

(2005) 12 CAL CK 0005
In the Calcutta High Court
Case No : C.R.A. No. 22 of 1998

Suresh Mahato

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 07-12-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 34, 364

Citation : (2006) 1 CALLT 248 : (2006) 2 CHN 78

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

Bench : Division Bench

Advocate : Sekhar Basu and Joyamallya Bagchi and Siladitya Banerjee, for the Appellant; Asimesh Goswami and Minoti Gomes, for the Respondent

Final Decision : Dismissed

Judgement

Alok Kumar Basu, J.—Suresh Mahato being convicted u/s 302/302 of the IPC by the learned Additional Sessions Judge, 4th Court, Midnapore in Sessions Trial Case No. XLII (June of 1996) arising out of G.R. Case No. 166 of 1996 corresponding to Kharagpur (town) Case No.22 of 1996 dated 2nd February 1996 preferred this appeal challenging his order of conviction and sentence.

2. Ramnath Sinha was the son of one Birjoram Sinha of Gattarpara under Kharagpur (town) P.S. in the District of Midnapore. Ramnath Sinha was an employee of the cement shop of one Suresh Agarwal. On 1st February, 1996 Ramnath had left his house to join his duty and in course of his duty, he had been to the business place of appellant Suresh Mahato who was also a dealer of cement to bring money due to his employer. Ramnath Sinha did not return to his house for the whole day and for this reason a general diary was lodged at the P.S. by his employer.

3. As Ramnath Sinha was not traceable on the next day i.e. on 2nd February, 1996 and as on frequent enquiry being made to the appellant, father of Ramnath was threatened, the said father ultimately lodged a written complaint

at the local P.S.

4. On 4th February, 1996, getting information about presence of a dead body beneath the ground near the cement go-down of the appellant, local police officers arrived at the spot and subsequently in presence of an Executive Magistrate after digging, a mutilated human body kept under the full size cement bags and some bricks were noticed. After bringing out the dead body on the surface it was detected that the dead body had been cut into six pieces and after joining the parts it resembled with the body of Ramnath Sinha and the same was duly identified by his brother and local people.

5. On the basis of written complaint of Birjoram Sinha dated 2nd February, 1996 a case was instituted against the appellant, his wife and his servant.

6. In course of investigation, police collected materials and on the basis of such materials, charge sheet was submitted against the appellant, his wife Rukmini Mahato and his servant Jagu Nishad under sections 364/302/201/34 of the IPC.

7. The learned Additional Sessions Judge, after considering necessary papers and on hearing both sides, framed charges against three persons including the appellant under sections 364/302/201/34 of the IPC and thereafter prosecution was asked to produce its evidence for trial of the aforesaid persons.

8. Prosecution examined in all 29 witnesses in this case which included PW 1 father of Ramnath Sinha and FIR maker, local witnesses who were present at the time of digging out of the dead body, witnesses to the seizure of moneybag and chappals of victim Ramnath Sinha, witnesses to the seizure of "katari" and some blood stain cement from the wall of a room belonging to the appellant, three doctors who were members of the medical board which conducted post mortem examination of the deceased Ramnath Sinha, the Executive Magistrate in whose presence the dead body was brought out after digging and several police officers including PW 29 who was part of the investigation team and who identified several documents including seizure lists prepared by the I.O. who could not be examined as he expired meanwhile.

9. Prosecution also produced written complaint of Birjoram Sinha, inquest report, post mortem report, seizure lists, report of the forensic laboratory and, that apart, the moneybag, photo of the victim, the "katari", chappals etc. were also produced during trial as material exhibits for the prosecution.

10. The learned Additional Sessions Judge, after considering the prosecution evidence both oral and documentary and after hearing submission of both the prosecution and the defence, found sufficient evidence to hold the appellant guilty of the offence under sections 302/201 of the IPC, but, he did not find any evidence either against Rukmini Mahato or accused Jagu Nishad and accordingly, both of them were acquitted of all the charges. The learned Judge also found no material to hold the appellant guilty u/s 364 of the IPC.

11. After hearing the appellants on the question of sentence, the learned Judge

sentenced the appellant to suffer imprisonment for life and also to pay a fine of Rs. 10,000/- in default to suffer rigorous imprisonment for one year more for the offence u/s 302 of the IPC and the appellant was also sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs. 6,000/- in default to suffer rigorous imprisonment for six months more for the offence u/s 201 of the IPC. The learned Judge directed that both the sentences should run concurrently.

12. Mr. Basu appearing for the appellant after scanning the relevant prosecution evidence available with the record submits that prosecution side came before the Trial Court with an absurd story and the manner in which prosecution sought to project its case with the help of its evidence appears to be totally unacceptable and improper.

13. Mr. Basu contends that there was no convincing evidence before the Trial Court wherefrom the prosecution story regarding the victim being found for the last time in the company of the appellant could be proved. Mr. Basu submits that not a single witness has come forward to depose that victim was found in the business place of the appellant and this, at once, strikes at the very root of the prosecution case.

14. Mr. Basu contends that it is a mystery from the prosecution evidence as to who informed the P.S. about presence of the dead body near the go-down of the appellant and such a vital fact did not find any place either in the statement of the police officers or in the statement of any local witness.

15. Mr. Basu contends that although motive may not assume much importance in determining the criminal liability of a person, but, sometime motive is a determining factor to pick up the culprit in criminal trial and particularly, in the backdrop of the present case motive assumes much importance but, curiously enough, from the entire prosecution evidence nothing can be shown to prove the alleged motive of the appellant to commit the murder of the victim. Mr. Basu submits in this context that no investigation was made as to where the victim kept money alleged to have been received from the appellant or how the moped used by the victim was subsequently recovered from the cycle stand and there is nothing on record to indicate that investigation proceeded to identify the person who brought the moped to the cycle stand.

16. Mr. Basu is very much vocal about the prosecution case that the place of recovery of the dead body was within the exclusive possession and control of the appellant. Mr. Basu has referred to the evidence of PW 8 and PW 10 and also the evidence of PW 20, PW 25 and PW 26 to press his point that the place was easily accessible to the outsiders and there is nothing on evidence to suggest that the place was within a boundary wall which could not have been crossed by the outsiders to do any mischief.

17. Mr. Basu was equally vocal about the manner of seizure of moneybag allegedly belonging to the victim and so also the "katari" allegedly used by the

appellant to do away with the victim. Mr. Basu contends that there is no convincing evidence to lend support to the prosecution story that appellant brought out either the moneybag or the "Katari". Mr. Basu also submits that it was not mentioned in the seizure list from whom the "katari" was seized. Mr. Basu contends that it has come out from evidence that the photo of the victim was in loose condition and the possibility cannot be ruled out altogether that the photo was subsequently planted in the moneybag to create the evidence against the appellant.

18. Mr. Basu submits that PW 1 himself admitted that he signed on a blank paper and when the scribe of the FIR was not examined, lodging of the FIR itself was doubtful and it cannot be ruled out altogether that probably the FIR maker was a mere name lender and some person with some ulterior motive and out of business rivalry might have used the police machinery to harass the appellant by implicating him in an altogether false and fabricated case.

19. Mr. Basu finally submits that in this case from the record it is very much clear that investigation was very much tainted and suspicious and no attempt was made to nab the person who brought the moped to the cycle stand and no attempt was also made to trace out the money received by the victim from the appellant.

20. Mr. Basu in view of his above submission contends that where investigation was suspicious and not in accordance with the rule and where evidence was scanty to nab the real culprit, merely acting on surmise and conjecture, the appellant should not have been convicted in a serious offence like the present one.

21. Mr. Goswami on behalf of the State has strongly refuted all the points taken by Mr. Basu to challenge the order of conviction and sentence. Mr. Goswami contends that on careful consideration of the prosecution evidence both oral and documentary, one will find that the learned Judge rightly recorded his order of conviction and sentence against the present appellant for the dastardly act of murder of the victim Ramnath Sinha and also for causing disappearance of evidence relating to such dastardly act by keeping the dead body concealed underground with the help of cement bags, bricks etc.

22. Mr. Goswami contends that it has never been challenged by the appellant that he was not a cement dealer and the victim was not an employee of another cement dealer PW 7 and the appellant owed money to PW 7. Mr. Goswami contends that from the statement of several witnesses it has been established that in the morning of 1st February, 1996 victim was alive and he joined his duty in the cement shop of PW 7 and thereafter he had left the shop to bring money of his employer from the appellant. Mr. Goswami contends that this point of prosecution has been well established from several witnesses and appellant during cross-examination of those witnesses did not succeed at all to demolish the prosecution case.

23. Mr. Goswami contends that on 2nd February, 1996 father of the victim Ramnath Sinha and his brother met the appellant to enquire of the victim, but, appellant did not give any answer, rather, he threatened both of them and only thereafter on 4th February, 1996 acting on some source information police had been near cement go-down of the appellant which was under a boundary wall and after digging earth the mutilated dead body of the victim was recovered.

24. Mr. Goswami contends that several witnesses including the Executive Magistrate deposed in Court that the dead body was kept concealed under three full size cement bags and it is pertinent to mention that the place where the dead body was concealed was near the cement go-down of the appellant and there is no explanation why the dead body was concealed under three cement bags and who brought those cement bags and the only answer was that it was the appellant who concealed the dead body and who brought cement bags from his go-down for that purpose.

25. Mr. Goswami contends that three doctors out of four who constituted a special team to hold postmortem examination of the dead body opined in one voice that the victim died due to shock and out of throat cut injury and such injury was possible by "katari" and there was no suggestion given to those doctors that the injuries could not have been caused by a single man. Mr. Goswami contends that all the three doctors expressed their opinion that other injuries resulting severing of the different organs of the body were all post mortem in nature and those parts bore the mark of cement.

26. Mr. Goswami contends that in this case apart from strong circumstantial evidence, prosecution collected direct evidence to hold the appellant guilty of this murder and this is evident from the seizure of moneybag of the victim and also from seizure of "Katari" at the instance of the appellant from a well under his exclusive possession. Mr. Goswami contends that the chappal used by the victim were also brought out by the appellant while he was in police custody and in presence of local witnesses and the appellant during trial did not succeed to impeach credibility of any of the witnesses to the seizure.

27. Mr. Goswami contends that although attempt has been made to show that the house of the appellant was also used by his tenants, but, the witnesses of prosecution stated firmly that during search and seizure no tenant was visible in the house of the appellant and naturally, the point taken by Mr. Basu that it was totally impossible and absurd for the appellant to commit the murder amidst the inmates and tenants can not be accepted at all.

28. Mr. Goswami thus submits after analyzing the evidence that the victim went to the house of the appellant on 1st February, 1996 and since thereafter he was not traceable and his mutilated dead body was found from a place which was under total control of the appellant and the dead body was concealed under some full size cement bags and the appellant while in police custody and in presence of witnesses brought out moneybag of the victim from his cow-sheds

and the appellant brought out "katari" used by the appellant to kill the victim and the appellant brought out chappal of the victim and all these factors taken together along with circumstantial evidence clearly established the prosecution case that it was the appellant who had killed the victim and who had concealed his dead body beneath the ground and under the cement bags.

29. We have considered all the points raised by Mr. Basu during his oral submission and also the points mentioned by him in his written note. We have also considered submission of Mr. Goswami.

30. The prosecution case as apparent from the FIR of PW 1, father of deceased Ramnath Sinha was that in the early morning of 1st February, 1996 victim was alive and after taking his bath he left for his usual duty in the shop of PW 7. The FIR case was that from the shop of PW 7 victim went to the business place of appellant who was also a cement dealer to bring money of his employer and since thereafter the victim was not found any more. From the FIR we further get that on 2nd February father of the victim along with his other son met the appellant and asked him about the victim, but, no reply was received, on the contrary, appellant threatened both the father and the son.

31. The contents of the FIR have been supported both by PW 1 the FIR maker and his son PW 2 and from their cross-examination nothing is found to impeach their credibility.

32. From the statement of PW 5, PW 6, PW 7 the employer of the victim and PW 10 father of PW 7, we get that victim left his employer's shop to go to the shop of the appellant and there is nothing on record to hold otherwise and it is very pertinent to mention that in the cross-examination of these witnesses nothing was suggested that victim went to the other place.

33. It has been contended on behalf of the appellant that there is no evidence to support "the last seen together theory", but, in our view, this theory cannot have any application in the present case and in view of the overwhelming evidence that victim left his employer's shop to go to the shop of the appellant and when the appellant did not return for the whole day of 1st February, 1996 and when on 2nd February, 1996 the appellant was asked about the victim, as a normal human conduct, he should have given some answer, but, instead of giving any answer to the quarry of the father of the victim, he threatened them and this part of the prosecution evidence has not been challenged by the appellant during cross-examination of both the father and the brother of the victim.

34. Thus, from the statement of PW 1, PW 2, PW 5, PW 6, PW 7 and PW 10, we get a complete picture that victim during his lifetime visited the place of the appellant and from that place he did not come alive and naturally, it was within the knowledge of the appellant as to where the victim had been since his visit to the place of the appellant and in that background we hold that prosecution has sufficiently explained its case against the appellant.

35. On 4th February 1996 getting some information, police had been near the cement go-down of the appellant and started digging the ground first by themselves and thereafter in presence of an Executive Magistrate and as a result of the digging the mutilated body of the victim was recovered. It has been argued on behalf of the appellant that there is nothing on record how police came on the spot for recovery of the dead body, in our considered view, this point was not very much material and the relevant point was that the dead body of the victim was recovered from a place which was under exclusive possession of the appellant and near his cement go-down.

36. Strenuous attempt has been made to project that the place wherefrom the dead body was brought out was accessible to other person and it is not altogether improbable that the victim might have been killed at some other place and the miscreants thereafter brought the dead body near the cement go-down of the appellant and kept it there concealed beneath the ground. This proposition on the face value appears to be attractive, but, from the inquest report as well as from the statement of PW 4, PW 8, PW 9, PW 12, PW 13, PW 19, PW 20 and PW 25, we get that the body of the victim was buried under three full size cement bags and it was opined by all the three doctors PW 22, PW 23 and PW 24 that cement particle was detected on the mutilated body of the victim.

37. Now, if we consider the statement of PW 4, PW 8, PW 9, PW 11, PW 12, PW 13 and PW 19 the Executive Magistrate in whose presence the body was brought out, we find that all these witnesses have stated in one voice that the place of recovery belonged to the appellant and in that background, considering the fact that three full size cement bags were found over the dead body and the go-down of the cement was near the place of recovery and that go-down belonged to the appellant, it is very difficult to accept the case of the appellant that some outsiders would come on his land and they would dig the land to prepare a ditch and thereafter they shall put the dead body and with the dead body they would bring the cement bags.

38. It is very important aspect of the prosecution case that no witness of the prosecution who deposed about the presence of cement bags and about the exclusive possession of the place of recovery was shaken during their cross-examination.

39. It has been contended on behalf of the appellant that the prosecution story that appellant alone killed the victim and thereafter put his dead body in the ditch appears to be impossible and absurd, because, there were several persons in the house of the appellant including his tenants. We have examined the prosecution evidence and from the statement of witnesses who came to the house of the appellant in connection with the search and seizure, we find that there was nobody present in the house of the appellant not to speak of any tenant. Again, during cross-examination of the doctors who conducted the postmortem examination, no suggestion was given that a single man could not have killed the victim in the manner the victim was actually killed. We get from

the evidence of PW 22, PW 23 and PW 24, the three doctors who were part of the medical board, that the victim died out of throat cut injury and a single individual could have inflicted that injury with a sharp cutting weapon like "katari" and since the doctors observed that other injuries of the victim were of post mortem in nature, it was quite probable that after killing the victim he was cut into several pieces only to facilitate dispatch of the body from the place of murder and to put the same in the ditch by a single individual without creating much publicity.

40. It has been argued on behalf of the appellant that the story of search and seizure was totally fabricated and not acceptable at all in the eye of law since there was no label on the "katari" seized and in the seizure lists there was no mention wherefrom the article was seized and similar has been the argument regarding the recovery of moneybag along with photo of the victim.

41. We find from record that soon after arrest of the appellant he had been remanded to police custody and during his police custody pursuant to his statement he was taken first on 6th February, 1996 and thereafter on 8th February, 1996 to his house and there he brought out the moneybag of the victim from the cow-shed and in that moneybag a photo of the victim was found. Again, the appellant was taken to his house when at his instance the "katari" was brought out from a well of his house by another man in presence of witnesses. PW 9 and PW 14 have deposed about the recovery of moneybag at the instance of the appellant from his cow-shed and PW 17 and PW 18 have deposed about recovery of "katari" recovery of chappal of the victim and also recovery of some blood stain cement from the wall of a room belonging to the appellant.

42. We have carefully examined the seizure lists prepared by the investigating officer and we find that in the seizure lists it was specifically mentioned that appellant in presence of witnesses brought out the moneybag and the appellant pointed out the well wherefrom by another man "katari" was brought out and we further find from the statement of PW 9, PW 14, PW 17 and PW 18 that appellant was actually brought at his place and in their presence the recovery was made and during cross-examination of these seizure witnesses, nothing has come out to impeach their credibility. During trial before the learned Additional Sessions Judge "katari", chappal, moneybag and photo of the victim were all produced and marked as material exhibits. It is true that no conclusion could be drawn regarding the blood stain cement collected from the room of the appellant by the FSL, but, that cannot demolish the prosecution case in view of the overwhelming evidence of search and seizure.

43. It has been contended on behalf of the appellant that the recovery of the moped of the victim taken from his employer was not explained properly and it was also not explained properly where was the money given by the appellant to the victim. We have carefully considered these points of the appellant and in our view, the recovery of the moped has practically got no connection with the

prosecution evidence and there is nothing on record to indicate that appellant paid any money to the victim, but, what is available from the evidence that victim went to collect money and thereafter he was killed and his body was cut into several pieces and put in a ditch under bags of cement and bricks and the place was near the cement go-down of the appellant.

44. Thus, the prosecution evidence taken as a whole clearly proved the following points: -

44.1. The victim was alive in the morning of 1st February, 1996 and thereafter he went to the business place of the appellant who was a cement dealer and since then he was not traceable.

44.2. The dead body of the victim in mutilated condition was found in a ditch near the cement go-down of the appellant and the place was under exclusive possession of the appellant and there is no evidence to indicate that outsiders put the dead body on the land of the appellant and near his go-down.

44.3. The dead body was found under three full size cement bags and the cement go-down of the appellant was near the place where the dead body was found.

44.4. A single individual could have killed the victim and thereafter could have cut his body into several pieces and this had been the opinion of the doctors and the doctors found cement particle on the body of the victim.

44.5. The moneybag of the victim along with photo of the victim was kept in a place within the exclusive knowledge of the appellant and he brought out the same in presence of the witnesses. The appellant also brought out chappal of the victim from a drain within his land. The appellant brought out "katari" from his well and that "katari", according to the doctors, could have caused the death of the victim.

45. Thus, in this particular case from the evidence on record we get prosecution with the help of both direct as well as circumstantial evidence proved beyond reasonable doubt that victim was in the company of the appellant and he was killed by the appellant and the appellant concealed his dead body after cutting the body into several pieces and to conceal the dead body he used Several cement bags taken from his possession and the dead body was concealed in a place over which the appellant alone had full control and possession.

46. Thus, after considering submissions of both Mr. Basu and Mr. Goswami and after perusal of the entire prosecution evidence, we find no merit in the present appeal and we hold that the learned Judge rightly convicted the appellant both u/s 302 and u/s 201 of the IPC.

47. In the result of our discussion, we dismiss the appeal and we confirm both the order of conviction and sentence. We gather from record that the appellant has been released on bail and we cancel his bail bond with immediate effect and

direct him to surrender before the learned Trial Court within ten days from this order failing which the Trial Court shall issue warrant of arrest and send the appellant to jail to serve out his sentence.

Send a copy of this Judgment at once along with LCR to the Court below.

Urgent Xerox certified copy of this order be supplied to the appellant immediately.

Pranab Kumar Deb, J.

48. I agree.