

(1987) 11 CAL CK 0019
In the Calcutta High Court

Sudhir Mondal

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 20-11-1987

Acts Referred:

Evidence Act, 1872 — Section 3
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (1988) CriLJ 569

Hon'ble Judges : Jitendra Nath Chaudhuri, J; Amarendra Chandra Sengupta, J

Bench : Division Bench

Judgement

Amarendra Chandra Sengupta, J.—This appeal is directed against the order of conviction and sentence passed by the learned Sessions Judge, Malda on 16-6-84 u/s 302 I.P.C. and Section 201 I.P.C.

2. The learned Sessions Judge passed the said order of conviction and sentence on the finding that the appellant murdered his wife Hem Mondal on or about 11-5-77 and removed the dead-body of Hem Mondal. The learned Sessions Judge found on the basis of the Statement recorded in the FIR which is not a substantive piece of evidence that the occurrence took place on 11-5-77. The father of the victim girl (P.W. 1) is a resident of Deoritola. On being informed by the appellant's father Madan Mondal of Shibpore where the appellant lived with his wife that his daughter, the wife of the appellant, had gone out with the appellant to attend a marriage feast, he returned home in search for his daughter and after learning that his daughter could not be found in the village he lodged the said F.I.R. on 22-5-77. The learned Sessions Judge further found that the skeleton that was recovered beside the western side of the river Marakashi on 22-5-77 was that of the victim, who according to him, was last seen in the company of the accused on 11-5-77 on the way to Debipur from the village Shibpore. He also found that some wearing apparels and bangles and some hairs found beside that skeleton belonged to the victim. The learned Sessions Judge also found that on one morning, "presumably after the occurrence" the accused was found moving with stains of blood on his Dhoti. On the basis of such

evidence the learned Sessions Judge passed the aforesaid order of conviction and sentence.

3. This case is based purely on circumstantial evidence. Before stating the law regarding substantial evidence we may consider the submissions of the learned advocate for the appellant that the accused cannot be convicted because, he contended, that the identity of the skeleton has not been established and that it was not proved if the alleged death was homicidal. He further contended that even if it is assumed that the victim was last seen in the company of the accused no conviction can rest on such finding in the circumstances of the case. In this connection, the case of Chandmal and Another Vs. State of Rajasthan, , The State of Punjab Vs. Bhajan Singh and Others, and the case of State Government, M.P. v. Ramkrishna Ganpatrao reported in 1954 Cri LJ 244 (SC) (supra) were referred to. In the last case reported in 1954 Cri LJ 244 (SC) (supra) the following circumstances were established : - the deceased was last seen in the company of the accused on the date of his death in the house of the accused on 8-10-49. The dead-body of the accused was recovered from a freshly constructed tomb on the third storey of Limsey's house. The plea of alibi of the accused Limsey was found to be untrue. In these circumstances the accused persons were acquitted on the ground that there was no direct evidence in the case of the murder of the victim or of the participation of the accused persons in it. In the second case reported in The State of Punjab Vs. Bhajan Singh and Others, the accused persons were found entitled to be acquitted on the ground that "there is no evidence on record to show that the two dead-bodies which are alleged to have been recovered in pursuance of the disclosure statement of" one of the accused were of the deceased and that "it is not possible to hold that the death of the two persons, whose bodies were recovered, was homicidal. In the first noted case namely, that reported in Chandmal and Another Vs. State of Rajasthan, no conclusion with regard to the guilt of the accused could be drawn from the fact that a skeleton was discovered from a pit in the house occupied by the accused Chandmal because not only the identity of the skeleton was doubtful but the cause of the death had also not been established. It had not been shown that the death of the person whose skeleton it was, was due to culpable homicide or unlawful violence. In view of these decisions it may be concluded that a person cannot be held guilty of murder even if the deceased was last seen in his company unless it is proved that the death was homicidal. But it cannot be concluded from these decisions that there case be no conviction unless the dead-body is found. The law on this point has been stated in the decision in the case of Ramanand v. State of Himachal Pradesh reported in Rama Nand and Others Vs. State of Himachal Pradesh, : "Discovery of the dead body of the victim bearing physical evidence of violence has never been considered as the only mode of proving what is the corpus delicti in murder...where the dead-body of the victim in murder case is not found, other cogent and satisfactory proof of homicidal death of the victim must be adduced by the prosecution. Such proof may be by the direct ocular account of an eye-witness or by circumstantial evidence, or by

both. But where the fact of corpus delicti that is "homicidal death" is sought to be established by circumstantial evidence alone the circumstances must be of a clinching and definitive character unerringly leading to the inference that the victim concerned has met a homicidal death. Even so, this principle of caution cannot be pushed too far as requiring absolute proof. Perfect proof is seldom to be had in this imperfect world and absolute certainty is a myth. That is why u/s 3 of the Evidence Act a fact is said to be "proved", if the Court considering the matters before it, considers its existence so probable that a prudent man, under the circumstances of the case, is to act upon the supposition that it exists. The corpus delicti or the fact of homicidal death, therefore, can be proved by telling and inculcating the circumstances which definitely lead to the conclusion that within all human probability the victim has been murdered by the accused concerned." In that case the fact of homicide was held to have been proved on consideration of the circumstances of that case namely, (i) accused Ramanand had a strong motive to murder his wife Sumitra, (ii) Sumitra was last seen alive with Ramanand in the night between 13-5-72 and 14-5-72, (iii) (a). Ramanand and other two accused had falsely given out that she had committed suicide by jumping into the river, (b) the accused also falsely introduced the story of planting chillies by Sumitra up to 11 a.m. on 14-5-72. (iv). Some of the ornaments that the victim had on her person when she came to the house of the accused on 13-5-72 were recovered from the house of the accused. (v) Some days after the occurrence one parenda was found from the jungle near the village of the accused. There was the bunch of hair in the plated tail of this parenda. The tail appeared to have been cut. The hair sticking in the parenda and those found in the Dupatta of the deceased according to the Forensic expert were of the same person.

4. In our present case there is nothing to show that the accused had any motive to murder his wife. 11 is also not the prosecution case that the accused gave out that his wife committed suicide - thereby admitting the fact of death. In the present case the prosecution has further given some evidence with regard to the finding of some hairs beside the place where the skeleton was found and from the house of the accused where Hem Mondal resided with the accused. But the evidence of the forensic expert, unlike that in the reported case referred to in the preceding paragraph, is that the hairs recovered from the respective places were similar. It does not state that these hairs, unlike that in the said reported case were of one and the same person.

5. The case, as already noted, is based on circumstantial evidence. The law regarding circumstantial evidence has been enunciated in several decisions. We quote this law from one such decision, we have already referred to viz. that reported in Chandmal and Another Vs. State of Rajasthan, "It is well settled that when a case rests entirely on circumstantial evidence, such evidence must satisfy three tests. Firstly, the circumstance from which an inference of guilt is sought to be drawn must be cogently and firmly established; secondly those circumstances should be of a definite tendency unendingly pointing towards the guilt of the

accused. Thirdly, the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. That is to say, the circumstances should be incapable of explanation on any reasonable hypothesis save that of the accused's guilt". In this case the circumstances, the prosecution sought to prove taken cumulatively do not lead to the conclusion that the fact of commission of the alleged crime has been proved according to the standard set forth in Section 3 of the Evidence Act.

6. The prosecution case is that one evening, Hem Mondal, the wife of the accused, alleged to have been murdered was seen with the accused coming towards Debipur and that thereafter her skeleton was recovered from the bank beside the river Marakashi. There is no evidence whatsoever to show that the said skeleton was that of Hem Mondal, the wife of the accused. To establish the identity of the skeleton the prosecution adduced evidence to show that a tuft of long hair, one twisted black turtle, a piece of light yellow coloured glass-bangle and a beguni coloured blouse were seized from beside the place where the skeleton was found. These articles were not found on the dead-body but were found, according to the evidence of P.W. 15, near Debipur embankment. P.W. 6 says that the O.C. seized a yellow blouse but the O.C., P.W. 16, says that he seized a beguni coloured blouse. P.W. 1, the father of the victim, identified one blue coloured blouse as the one belonging to her daughter. The evidence of P.W. 1 that "when my daughter went out with the accused she was wearing a purple (beguni) coloured blouse and used glass bangles. Her hair was dressed with a tersel" cannot be accepted because he did not see his daughter coming with the accused. So he cannot have any knowledge as to what was worn by his daughter at that time. The evidence of P.W. 4 that the wife of the accused wore a blouse shown to her and yellow bangles and a tersel when she was coming with the accused is shaky, because her evidence that she told the I.O. that she saw Sudhir and his wife coming out of their home in the evening and that on her asking Sudhir told her that he and his wife were going to attend a marriage feast, is contradicted by her statement recorded by the I.O. P.W. 16. Even if it is assumed that P.W. 4 saw the accused and his wife going out her evidence about the colour of the bangles, blouse etc. cannot be relied upon because she says that it was getting dark when Sudhir and his wife were going out. The evidence of P.W. 3 the husband of P.W. 4 is also shaky.

7. In view of the evidence on record we are unable to hold that the identity of the skeleton has been established. P.W. 16 states that he despatched the skeleton to the D.M.O., Malde for post-mortem examination. P.W. 17 who submitted charge-sheet said that the F.S.L. report and the post-mortem report were already in the case diary. In spite of several opportunities having been given to the prosecution for production of the postmortem report the said report was not produced. In the circumstances, we hold that the prosecution failed to prove that any murder was at all committed to hold the accused guilty of the charges framed.

8. Prosecution unsuccessfully sought to prove that the accused was wearing a dhoti which was found to have been stained with blood by P.W. 11 who was declared hostile by the prosecution. P.W. 11 has not stated when he found the accused, either before or after the occurrence walking on the embankment by the side of his house at Shibpur with a blood-stained dhoti on his person.

9. The learned Public Prosecutor argued that the accused absconded and he could not be arrested before 18-6-77. There is no evidence to prove absconsion. On the other hand, the evidence is that poor people of the village go out to Debipur to work as agricultural labourers.

10. The prosecution has also not adduced any evidence to prove that the accused was guilty of any conduct from which the guilty of the accused could be inferred.

11. In view of the circumstances of the case, some of which we have noted above, we hold that the prosecution has failed to prove, according to the standard set forth in Section 3 of the Evidence Act, that the accused was responsible for the alleged death or that he caused disappearance of the evidence of the alleged offence. In other words, the prosecution failed to bring home to the accused any of the charges levelled against him.

12. The appeal is accordingly allowed. The order of conviction and sentence is set aside. The accused is acquitted of the charges under Sections 302 I.P.C. and 201 I.P.C. The accused be set at liberty at once.

Jitendra Nath Chaudhuri, J.

13. I agree.