

(2006) 02 CAL CK 0037
In the Calcutta High Court
Case No : C.R.A. No. 180 of 1997

Sudarshan Bera and Swapan Mal

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 21-02-2006

Acts Referred:

Constitution of India, 1950 — Article 20(3)
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2006) 3 CHN 340

Hon'ble Judges : Pranab Kumar Deb, J;Alok Kumar Basu, J

Bench : Division Bench

Advocate : Joymalya Bagchi, Kallol Mondal and S. Mahapatra, for the Appellant;
Asimes Goswami, Puspall Satpathi and Rupa Bandyopadhyay, for the Respondent

Final Decision : Dismissed

Judgement

Alok Kumar Basu, J.—This appeal was directed against the judgment and order of the learned Additional Sessions Judge, Midnapore in connection with Sessions Trial No. II/March, 1996. The learned Additional Sessions Judge convicted both the appellants under Sections 302/34 of the IPC and also under Sections 201/34 of the IPC and both of them were sentenced to suffer rigorous imprisonment for life and also to pay a fine of Rs. 10,000/- in default to suffer rigorous imprisonment for three years under Sections 302/34 of the IPC and they were also sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs. 500/- each in default to suffer rigorous imprisonment for six months for the offences under Sections 201/34 of the IPC

2. The prosecution case in brief was that on 10th April, 1994 at about 7 p.m. in the evening Suresh Jana, the 4th son of Gourhari Jana of village Sithibinda under P.S. Pingla went to their shallow machine room. At about 8 p.m. one Jhantu Ghoroi of the same village informed that he had heard shouting of Suresh from inside the shallow room. On getting this information, Gourhari with some of his

co-villagers went to the shallow room and found the body of Sukesh inside the pit of the shallow room and bringing the body therefrom, it was noticed that the body had marked of several injuries and, that apart, the neck was tied with nylon rope. The body of Sukesh was thereafter brought in the village. Out of suspicion appellant Sudarshan and Swapan were summoned by the villagers in the presence of Gourhari and his family members and both the appellants confessed that over a love affair both of them had killed Sukesh. It was also noticed during confession of both Sudarshan and Swapan that Sudarshan had sustained burn injury over the skin of his abdomen and Swapan Mai had marked of laceration on his right hand. Both the appellants confessed that they sustained injury at the time of commission of murder.

3. Gourhari thereafter lodged a written complaint before the O.C., Pingla P.S. and on the basis of that written complaint, a case was initiated. The Investigating Officer held inquest over the deadbody, sent the deadbody for post-mortem examination and also examined the available witnesses. Both the appellants were arrested and taken into custody and subsequently on the basis of statement of Swapan his locket was recovered from the pit of shallow machine of Gourhari and a burnt nylon fishing net was recovered from the house of Sudarshan. The Investigating Officer also produced both the appellants for medical examination and the doctor found injuries on the persons of both the appellants.

4. After completion of investigation, chargesheet was submitted against both the appellants for commission of murder of Sukesh under Sections 302/34 of the IPC and also under Sections 201/34 of the IPC since they caused disappearance of the deadbody of Sukesh by throwing the same inside the pit of the shallow machine.

5. During trial prosecution examined 15 witnesses including informant Gourhari, some of the villagers before whom appellants made extra-judicial confession, the doctor who conducted post-mortem examination over the dead-body of Sukesh, the doctor who examined both the appellants and submitted an injury report and also the Investigating Officer.

6. The learned Additional Sessions Judge mainly relying on the extra-judicial confession made by both the appellants soon after commission of murder of Sukesh was convinced to hold that the appellants were responsible for the homicidal death of Sukesh which was supported from both the inquest and the post-mortem report.

7. The learned Additional Sessions Judge also placed his reliance to get corroboration of extra-judicial confession on the recovery of locket of Swapan from the pit of the shallow machine room and also from the recovery of the half burnt nylon fishing net from the house of Sudarshan Bera. The learned Judge also took into consideration the injury report of both the appellants which corroborated their extra-judicial confession.

8. After considering submissions of both the prosecution and the defence, the learned Additional Sessions Judge ruled out all the objections taken by the appellants challenging their extra-judicial confession and the learned Judge although did not support the prosecution case regarding motive of the murder, was, however, satisfied with the prosecution evidence that both the appellants had committed murder of Sukesh and thereafter threw his body in the pit of the shallow machine room.

9. Appearing for the appellants, the learned Advocate Mr. Bagchi has made before us the following submissions on the basis of the prosecution evidence to challenge the order of conviction and sentence:

1. Mr. Bagchi contends that from overall scanning of prosecution evidence and also from the impugned judgment and order it is very much clear that in this particular case there was no direct evidence against the appellants and the prosecution mainly relied on the extra-judicial confession of the appellants and also on the injury report of the appellants. Mr. Bagchi contends that prosecution also relied on the alleged recovery of locket of Swapan and a half burnt fishing net from the house of Sudarshan Bera;

2. Mr. Bagchi contends that there is no denying of the legal position that if otherwise satisfactorily proved to be trustworthy and reliable, extra-judicial confession alone can be the basis of conviction, but, prudence demands that even in case of otherwise acceptable and trustworthy extra-judicial confession. Court must insist for some corroboration of the same in order to sustain an order of conviction on the basis of such extra-judicial confession;

3. Mr. Bagchi contends that in this particular case P.W. 5, P.W. 8, P.W. 9 and P.W. 10 came before the Trial Judge in support of the extra-judicial confession and from their statements it is not at all clear in exactly what language both the appellants confessed their guilt. Mr. Bagchi contends that from the statement of these witnesses it is also not clear exactly at what point of time the appellants gave such extra-judicial confession. Mr. Bagchi submits that judging the prosecution evidence as a whole, we are not convinced as to whether police was actually present or not at the time of so-called extra-judicial confession;

4. Mr. Bagchi contends that on careful examination of the statement of P.W. 5, P.W. 8, P.W. 9 and P.W. 10 we will notice that each of the witness made certain improvement regarding their version about the so-called extra-judicial confession and this state of affair leads us to hold that such extra-judicial confession was not acceptable in the eye of law;

6. Mr. Bagchi contends that the seizure of locket from the pit of the shallow machine room cannot be admissible in evidence since it did not satisfy the basic requirements for a recovery to be made u/s 27 of the Indian Evidence Act and that being the legal position, it cannot be stated that there was corroboration of extra-judicial confession through alleged seizure of locket belonging in Swapan Mal;

7. Mr. Bagchi submits with sufficient force that the injury report of the appellants and also the statement of the doctor supporting the injury report are also not admissible in evidence since it is hit under Article 20(3) of the Constitution of India and also under provisions of the Evidence Act;

8. Mr. Bagchi contends that appellants were examined by the doctor soon after their arrest by the I.O. and the appellants were produced before the doctor from police custody and naturally, the statements alleged to have been given by the appellants before the doctor are not admissible in evidence;

9. Mr. Bagchi finally contends that there is much discrepancy between the observation of the doctor holding the post-mortem report and the recovery of a single nylon rope by the I.O. and this also shows that prosecution case was not proved beyond shadow of doubt.

10. To sum up his points, Mr. Bagchi submits that when the extra-judicial confession was not produced ad verbatim, when the exact time of making such extra-judicial confession was not proved, when there was every possibility of presence of police officer when such extra-judicial confession was made and when there was no corroboration of such extra-judicial confession by convincing and reliable evidence, the learned Trial Judge was not justified in recording the order of conviction and sentence merely acting on such extra-judicial confession and, accordingly, the conviction and sentence of the Trial Court must be set aside.

10. Mr. Goswami appearing for the State respondent has strongly refuted each and every point of Mr. Bagchi taken in support of his argument. Mr. Goswami contends that from the contents of the FIR which were never challenged during trial, we find that the victim was murdered inside his shallow machine room far away from the residential houses of the village and an alarming sound of the victim was first noticed by one of the villagers, who informed the father of the victim and thereafter father of the victim and other villagers going to the shallow machine room noticed the body of the victim inside the pit of the shallow machine room and this narration appearing in the FIR has never been challenged and it speaks a volume in support of the prosecution allegation.

11. Mr. Goswami contends that in the FIR it was disclosed at the earliest point of time that out of suspicion the appellants were called by the villagers and in presence of the villagers the appellants confessed their guilt and stated that before murder they had scuffle with the victim and as a result of such scuffle both of them had sustained injury. In the FIR it was also disclosed that appellant Sudarshan received a burn injury on the skin of his abdomen after coming in contact with the silencer pipe of the running shallow machine.

12. Mr. Goswami contends that it is obtained from the statement of P.W. 5, P.W. 8, P.W. 9 and P.W. 10 that soon after bringing the deadbody of Sukesh in the village, the appellants were summoned and they made the extra-judicial confession and only thereafter father of the victim went to the P.S. and police arrived at the spot at 3.35 a.m. and started investigation. Mr. Goswami contends

that from the prosecution evidence there is nothing to support the case of the appellants that they had made extra-judicial confession in presence of police or they were assaulted to obtain confession.

13. Mr. Goswami contends that it is desirable that prosecution should place the ad verbatim version of the extra-judicial confession, but, if in a case that is not done, the Court must not discard the confession merely on that ground, but, the Court will examine the surrounding fact and circumstances and only thereafter a reasonable conclusion should be drawn regarding veracity of such extra-judicial confession.

14. Mr. Goswami contends that all the witnesses supporting the extra-judicial confession spoke about the motive behind the murder and also about noticing of injuries on the person of the appellants and the appellants had given explanation for sustaining such injury.

15. Mr. Goswami contends that the injury report of the appellants and the statement of the doctor making such injury report cannot be thrown away merely taking a plea that since the appellants were produced from police custody, their statement to the doctor are inadmissible. Mr. Goswami contends that the appellants had already stated about their injury and also the cause of such injury and the injury report and the statement of the doctor merely corroborated the same and hence, the argument of Mr. Bagchi in this regard has got no merit at all.

16. Mr. Goswami contends that even if for some technical reason no reliance can be placed on the recovery of locket of Swapan from the pit of the shallow machine room, from the prosecution evidence it has been successfully shown that appellants gave voluntary extra-judicial confession and such confession was corroborated by their sustaining of injury and naturally, the learned Trial Court made no mistake in placing its reliance on the extra-judicial confession, and in recording the order of conviction and sentence.

17. We have heard and considered submissions of both Mr. Bagchi and Mr. Goswami in the background of prosecution evidence available with the record of the Trial Court.

18. From the prosecution evidence, one thing is certain that prosecution banked on extra-judicial confession of the two appellants given soon after detection of murder of Sukesh Jana and the learned Trial Court also accepted such extra-judicial confession for recording the order of conviction. We also find from prosecution evidence that the extra-judicial confession of both the appellants was corroborated by the fact of detection of some injuries on their person which took place during their scuffle with the victim before his death and the learned Judge also accepted such evidence of the prosecution as a corroborative evidence of the extra-judicial confession.

19. Mr. Bagchi during his submission has challenged the acceptability of the extra-

judicial confession by the learned Trial Court in sustaining the order of conviction and Mr. Bagchi has also challenged the corroborative evidence which was in the form of an injury report prepared by the doctor regarding both the appellants.

20. It is accepted position of law that there is no bar in sustaining an order of conviction on the basis of extra-judicial confession and rule of prudence requires that while acting on such extra-judicial confession, the Trial Court, should seek corroboration.

21. From the FIR and also from the statement of the material witnesses of the prosecution namely P.W. 5, P.W. 8, P.W. 9 and P.W. 10 we get that when the victim was in the shallow machine room, one of the witnesses heard his alarming sound and being attracted with that alarming sound, the witness informed his father and thereafter his father along with co-villagers came to the shallow machine room and found the deadbody of the victim.

22. From the statement of P.W. 5, P.W. 8, P.W. 9 and P.W. 10 we find that when the deadbody of Sukesh Jana was brought in the village, some of the witnesses disclosed that prior to the occurrence they had noticed altercation between the victim and the appellants near the shallow machine room and this fact alone prompted them to call the appellants and to ask them about the cause of murder of the victim.

23. The appellants after coming near the deadbody of the victim and in presence of those witnesses in a very clear and unambiguous term confessed their guilt. At the time of making their extra-judicial confession the witnesses also noticed burn injury on the skin of abdomen of Sudarshan and also injury on the person of Swapan and both the appellants disclosed that they sustained such injuries while scuffling with the victim and also while coming in contact with the silencer pipe of the shallow machine.

24. In order to judge voluntariness of an extra-judicial confession, the Court must be certain that such extra-judicial confession was made without any pressure either in the form of physical torture or mental pressure and it is also the duty of the Court to be sure that such confession was not made in presence of any police officer or any man of authority.

25. It is accepted principle of law that if from evidence there is slightest hint to hold that extra-judicial confession was obtained under pressure and in presence of police officer, such confession must be thrown outright and prosecution will never be permitted to take advantage of such extra-judicial confession.

26. Mr. Bagchi during his submissions wanted to show that appellants did not give the extra-judicial confession voluntarily as such confessions were not reproduced in the exact words uttered by them. We are inclined to differ from Mr. Bagchi, because, there is no hard and fast rule that extra-judicial confession must be reproduced in the exact words uttered by the appellants, but, what is required in law is that the Court must gather from the statement of witnesses

that appellants must give in detail the occurrence while confessing their role behind such occurrence and that was exactly done as it is available from the statement of P.W. 5, P.W. 8, P.W. 9 and P.W. 10.

27. From the statement of all the material witnesses as indicated above we find that there was no police officer present at the time when appellants gave the extra-judicial confession and only after starting of the case on receipt of the written complaint from witness Gourhari Jana police arrived at 3.30 a.m. and thereafter in presence of police, the appellants repeated the confessions and only thereafter they were taken to custody.

28. It is very significant to note that during cross-examination of P.W. 5, P.W. 8, P.W. 9 and P.W. 10, no suggestion was given that the witnesses stated about extra-judicial confession out of previous enmity and, in fact, there was no effective cross-examination during trial challenging the veracity of the extra-judicial confession.

29. Mr. Bagchi was very much critical about the injury report of the appellants produced by the prosecution during trial. We also share the view and anxiety expressed by Mr. Bagchi in this regard and we are also of the opinion that an accused of criminal trial cannot be compelled to make any statement against his interest after his arrest and detention under police custody and in this case also when the appellants were produced before the doctor directly from the custody of the Investigation Officer, any statement given by the appellants implicating themselves would not be permissible and cannot be used against them and this is the cardinal principle of our system of trial followed from time immemorial.

30. From the evidence-on-record particularly, with reference to P.W. 5, P.W. 8, P.W. 9 and P.W. 10 we get that both the appellants before their arrest and while making their extra-judicial confession before arrival of police themselves explained the reason of their injuries and in course of their extra-judicial confession they disclosed that during scuffle with the victim they received injuries and this part of the statement was corroborated by the medical officer while examining the appellants and even if we ignore the statement of the appellants as recorded by the doctor being inadmissible in evidence, we cannot ignore the fact that injuries appearing on the person of the appellants were also noticed by the doctor and this was sufficient corroboration regarding extra-judicial confession given by the appellants.

31. Mr. Bagchi submitted that motive behind the murder being not proved and not accepted by the Trial Court, one of the essential feature of the extra-judicial confession was very much lacking and for that reason alone, the extra-judicial confession cannot be accepted. We find from the evidence-on-record that the material witnesses in one voice spoke about a motive and, that apart, before the commission of the offence, the appellants were found engaged in an altercation with the victim and this was sufficient for prosecution to establish its case that the appellants had the motive of killing the victim.

32. Thus, after considering the prosecution evidence as a whole and with reference to the cross-examination of the material prosecution witnesses namely P.W. 5, P.W. 8, P.W. 9 and P.W. 10, we are of the view that during trial appellants did not succeed in the least to challenge the veracity of their extra-judicial prosecution, on the other hand, from the statement of those witnesses together with other attending circumstances, we are convinced that both the appellants knowing fully well the impact of their statement themselves voluntarily gave the extra-judicial confession and such confession was duly corroborated by the fact of their sustaining injuries at the time of scuffling with the victim and also during commission of the murder within the shallow machine room.

33. Thus, after considering the submissions of both the sides and having regard to the evidence-on-record we find no merit in the present appeal and we confirm the order of conviction recorded by the learned Trial Judge.

34. We, therefore, dismiss this appeal.

35. The order of conviction and sentence passed by the learned Trial Judge are hereby confirmed.

36. Since both the appellants are in Correctional Home, send a copy of this judgment at once to the Superintendent of the Correctional Home for information of the appellants.

37. Send a copy of this judgment along with LCR forthwith to the Trial Court for information.

38. Xerox certified copy of this judgment, if applied for, be supplied to the parties after complying with all necessary formalities.

Pranab Kumar Deb, J.

I agree.