villagers with regard to Sabitri being not at home do indicate that there is a possibility of his committing murder of Sabitri. But there is another side of the story. The possibility that the deceased committed suicide by consuming poison, cannot be ruled out. We recollect that there was no mark of injury on the dead body. This effectively scuttles the prosecution case that death was the result of an assault by a lathi. The prosecution sought to implicate the Appellant in the offence of committing murder of Sabitri by his assault on her by a lathi.

26. In such situation, the prosecution failed to explain the presence of oregano chorine pesticides in the viscera of the deceased. The prosecution is blameworthy

with regard to the investigation conducted by it. The peculiar manner regarding disposal of the dead body for the reasons best known to the Appellant as well as his explanation for absence of Sabitri from home would not necessarily mean, in absence of any other material on record, that it was he who had committed the murder of Sabitri. We do not feel it safe to convict the Appellant on the charge u/s 302 IPC on the basis of the materials on record and accordingly, we acquit him of the charge u/s 302 IPC. However, the conviction of the Appellant u/s 201 IPC as recorded by the learned trial Court is maintained. The Appellant has already served out sentence u/s 201 IPC.

27. In the result, the appeal is partly allowed and the Appellant is set at liberty forthwith.

28. For the services rendered, the Assam State Legal Services Authority will remunerate Ms Rita Das Mazumdar, the learned Amicus Curiae, to the extent of Rs. 5,000.00.

29. Send back the LCRs.

30. A free copy of the judgment be made available to the Appellant.