
(2013) 07 CAL CK 0015
In the Calcutta High Court
Case No : C.R.A. No. 104 of 2003

Shyamal Pramanik

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Citation : (2013) 4 CALLT 440 : (2014) 1 DMC 564

Hon'ble Judges : Tapen Sen, J; Mrinal Kanti Sinha, J

Bench : Division Bench

Advocate : Arup Chandra Chatterjee and Mr. Asit Baran Ghosh, for the Appellant; Anusuya Sinha, for the Respondent

Judgement

Tapen Sen, J.—This appeal is directed against the judgment and Order dated 14.2.2003 passed by Shri K.K. Bakshi, Additional Sessions Judge, Kalna in Sessions Trial No. 20/2001 arising out of Sessions Case No. 8/2001 whereby and whereunder the appellant, Shyamal Pramanik, was found guilty u/s 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/-. In default he was directed to suffer imprisonment for 1 year more with an observation that the period of detention Shall be set off.

On 24.2.1998 at about 8:25 A.M. the Purbasthali Police Station, in the Sub-Division of Kalna, District of Burdwan, recorded an FIR of one Madhav Rajbanshi which was registered as FIR of 18/1998. The FIR was lodged against the appellant, Shyamal Pramanik alleging inter-alia therein that at about 1 A.M. of the night of 24.2.1998, he and other people of the locality had heard a commotion in the house of one Bhabataran Pramanik, his neighbour. On hearing such a commotion, he went there and found Pushpa Pramanik, wife of Shyamal Pramanik (Appellant), lying dead on the bed inside the room.

Upon enquiry, the people in that house informed him that Shyamal had beaten up his wife and had throttled her to death. They also told him that there had been a discord between the couple for a longtime. Shyamal had tried to run away

after killing his wife but he could not do so since many people had reached there and as such, he was detained. According to the informant, Shyamal had confessed before him that there had been a discord between him and his wife for a longtime and that he could not tolerate Pushpa and therefore, he had killed her. The informant observed that Shyamal did not have a good character and that he had many affairs involving women.

On the basis of the aforementioned written report, the Officer-In-Charge of the police station registered the case referred to above and started investigation and on 13.6.2001, charges u/s 498A/302 of the Indian Penal Code were framed. The appellant pleaded not guilty and claimed to be tried. Finally the impugned Judgment was delivered. When we examine the evidences of record, we have to bear in mind that this case revolves around facts and occurrences which lead us to the inevitable conclusion that we are dealing with a case which is circumstantial in nature.

2. P.W. 1 is the informant Madhav Rajbanshi, he is a neighbour and also member of the Panchayat. His written report before the Police is based on what he heard from others in the house of Bhabataran Pramanik when he went there on hearing a commotion. He was told that the appellant had beaten up his wife and had throttled her to death. He also makes a mention in his written report that the appellant had confessed before him that he had killed his wife. This, in our opinion, is an extrajudicial confession.

3. We have to now look into what he said "as a witness". He firstly proved the FIR and he also stated that he was a responsible member of the local Panchayat. He stated that the inquest was held by the police and that he had put his signature on the said inquest report. He also stated that at the time of preparation of the inquest report, one Nilratan, Swapan and Bhagya were present. Nilratan is P.W. 3 but the other 2 were not examined by the prosecution.

4. He also stated that he discharged his duty as a member of the Panchayat with the help of the local police and being a responsible and active member of Congress (I) political party, he had informed Sadhan Khan, another respectable member of Congress (I) about the incident. He stated that he had no talking terms with the accused after the incident and that the father-in-law of the accused had come to the village after the death of Pushpa whom he consoled.

This father-in-law (meaning thereby the father of the victim) was never examined.

He further stated that one Khudiram Modak and one Brindaban Dey and others were close neighbours but they were also not examined.

He has stated also that he discussed the incident with them.

In his cross-examination this witness had stated that he had heard that the elder brother of the accused had already lodged an FIR but strangely, no such FIR was ever produced.

Another contradiction which makes us doubt the veracity of his statement is that while in the FIR he had stated that he found the victim lady lying dead on the bed inside the room, yet in his cross-examination, he stated that on arriving at the place of occurrence he saw her dead body lying in the courtyard with her face downwards. Add this with his status as a so-called "responsible member" of a political party and we become doubtful about his motives and statements.

The other discrepancy is that while in the FIR he stated that the appellant had told him that he had killed Pushpa and that he had himself heard from others that Shyamal had beaten up his wife and had finally throttled her to death, yet in his cross-examination, he stated that he had heard the local people to say that Pushpa had gone out to answer nature's call in the privy at the back of the house and while she was returning, she fell down and died. These discrepancies make us wonder.

5. To add to all these, he mentioned that three brothers of the accused also resided/reside in the same house. Bhabataran and Lalji have been named as two brothers but they have not been examined. He also mentions the names of Saraswati and Mamata who are the mother and sister of the appellant respectively and who also lived in the same house, but they have also not been examined. Another startling revelation that he makes while concluding his cross-examination is that he wrote the FIR "as per dictation of the police," He also states that 7 have no idea about the murder.

Let it be recorded that this witness namely P.W. 1, was declared a hostile witness when he stated in his Examination-in-Chief that he had not stated before the police that the appellant had murdered his wife in his bedroom. P.W. 2 is an independent witness. He refers to Bhabataran Pramanik who is said to be the appellant's elder brother. He has also not been examined. He also refers to Khudiram Modak, Brindaban Dey, Prasad Ghosh and one Dutta all of them are said to have their houses near the house of the appellant. None of them have been examined. He is not an eyewitness and he states that he had been to the house of the appellant in the next morning after the death of his wife and that he did not know as to why the wife of the appellant had died. He had also stated that he had put his signature on the inquest report "as per instruction of the police". This witness was also declared hostile. He has also made a statement in his cross-examination after having been declared hostile that the appellant has two daughters and they were students. It is strange that these two daughters have also not been examined. In his further cross-examination he had stated the same thing which P.W. 1 had stated and that is, that he had heard that the wife of the appellant had gone to answer nature's call and while she was returning, had fallen with her face downwards and died.

6. P.W. 3 is an independent witness also who was declared hostile when he said that he could not recollect the names of the persons who were present. He also stated that Madhav Rajbanshi (P.W. 1) was not present on the following day when he went to the house of the appellant when many others had also come

upon hearing the death news. He stated that there were about 200/300 people on the spot. He also denied the suggestion that the appellant had stated before the people assembled there counseling that he had murdered his wife and strangulated her to death. In his further cross-examination he stated that the wife of Shyamal was lying in the courtyard in the rear of the house. He also stated that "he had not heard any allegations" against the appellant and that he did not know as to how Shyamal's wife had died. This witness has stated that the two daughters of the appellants were aged 14/15 years.

7. P.W. 4, Amiya Dutta is a Constable who was attached to the Purbasthali Police Station and in whose presence, the inquest was carried out. He had taken the dead body to Kalna S.D. Hospital for post-mortem after having been instructed to do so by Sub-Inspector Roy. He has proved the Challan of the dead body as Exhibit 3/1 that contained his signature. He has stated that the post-mortem however, was not done at the S.D. Hospital at Kalna and it was sent to Burdwan Hospital for post-mortem examination.

8. P.W. 5 is Sub-Inspector B. Bhattacharjee who was an officer at the Purbasthali Police Station and who had investigated the case after transfer of the first Investigating Officer namely Ramprasad Roy (P.W. 6). This gentleman had "Simply submitted charge sheet of this case U/S 498A/302 of Indian Penal Code against ACCD Shyamal Pramanik". In other words he had simply submitted the charge sheet and had done nothing else. This fact is clear from his cross-examination also.

9. P.W. 6 is the 1st Investigating Officer, namely Ramprasad Roy. His evidence is interesting. At one point of time he said that the place of occurrence was the bedroom of the appellant and that he had drawn a sketch map of the said place. Interestingly this is not what the P.Ws. 1, 2 and 3 had stated because each one of them had said that the appellants' wife had fallen on the courtyard at the back of the house and had died. Interestingly even the sketch map that he talked about in his Examination-in-chief, was not produced.

This witness also prepared the inquest report and while referring to the same, he referred to various people who, according to him, were present at the time of preparation of the inquest. They are Bhajan Ghosh, Swapan Kumar Dey, Nilkamal Ghosh and Meghnad Roy. Bhajan Ghosh is P.W. 2, Swapan Kumar Dey has not been examined. Meghnad Roy has also not been examined and this Court also could not find the signature of Meghnad Roy in the original inquest report. Therefore this Court is unable to understand as to how this witness (P.W. 6) referred to Meghnad Roy (typed as Mednad Roy). In his evidence he again refers to the statement of Nilratan Ghosh (P.W. 3) and says that Nilratan had told him that the body of the victim was lying on the bed and that the accused/appellant had stated before them that he had murdered and strangulated his wife. This is extra judicial confession which was not corroborated by other evidences.

10. He has also referred to the statement of Bhajan Ghosh but he was also

declared hostile. There is yet another marked discrepancy in his evidence because, in the last line of his cross-examination, he said that he sent the dead body for post-mortem on 24.2.1998. In the post-mortem report, the Doctor signed on 25.2.1998. The post-mortem also shows that the dispatch of the dead body from the house for post-mortem was 10:30 A.M. on 24.2.1998 but the arrival of the dead body in the dead house is 11:45 A.M. on 25.2.1998. This is a very serious discrepancy because even the Doctor signed on 25.2.1998. The Investigating Officer (P.W. 6) states that he sent the dead body for post-mortem examination on 24.2.1998. Therefore, there is no explanation coming forth as to where was the dead body between 24.2.1998 to 25.2.1998. This question has haunted us because there is no explanation as to where was the dead body between 24.2.1998 10:30 A.M. to 25.2.1998 11:45 A.M. (More than 24 hours). We are therefore constrained to nurture a very serious suspicion as to whether it was the same dead body that was examined by the Doctor or was it the dead body of somebody else? Is it not possible that when there is a political background as had been submitted by Madhav Rajbanshi who was an active political person that a suicide can, with political motives, be twisted and turned and attempted to give the colour of murder? We are therefore not inclined to believe the statement of P.W. 4.

11. Another very interesting statement of this Investigating Officer is in the cross-examination where he said that he did not know the plot number of the P.O. This is not expected of a responsible Investigating Officer. He also stated that he did not find the sketch map which he had prepared/drawn in the case diary. He admits that instead, he found another sketch map which did not bear his signature and he has not been able to explain as to how the other sketch map was found in the C.D. He also stated that he did not know who drew this sketch map. Therefore, we are bound to draw an adverse inference u/s 114(g) of the Evidence Act. At this stage, we would like to go back to the post-mortem report once again. P.W. 7 is the Doctor who conducted the post-mortem examination. He categorically stated that he conducted the examination on 25th February, 1998. He also stated that he held the post-mortem examination of a lady who was identified by Amiya Dutta who is P.W. 4. The statement of Amiya Dutta is that he was not at all familiar with the victim before. Therefore it is not known as to how he identified the body as that being of Pushparani Pramanik?

12. P.W. 8 is a Sub-Inspector who stated that he was posted at the police station concerned on "24.2.1992"? He stated that he received the FIR from Madhav Rajbanshi and that he was acquainted with the Pradhan of the area concerned. The learned Counsel appearing for the State has submitted that the evidence of P.W. 1 supports the fact that he lodged the FIR. There is no dispute in this case that P.W. 1 lodged FIR but what we are concerned with, is the manner in which the trial was conducted and specially the discrepancies that we have noticed above. The evidences show that the situs where the dead body was found had shifted from the bedroom to the courtyard and it is only the P.W. 6, namely the Investigating Officer, who stated that it was the bedroom. He also spoke of a

sketch map which was never produced. According to the inquest report the character of the appellant was said to be bad but we are not impressed because there are no corroborative evidences on record establishing that this appellant had a loose character or that he was a person of a bad character. The learned Counsel for the State has tried to impress upon us, by drawing attention to Question No. 5 of the examination of the appellant u/s 313 saying that where the appellant, in answer to that question, had stated it to be false, "no Sir", was a false answer and therefore, this should be taken into consideration for purposes of forming a link in the chain of circumstances. We have perused the questions that were put u/s 313 and we notice that the questions were all irrelevant. The proper question should have been that "you are the husband therefore you are required to explain as to how your wife died. What do you have to say?" Instead, they proceeded to ask questions like-

3 number sakshi mrityur surthal kagaje shoi koren ebong mritoke pordin sakale apnar baritey dekhon ebong policera tokhon apnake nijo strir mrityur karone greptar kore. Ki bolte chan?

Answer-mithye katha. Na Sir.

13. The statement of P.W. 6, the Sub-Inspector is that he arrested the appellant on 22.4.1998. The incident itself took place on 24.2.1998 therefore if the appellant, in answer to such a question says "no Sir" then how can it be a false statement? Having considered the case in the manner as aforesaid, we are of the view that the learned Court below ought to have given the benefit of doubt to the appellant because it appears to us that a case of suicide has been given the shape of murder. We are, therefore, not at all happy with the Order of conviction.

The same is accordingly set aside. The appeal is allowed.

Later:

Let the Appellant be discharged from his bail bond if not wanted in any other cases.

Mrinal Kanti Sinha, J.

I agree.