
(2018) 03 CAL CK 0038
In the Calcutta High Court
Case No : C.R.A. 745 of 2004

SUSHIL MANKI MUNDA

APPELLANT

Vs

THE STATE OF WEST BENGAL

RESPONDENT

Date of Decision : 09-03-2018

Acts Referred:

Indian Penal Code, 1860 — Section 300, 302 Code of Criminal Procedure, 1973 —
Section 164, 313, 428

Citation : (2018) 03 CAL CK 0038

Hon'ble Judges : JOYMALYA BAGCHI, J; RAJARSHI BHARADWAJ; J

Bench : Division Bench

Advocate : Partha Sarathi Bhattacharjee, Saibal Bapuli, Bibaswar Bhattacharyya,

Final Decision : Dismissed

Judgement

Rajarshi Bharadwaj, J

The Appeal is directed against judgment and order dated 19th July, 2004 passed by learned Additional Sessions Judge, 2nd Court, Jalpaiguri in

connection with Sessions Case No. 137 of 2001 convicting the appellant for commission of offence punishable under section 302 of the Indian Penal

Code and sentencing him to suffer imprisonment for life.

Prosecution case as levelled against the appellant is that on or about 20:00 hours of 18th February, 2000, the abovenamed accused murdered his wife

Asha Manki Munda by strangulation at his residence at Nayaline, Songachi Tea Estate, P.S. Metalli, District Jalpaiguri. After committing the crime

the accused person tried to run away, when he was apprehended by some local people and he sustained injuries on his person and was admitted at the

Mal Rural Hospital. One Bishnu Munki Munda reported the matter to the O.C., Metalli P.S. On or about 00:35 hours of 19th February, 2000 S.I.

D.K. Sarki received the written complaint and forwarded the same to the O.C., Metalli P.S. for starting the case u/s. 302 of I.P.C. On the basis of

written complaint, O.C., Metalli P.S. started Metelli P.S. Case No. 14/2000 dated 19th February, 2000 and S.I. D.K. Sarki was directed to take up

investigation.

During the course of investigation, accused made a statement before the Judicial Magistrate confessing his guilt. Inquest upon the dead body of Asha

Manki Munda was performed and the dead body was sent to the hospital for holding post mortem examination. Post mortem report was

collected. In the meantime, S.I. D.K. Sarki was transferred to Kotwali police station, Jalpaiguri. Accordingly S.I. D.B. Tamang took up

investigation. He received R/T message from the Superintendent of police, Jalpaiguri to submit charge sheet in the case as proposed by the previous

I.O. and accordingly, he submitted charge sheet. Thereafter, the case was committed to Additional Sessions Judge 2nd Court, Jalpaiguri on 28th

August, 2001 and record was put up for consideration of charge. Additional Sessions Judge, 2nd Court, Jalpaiguri found a prima facie case to frame

charge u/s. 302 of I.P.C. against the accused and he framed the charge accordingly. The charge was read over and explained to the accused to

which he pleaded not guilty and claimed to be tried. Thereafter, the case was posted for trial.

In the course of trial, the prosecution examined 9 witnesses to establish its case and exhibited a number of documents.

The defence of the appellant was one of innocence and false implication.

In conclusion of trial, the trial judge by judgment and order dated 19th July, 2004 convicted and sentenced the appellant, as aforesaid.

Mr. Partha Sarathi Bhattacharya, learned advocate for the appellant argued that there was an illicit affair between the deceased Asha with Siman,

assistant manager of the tea garden following which the accused had an altercation with Siman the previous day and the appellant has been falsely

implicated at the behest of the said manager. Mr. Bhattacharya further states that the trial court ought not to have relied upon the confessional

statement of the accused recorded under section 164 Cr. P. C. as if suffers from various infirmities.

On the other hand, Saibal Bapuli, learned Additional Public Prosecutor, relied

heavily on the confession recorded by the appellant under section 164

Cr. P. C.

Let me now examine the evidence of witnesses to ascertain whether the prosecution has been able to prove its case beyond reasonable doubt.

Bishnu Bhumij, P.W. 1 identified the accused and stated that accused was in occupation of a garden quarter and was living with his wife Asha Manki

Munda along with their child.

P.W. 1 claimed himself to be the occupant of a quarter just opposite the quarter of the accused.Â According to him, Asha was murdered by the

accused at about 8 p.m. inside the garden quarter.Â On hearing the hulla, he went to the quarter of the accused and he found the dead body of Asha

lying inside the quarter. He also found a mark of rope on her neck and he found a jute rope lying inside the room and the accused was running away

along with his child.Â According to him, he chased the accused and caught him and handed over to police.

During cross-examination he stated that he chased the accused along with others on hearing hulla.Â He, further, stated that on hearing the hulla, he

had been to the quarter of the accused and found the dead body of the deceased lying inside the quarter of the accused Lalsai, Rupna, Uttam, Siman

and many others assaulted the accused and thereafter they handed him over to the police.

P.W. 2 Rupna munda introduced himself to be the resident of Songachi Tea Estate quarter at Nayaline.Â He deposed that he was in occupation of a

garden quarter which is intervened by 8 quarters from the quarter of the accused.Â Accused was living with his wife Asha Manki Munda and their

child aged about one year.Â According to him, Asha was murdered by her husband (accused) on the 18th day of month, 2000 which was Saturday at

about 8 p.m.Â On hearing the cry of the child of the accused, P.W. 2 rushed to the quarter of the accused and found the door closed from inside and

he knocked the door but none responded.Â The local people pushed the door heavily and entered the quarter and found the dead body of Asha and

found a jute rope in the hand of the accused.Â Accused tried to flee away with his child.

During cross-examination P.W. 2 replied that on hearing the cry of the child he went to the quarter of the accused and thereafter pushed the door and

entered the room of the accused and found the dead body of the deceased lying there and he also found the accused with a jute rope in his hand.Â

About 15/20 persons were found present outside the quarter of the accused.

P.W. 3 Lalsai Oraon deposed that the accused was the occupant of the garden quarter and was living with his wife Asha Manki Munda and his

child.Â On hearing the cry of the child of the deceased he rushed to the quarter of the accused and caught hold of him after chasing him.Â He also

found the dead body of the deceased Asha lying inside the quarter of the accused.Â He lodged the written complaint at the local police station as per

instruction of the de-facto complainant P.W. 1.

During cross-examination, he replied that the written complaint was prepared in presence of police at about 10.30 p.m. He found the police putting the

accused in the police van.Â He was informed by some persons that the accused murdered his wife by strangulation with a jute rope on her neck.

P.W. 4 Smt. Gita Bhumij deposed that she is the resident of Songachi tea garden.Â She identified the accused as coneighbour.Â According to her,

the accused was living with his wife Asha Manki Munda and a child.Â On hearing the hulla from the house of the accused she rushed to the house of

the accused and found that the accused was fleeing away with his child.Â Many people came there and caught hold of him.Â She also found the

dead body of Asha lying inside the quarter of the accused and also found a mark of jute rope on the neck of the deceased.

During cross-examination, she stated that the quarter of the accused and her quarter are intervened by 12 quarters.Â She found that the accused was

caught by the villagers on the village pathway and they assaulted the accused and thereafter she left the spot.

P.W. 5 Kanalri Bhumij is also the resident of Songachi Tea Estate and her quarter is situated adjacent to the quarter of the accused intervened by

three quarters and she deposed that the accused was living with his wife and a child (son).Â On hearing the cry of the child of the accused, she

rushed to his quarter and found that the accused was fleeing away with his son.Â She, further, stated that the accused was chased by the local

people and he was caught by them. She also found the dead body of the deceased lying inside the quarter of the accused.

During cross-examination, she stated that they caught hold of the accused on

the village pathway.Â Gita and she herself were present when they were chasing the accused.Â The accused was beaten by the public and she saw the accused fleeing away with his son.

P.W. Nos. 1 to 5 were the residents of Songachi Tea Estate and they identified the accused as a co-neighbour.Â At the relevant time the child of the accused was crying and on hearing the cry, they went to the house of the accused.Â P.W. 2 found that the door was closed from inside.Â

According to P.W. 2, he along with P.W. 1 and 2 including others pushed the door heavily and entered the quarter of the accused and found the dead

body of Asha, wife of the accused, jute rope (Material Exhibit 1) in the hand of the accused.Â These witnesses, further stated, before the court that

they found the accused trying to flee away with the child and they caught the accused and handed him over to the police.Â According to these

witnesses, the accused murdered his wife Asha by strangulation of neck with a jute rope on 19th February, 2000.

P.W. 7 Dr. Asish Sarkar held the post mortem of the dead body of Asha Manki Munda and on examination he found:-

1) Two ligature marks one just below the other completely circular round the neck with deep groove more prominent on the front side than on the back

of the neck, mark of two knots on the front side was found.Â Ligature mark was continuous.

2) Base of the ligature marks was pale with congestion with ecchymosed margins.

3) Base of the marks showed imprint pattern of rope.

4) Larynx was congested and oedematous with fractured thyroid cartilage.Â Haemorrhage under the mucosa of larynx was found.

5) Both lungs are congested oedematous sub plural petechial haemorrhage with emphysematous bullae formation.

6) Haemorrhage in carotid sheath present.

7) Mouth farynks (nic) are congested and oedematous.

8) Parchmentisation with extoriation of the neck tissue was found.

Dr. Asish Sarkar as P.W. 7 opined that the death was due to shock and asphyxia following ante mortem homicidal strangulation which may be caused

by a rope like material exhibit 1.

P. W. 7 further opined â??Fracture on the thyroid bone is one of the factors for

causing death of the deceased by strangulation.â??

P.W. 9 was posted as Judicial Magistrate, 2nd Court, Jalpaiguri on 22nd February, 2000.Â He recorded the judicial confession of the appellant

(Exhibit 9).Â In cross, he clarified the appellant had been produced before him on 21st February, 2000 and had been produced to judicial custody for segregation.

The defence suggested that Siman had an illicit relationship with the wife of the accused and there was a quarrel between Siman and the accused in

the night of occurrence and, thereafter, Siman and his men assaulted the accused.Â According to the defence there was a quarrel between Siman

and the accused over the extra marital relationship of Asha and Siman and the ultimate result of which was the murder of Asha.Â But I am unable to

accept the version of the defence that the appellant had acted with sudden and grave provocation and I am not inclined to give much credence to such

plea in view of clear and convincing ocular version of P.W.1 and P.W.2.Â The circumstance probalises the version of the aforesaid eye-witnesses

that on the fateful night the appellant was present at the house and had mercilessly strangled his wife resulting in her death.Â No evidence has

come on record that the appellant had caused such act due to any sudden on grave provocation or, in the course of a free fight or sudden quarrel so as

to bring his act within the exception of section 300 of the Indian Penal Code.

P.W. 1 & P.W. 2 along with others after hearing the child of the accused crying went to the quarter of the accused and found the dead body of his

wife and a jute rope in the hands of the accused.Â The accused tried to flee away but P.W. 1 to P.W. 4 along with others intercepted the accused

after chasing him.Â Nature of injury on the deceased had been proved by medical evidence.Â Dr. Asish Sarkar categorically opined that the death

was due to shock and asphyxia following ante mortem homicidal strangulation which may be caused by a rope like material exhibit 1.

The aforesaid evidence corroborates the judicial confession of the appellant.Â The confession of the appellant does not suffer from any infirmity and

was not even retracted by the appellant during his examination under section 313 Cr. P. C.

In the face of the cogent and consistent evidence of the eye-witnesses which is corroborated by the medical evidence and the judicial confession of

the appellant, I am of the opinion that the prosecution has been able to prove its case beyond reasonable doubt and conviction and sentence of the appellant is upheld.

In view of the aforesaid discussion, the appeal is dismissed.

The period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentenced imposed upon

him in terms of section 428 of the Code of Criminal Procedure.

Copy of this judgment along with the lower court records be sent down to the Trial Court at once for necessary compliance.

Urgent Photostat certified copy of this judgment, if applied for, be furnished to the parties expeditiously.