
(2023) 01 CAL CK 0022
In the Calcutta High Court
Case No : Criminal Appeal No. 238 Of 1995

Sukchand @ Banria Maity & Anr.

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision : 10-01-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302, 498A

Citation : (2023) 01 CAL CK 0022

Hon'ble Judges : Chitta Ranjan Dash,. J;Partha Sarathi Sen, J

Bench : Division Bench

Advocate : Navanil De, Prasun Kr. Dutta, Md. Kutubuddin, Santanu Deb Roy

Final Decision : Allowed

Judgement

Partha Sarathi Sen, J

1. The instant appeal arises out of the judgement and order of conviction dated 14.09.1995, as passed by Learned Additional Sessions Judge, 4th Court, Midnapore, in Sessions Trial No. V of December 1994 whereby and whereunder the said court convicted one Sukchand @ Banria Maity under Sections 302/498A/201 I.P.C and thus sentenced to suffer imprisonment for life and fine of Rs.5000/- i.d to suffer further rigorous imprisonment for two years for the offence under Section 302 IPC, rigorous imprisonment for two years and fine of Rs.1000/- i.d to suffer further rigorous imprisonment for six months for the offence under Section 498A I.P.C and rigorous imprisonment for four years and fine of Rs.2000/- i.d to suffer further rigorous imprisonment for one year for the offence committed by him under Section 201 I.P.C. The convict above named felt aggrieved and thus preferred the instant appeal.

2. On 24.12.1991, one Bhanu Charan Mondal, the father of deceased lodged a written complaint with the O/C of Patashpur P.S stating, inter alia, that his daughter Faringbala after her marriage started living at her matrimonial home with her husband, the appellant herein and out of such matrimonial wedlock a

male child was born to them. He stated further that the present appellant as well as his mother Smt. Khandibala Maity and elder brother Subal Chandra Maity used to inflict torture upon Faringbala during her stay at her matrimonial home. It is the further version of the de facto complainant that on 24.12.1991, he came to learn that the aforesaid three persons assaulted his said daughter and accordingly he went to the matrimonial home of his said daughter where he noticed that there was none in the house of the accused persons and the same was under lock and key. It has also been stated that from the neighbouring people he came to learn that on the previous night the accused persons assaulted his said daughter Faringbala and in the morning the accused persons disclosed that his said daughter went missing. In his written complaint it has also been alleged that at about 1/1:30pm the dead body of Faringbala was recovered from the pond of the accused persons and at that time he noticed a ligature around her throat with one of her wearing cloth having a tight knot at the backside and with the other knot of the same saree an earthen pitcher was tied. In his said written complaint the de facto complainant suspected that the accused persons murdered Faringbala and thereafter threw her dead body into pond.

3. On the basis of such written complaint investigation was taken up and on completion of the same charge sheet was submitted under Sections 498A/302/201/34 I.P.C against the aforementioned three accused.

4. After commitment the case was transferred to the trial court and thereafter charges under Sections 498A/302/201/34 I.P.C were framed against all the three accused persons. Since all the three accused persons pleaded their innocence and claimed to be tried the trial proceeded. It reveals from the trial court record that in order to bring home the charges, the prosecution has examined 13 witnesses in all and several documents have been exhibited on their behalf. It reveals further that the learned trial court after considering the entire evidence, both oral and documentary, as adduced by the prosecution witnesses convicted the present appellant under the Sections as mentioned above. However, the other two accused namely; Khandibala Maity and Subal Maity were found not guilty of the offences under Sections 498A/302/201/34 I.P.C.

5. We have heard the learned advocates for the appellant and the State at length. We have also perused the entire materials as available in the trial court record including the impugned judgement.

6. In this appeal we propose to deal with the evidence of those prosecution witnesses only which are relevant for the purpose of disposal of the instant appeal.

7. In our considered view the deposition of PW10 i.e. the doctor who conducted post mortem over the dead body of the victim is required to be looked into and the relevant portion of examination-in-chief of the said autopsy surgeon (PW10) is reproduced hereunder in verbatim:-

"on examination of the body I found the following injuries.

1. Swelling Haematoma on the right side of the face.
2. Blood clots inside the swelling after incision.

I also found a cloth was fastened around the neck of the body tightly with a knot and with the same cloth end a big pitcher was tied. Inside the pitcher I found mud. After removing the fastened cloth around the neck I found mark of ligature.

No crackling and water was found after squeezing the lungs.

Stomach and its contents reveal full of rice and acidic smell. Large intestine was full of fickle matter and bad smell.

No external injury other than swelling was found at the body. Stomach and its contents, portion of liver, right kidney, uterus and its appendixes were preserved.

In my opinion, death was due to violent Asphyxis, shock and cardio respiratory failure as a result of tight fastening of cloth with a loaded pitcher(full of water) ante mortem and homicidal in nature.

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If it was a suicidal case, there must have water in the lungs and stomach. In my opinion it is not a case of suicide by drowning into water. It is not a fact that always Hyoid bone would be fractured in case of throttling. It depends on force and violence."

8. From the aforesaid evidence of the autopsy surgeon, it is thus crystal clear that the death of the victim was unnatural as well as the same is homicidal in nature. On thorough scrutiny of the cross examination of PW 10 it does not transpire to us that any contrary view can be taken with regard to the nature of death of the victim, however, it is pertinent to mention herein that in his cross examination as well as in his post mortem report (Exhibit 3) it has been stated by the Autopsy surgeon that he noticed no external injury after dissection of the body of the victim.

9. From the evidence of the prosecution witnesses as well as from the impugned judgement there is no doubt in our the mind that the instant case is purely based on circumstantial evidence as the alleged incident took place on the relevant day in the midnight and naturally there was no ocular witness to the incident. On perusal of the trial court record, it reveals to us that most of the private prosecution witnesses are the neighbours of the accused persons except PW7 who is none but the father of the victim as well as he is the informant. In order

to arrive at a logical condition of the instant appeal we thus propose to look to the evidence of PW1 who according to the prosecution is one of the vital witnesses.

10. PW1 in course of his examination-in-chief stated that the victim was murdered at the house of the present appellant. It is his further version that on the relevant day at about 10/10:30pm he went to a nearby tank which is 10 feet away from the house of the accused persons and at that time he heard that the present appellant was calling his wife to open the door and he also heard that a quarrel started between the appellant and his wife i.e. the deceased immediately after opening of the door on account of delay in opening the door. He also stated that after sometime he heard some sound inside the room of the appellant as well as a hue and cry saying "ma go ma go". It is his further version that he then noticed that the present appellant and his brother Subal came out of their house and after sometime they again entered into their house along with two some unknown persons. It is his further version that on the next day at about 12:30 pm he found the dead body of the victim having a pitcher tied with her neck by her saree and other portion of the saree was around the neck of the deceased with a knot.

11. PW1 was extensively cross-examined by the defence and in course of his cross-examination he stated that he did not disclose to anybody of his locality about the hue and cry as heard by him on the relevant day and hour. He further stated that he could not follow what the present appellant was saying to his wife on the relevant day and hour.

12. According to the prosecution, PW2 is another neighbour of the accused, who adduced convincing evidence towards the guilt of the present appellant. In course of her examination-in-chief she stated that her house is situated at about 10 cubits away from the house of the accused persons. She stated further that on the relevant day and hour she heard whisper inside the house of the accused persons and on the next morning she came to learn that the wife of the present appellant fled away from her matrimonial home. It is her further version that in the noon time the dead body of the deceased was recovered from the pond of the appellant having one end of her saree tied with her neck by a knot while the other part of the saree was tied by a knot with a pitcher. She stated further that when the victim was alive she noticed that the present appellant used to assault her at times. In course of her examination nothing could be elicited which are either favourable to the prosecution or to the defence.

13. PW5 being another neighbour of the accused persons in course of her examination-in-chief stated that her house is situated within two cubits from the house of the accused persons. It is her version that on the relevant night at about 10/11pm when she was sitting at the verandah of her home at that time the present appellant Sukchand came from outside and asked his wife to open the entrance door. Since his wife was little bit late in opening the door, a quarrel started in between them and soon thereafter she heard some sound of "dhip

dhap" from inside the house of the accused persons. She also heard that mother of the appellant was asking to stop the quarrel. She also stated that she had heard a hue and cry saying " ma go ma go" in the voice of the victim. She further stated that at that time she noticed that two unknown persons entered inside the house of accused persons from outside. She stated further that she heard some whisper from the house of the accused persons and in the next morning the dead body of the victim was recovered from the pond of the present appellant in the fashion as disclosed by PW1 and PW2.

14. On perusal of the impugned judgement it appears to us that the learned trial court based on the oral evidence of the PW1 ,PW2 and PW5 came to a finding that chain of circumstances as involved in the instant case unerringly pointed out to the guilt of the present appellant and thus convicted the present appellant in the manner as indicated above.

15. It is pertinent to mention herein that PW7 being the informant and the father of the victim in course of his examination-in-chief though supported his FIR story but he categorically stated that his deceased daughter was living peacefully in her matrimonial home and in his examination-in-chief he made no allegation as against the charged accused persons. He has been declared hostile by the prosecution and in course of his cross-examination, the father of the victim stated that the present appellant had married his another daughter Toribala after death of Faringbala. In course of his cross-examination by the defence he stated that he advised his daughter Faringbala to stay at her matrimonial home as otherwise he would not allow her to come back to his home.

16. Since, the case before us is based on circumstantial evidence, we propose to look to the five established principles which are required to be assessed in a case based on circumstantial evidence and those are as under:-

"i. the circumstances from which the conclusion of guilt is to be drawn should be fully established;

ii. the facts so established should be consistent only the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypotheses except that the accused is guilty;

iii. the circumstances should be of a conclusive nature and tendency;

iv. there should every possible hypothesis except the one to be proved;

v. there must be chain of the evidence so complete as not to have any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

17. The aforementioned five principles have been discussed, dealt with and upheld in plethora of decisions namely; State of Rajasthan vs. Rajaram reported in (2003)8SCC180; State of Haryana Vs. Jaglir Singh reported in (2003)11 SCC

261 and Sarad Birdhichand Sarda Vs. State of Maharashtra reported in AIR 1984 SC 1622.

18. Keeping in mind the above mentioned propositions of law we propose to look to the evidence of PW1, PW2 and PW5 once again. On conjoint perusal of the examination-in-chief of the aforesaid three prosecution witnesses it appears to us that the said three prosecution witnesses adduced sufficient convincing and corroborative evidences to the effect that on the relevant night and hour a quarrel took place between the appellant and his wife i.e. the victim and after the entry of the present appellant in his house they heard a hue and cry in the voice of the victim saying "ma go ma go". It is also their evidence that they also heard some whisper in the house of the accused persons and also noticed entry of two unknown persons in the house of the accused persons at the relevant point of time. It is also their evidence that in the next morning they heard that the victim was missing from her matrimonial home and in the noon time her dead body was recovered from the pond. In considered view of us this evidence of the aforementioned prosecution witnesses cannot draw a logical conclusion to the effect that the alleged guilt of the appellant has been fully established. It is pertinent to mention herein that the dead body of the victim lady was not recovered from her bedroom or from the house of the accused persons. The time gap between the alleged quarrel and the recovery of the dead body from the pond of the accused persons were really long. On close scrutiny of the relevant portion of the impugned judgement it appears to us that the learned trial court arrived at the conclusion of the guilt of the present appellant based on some assumption of facts which gets no support from the evidence of the aforementioned three prosecution witnesses. It thus appears to us that the chain of circumstances as required to be proved in a case of circumstantial evidence is very much incomplete for which the present appellant cannot be held to be guilty under Sections 302/201 I.P.C. So far as the charge under Section 498A I.P.C is concerned it appears to us that the same has also not been proved beyond reasonable doubt since except PW2 no positive evidence has been adduced by the other prosecution witnesses that the victim lady was subjected to torture at her matrimonial home at the instance of the appellant.

19. In view of the discussion made hereinabove we have no hesitation to hold that the learned Trial Judge is not correct in holding the present appellant is guilty under Sections 302/498A/201 I.P.C. As a result the instant appeal succeeds. The impugned judgement and order dated 14.09.1995, as passed by Learned Additional Sessions Judge, 4th Court, Midnapore, in Sessions Trial No. V of December 1994 is hereby set aside.

20. The present appellant namely; Sukchand@ Banria Maity is thus acquitted from the charges under Sections 302/498A/201 IPC in connection with Sessions Trial no. V of December, 1994. He is thus discharged from his bail bonds.

21. Let a copy of this judgement along with the LCR be sent down at once.

22. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.