

(1991) 09 CAL CK 0027
In the Calcutta High Court
Case No : Criminal Appeal No. 308/83

Swapan Mandal alias Bhaskar Purkait	APPELLANT
Vs	
State of West Bengal	RESPONDENT

Date of Decision : 25-09-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 304, 304A

Citation : (1992) CriLJ 1011

Hon'ble Judges : J.N. Hore, J

Bench : Single Bench

Advocate : R.N. Chakraborty, for the Appellant; B.N. Das and Safia Begum, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Hore, J.—For committing murder of Dolly Gomesh alias Lily Mondal, wife of Late Robert Gomesh of Kundarali P.S. Baruiopore appellant Bhaskar Purkait alias Swapan Mandal was convicted by the learned Addl. Sessions Judge, 11th Court, Alipore u/s 302 Indian Penal Code and sentenced to imprisonment for life. The appellant seeks to assail the said order of conviction and sentence in this appeal.

2. Briefly stated, the prosecution case is as under:--

On 28-2-79 at about 6 p.m. the accused and the deceased introducing themselves as husband and wife under the false names of Swapan Mandal and Lily Mandal respectively came to Ambi Hotel at Diamond Harbour and booked room No. 4 of the hotel on payment of Rs. 20/- as room charge. They signed in the visitor's register and wrote the necessary particulars. They occupied room No. 4 and took two plates of food served by P.W. 2 Renubala, cook of the hotel, in the room on payment of usual charges, the lock and key of the room were made over to the accused. They shut the door of the room at about 9 p.m.

3. Next morning at about 6 a.m. the accused-appellant slipped away from the

hotel keeping the room under lock and key with the deceased inside the room on the pretext of taking tea outside. Being suspicious P.W. 1 Kanai Lal Haldar, Manager of the hotel and P.W. 3 Prasanta Pradhan, a bearer of the hotel went out in search of the accused. They did not find him in the tea stall. On search, they found him about to board a bus of route No. 76 at the bus stand which is very near the hotel. Being challenged by P.Ws. 2 and 3, the accused after initial refusal came with them to the hotel. On way to hotel P.W. 5 Ranjit Kr. Gain, a local shopkeeper to whom P.W. 1 narrated the incident, accompanied them to the hotel out of curiosity. The accused reluctantly opened the lock of the room No. 4 with the key which was with him and all of them entered into the room and found the deceased lying on the bed with her entire body covered with a blanket up to forehead. At the instance of P. W. 1 the accused called the deceased several times but there was no response. The accused then made a false statement that she drank heavily last night and was fast asleep and asked for two cups of tea. P.W. 2 Renubala who in the meantime entered into the room pointed out that there was no sign of breathing. At the insistence of P.W. 1 the accused was compelled to remove the blanket from the face of the deceased and the witnesses saw profuse bleeding from her mouth and nose which drenched the bed-sheet, the pillow-cover and other parts of the bed. She was found dead. On the query of P.W, 1 the accused made an extra-judicial confession that he had love affairs with the deceased but after his marriage the deceased used to visit the house of his father-in-law and his house which disturbed the marital peace between him and his married wife for which he killed the deceased.

4. On receipt of information P.W. 8 Amitava Maiti and P.W. 12 Bimal Modak, owners of the hotel, came to the hotel. The accused made another confessional statement to the same effect before P.W. 8, P.W. 1 and P.W. 12 went to the police station and P.W. 1 lodged First Information Report at 7.15 a.m. on the basis of which P.W. 13 S.I. Gourhari Das, the then Officer. In-Charge of Diamond Harbour P.S. started a case u/s 302 Indian Penal Code against the accused and took up investigation. After completion of investigation police submitted charge-sheet u/s 302 Indian Penal Code against the accused which in the usual course ended in the committal of the case to the Court of Session.

5. In defence, the accused pleaded innocence. The defence case is that the accused went to Diamond Harbour to purchase fish and when he was waiting for boarding a bus of route No. 76 the Manager and another young man took him to the hotel and he was falsely implicated out of mere suspicion.

6. In order to bring home the charge to the accused, the prosecution examined 14 witnesses while the defence examined none.

7. That the deceased died of violence is not disputed before us and has been proved by the prosecution beyond any shadow of doubt. P.W. 10 Dr. Prafulla Ch. Datta who held autopsy on the body of the deceased found the following injuries;-- Two bruises-one on each side at the level of hyoid bone-more or less oval in shape measuring 1 "x 1/2" each. There were also abrasions slightly

crescentic in shape on the upper part of both the bruises. On dissection under bone tissues corresponding to the tissues showed evidence of effusion of blood with clots on both sides and the hyoid bone also showed fracture on both sides almost at the same level. Fractured hyoid bone. Death, in the opinion of the doctor, was due to throttling antemortem and homicidal in nature and also associated with T.B. lungs both sides. Throttling caused fracture for which there was bleeding. There is, therefore, no doubt that this is a case of homicide.

8. The next question for our consideration and the crucial one is whether the appellant was responsible for the death of the deceased. There is no direct evidence in this case and the prosecution relies on circumstantial evidence and the extra-judicial confession of the accused.

9. It is well settled that in cases where the evidence is of a circumstantial nature the circumstances from which the conclusion of the guilt is to be drawn should be fully and cogently established and all the circumstances so established should be consistent only with the hypothesis of the guilt of the accused person i.e. the circumstances should be of such a nature as to reasonably exclude every hypothesis but the one proposed to be proved. To put it in other words, the chain of evidence must be so far Complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused person. In such cases, the Court must guard itself against the danger of allowing conjecture or suspicion to take the place of legal evidence. It is not necessary that each circumstance by itself should be conclusive but the circumstances cumulatively must form an unbroken chain of events irresistibly leading to the conclusion of the guilt of the accused. In *Hanumanth Vs. The State of Madhya Pradesh*, , the Supreme Court laid down the rule regarding the nature, character and essential proof required in a criminal case which is based on circumstantial evidence alone as follows (at page ; 1953 Cri LJ 132) :--

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. "This case has been uniformly followed by the Supreme Court in a large number of later decisions. Upon an analysis of this decision, the Supreme Court has laid down 5 principles which constitute the "Panchsheel" of proof of a case based on circumstantial evidence in *Sharad Birdhichand Sarda Vs. State of Maharashtra*, . The following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) The circumstances from which the conclusion of guilt is to be drawn should

be fully established. The circumstances concerned "must or should" and not "may be" established;

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) The circumstances should be of a conclusive nature and tendency;

(4) They should exclude every possible hypothesis except the one to be proved; and

(5) There must be a chain of evidence so complete as not to leave 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.

10. Bearing the above in mind let us proceed to consider the circumstantial evidence adduced by the prosecution and see whether the same has established the guilt of the accused beyond reasonable ground and whether the order of conviction can be sustained. The prosecution has adduced overwhelming evidence both oral and documentary, to prove that the accused and the deceased stayed at Hotel Ambi at Diamond Harbour on the fateful night of 28-2-79. PW 1 Kanai Lal Halder, Manager of the said hotel, has deposed that on 28-2-79 at about 6.00 p.m. the accused came to the hotel with the deceased and introduced her as his wife. He asked for accommodation in the hotel for 2/3 days. Room No. 4 on the first floor was allotted to them. The accused and the deceased duly subscribed their signatures in the visitors' Register of the hotel. The accused paid to the witness Rs. 20/- as room charge for one day and he granted receipt for the same. Thereafter, the accused and the deceased occupied room No. 4. As per order of the accused, he sent one plate of dal and one plate of meat to room No. 4 at about 8.30/9.00 p.m. and the accused paid the usual charges for the food. As usual the doors of the hotel were locked after 9.00 p.m. The collapsible gates on the staircase leading from the ground floor to the 1st and 2nd floor were also locked.

11. PW 2 Renubala Halder is cook of the hotel. Her evidence shows that she served food to the accused and the deceased at room No. 4 on the night of occurrence. After the food was served, the accused asked her to leave the room and she accordingly left the room.

12. PW 3 Prasanta Prodhan, bearer of the hotel, fully corroborates the testimony of PW 1. His evidence is that the accused came to the hotel on 28-2-79 between 6.00 and 6.30 p.m. along with a woman whom he introduced as his wife. He was present when (accused) had a talk with PW 1 regarding accommodation in the hotel. Both of them put in their signatures in the visitors' Register. PW 1 asked him to take them to Room No. 4 on the first floor. Accordingly he took them to Room No. 4 and showed them all about accommodation including the bath-room.

The blankets and beds were in order. He handed over the lock of the room with two keys to the accused and left.

13. All the three witnesses identified the accused in Court. Their evidence does not suffer from any infirmity. They were cross-examined at length but nothing transpires in the cross-examination which may even remotely impeach their credibility. They are the most natural witnesses and have no motive whatever for falsely implicating the accused. There is no reason to disbelieve their testimony. Their evidence is further strengthened by documentary evidence Ext. 3 is the receipt No. 2076 showing payment of a sum of Rs. 20/- by the accused as room charge on 28-2-79 duly signed by the accused and PW 1 Ext. 2 is the visitors' Register duly maintained in ordinary course of business. PW 1 proves the handwriting and signature of the accused in serial No. 15 at page 159 of the register. It also contains handwriting of the witness. The evidence of the PW 1 receives corroboration from the opinion of the Hand Writing Expert PW 9 Sri Ajit Kumar Ghosh. PW 9 who is Examiner of Questioned Documents attached to G.I.D. W.B. compared the disputed writings and signatures at page 159 of the visitors' Register Book of Hotel Ambi marked by him as X and X/1 with the specimen writings and signatures of the accused taken in open court marked by him as S and S/1 and found agreements in as many as 8 items regarding pen movement, slant, manner of execution of some letters etc. as enumerated by him in his evidence and his considered opinion is that the said questioned writings and signatures are written by the writer of the specimen writings and signatures. The opinion of the hand-writing expert together with the direct evidence of PW 1 leaves no doubt that the disputed writings and signatures in the visitors' Register are those of the accused. Another significant fact is the accused's possession of the keys of the lock of Room No. 4. As we shall see later, the accused opened the door of Room No. 4 next morning with a key which was with him. The lock and key seized under a seizure list (Ext. 9) are mat. (Ext. XVIII). This fact also lends great assurance to the truth of the testimony of PWs 1, 2 and 3.

14. Let us next consider what happened in the next morning. PW 3 rose up in the early morning and opened the collapsible gate and the entrance gate when he saw the accused descending to the ground floor. On his query, the accused first said that he would go out to purchase cigarette. When PW 3 told him that cigarettes would not be available as shops were still closed, the accused took another plea that he would go out for taking tea and went out PW 3 informed PW 1 while the accused was leaving the hotel. PW 1 asked PW 3 to have an inspection of the room where the accused stayed as a routine check. Accordingly PW 3 went upstairs and found Room No. 4 under lock and key. He knocked at the door shouting "Madam, Madam" several times but there was no response. PW 3 immediately reported the matter to PW 1 and both of them immediately went out in search of the accused. PW 1 went to the tea-stall but did not find the accused. PW 3 went to Bus Stand and saw the accused attempting to board a bus on Route No. 76. PW 1 also went there. At first the accused refused to come back to

the hotel with them. But when they challenged him as to why on the false plea of taking tea he was boarding a bus leaving the room under lock and key with the woman inside, the accused reluctantly accompanied them to the hotel. While they were passing by the side of the shop of PW 5 Ranjit Kumar Gayen, on his query PW 1 narrated the incident to him and Ranjit also accompanied them to the hotel. All of them went to Room No. 4 on the first floor. In the meantime PW 2 also joined them. PW 1 asked the accused to open the door of the room as the key was with him. The accused reluctantly opened the door with the key that was with him. All entered into the room and found the deceased lying on the bed "wrapped with a blanket up to her forehead. At the instance of PW 1 the accused called the deceased several times but there was no response. The accused then made a false statement that due to heavy drinking on the previous night she was fast asleep and asked PW 1 to arrange for two cups of tea. PW 2, however, noticed that there was no sign of breathing. PW 1 then asked the accused to remove the blanket from the face. When this was done, the witnesses found her dead with profuse bleeding from mouth and nose which drenched the pillow, bed-sheet and other parts of the bed.

15. After this startling disclosure, PW 1 challenged the accused that he had committed the crime. The accused then made a confessional statement in presence of PWs 1, 2, 3 and 5 that he had love affairs with the deceased and that after his marriage the deceased used to pay visits to his house and to the house of his father-in-law which led to disruption of the matrimonial relation between him and his wife and disturbance of matrimonial peace for which he killed the deceased.

16. Thereafter PW 3 informed the hotel owners PW 8 Amitabha Maity and PW 12 Bimal Kumar Modak who came to the hotel. PW 1 and PW 12 went to the police station where PW 1 lodged the First Information report. The accused made a similar confessional statement before PW 8 in presence of PW 3 and others.

17. The evidence clearly discloses that the extra-judicial confession was not obtained by threat or coercion. The statement of the accused in his examination u/s 313, Cr. P.C. that he was severely beaten by one Anadi is not supported by any material on record. The evidence does not show that any person named Anadi was present at all. There is nothing to show that the accused received any injury before making the statement. The Investigating Officer (PW 13) also did not notice any mark of injury on the person of the accused when he visited the place of occurrence and took the accused into custody and held inquest on the dead body in Room No. 4. The extra-judicial confession appears to be free and voluntary. It also fits in well with other facts and circumstances of the case and receives corroboration from other circumstances.

18. The evidence of the witnesses regarding what happened in the morning of 1-3-79 does not suffer from any infirmity and the learned Advocate for the appellant has not been able to point out any serious infirmity in their evidence. The only criticism that has been offered by him is that there is a possibility of

mistaken identification of the accused and the accused might have been apprehended out of mere suspicion. This contention is really based on mere conjecture and not on sound grounds. PWs 1, 2 and 3 had sufficient opportunity to observe features of the accused who stayed in the hotel in Room No. 4 on the night of 28-2-79. PW 3 also saw him slipping out of the hotel in the early morning of 1-3-79 on the plea of taking tea outside and only a few minutes after they apprehended him while he was about to board a bus. There is no scope for mistake in identification. Moreover, the accused's possession of the keys of Room No. 4 completely rules Out mistake in identification. The defence case is that the accused came in that early morning to Diamond Harbour to purchase fish and he was wrongly apprehended out of suspicion while he was about to board the bus is falsified by the overwhelming evidence of the witnesses and the fact of the accused's possession of the keys of Room No. 4 and his signatures in the visitors" book.

19. The learned Advocate for the appellant has commented on non-examination of other boarders. The evidence disclosed that as soon as the crime was detected, other boarders left the hotel presumably out of fear of being involved in the affair. The evidence also does not disclose that they were material witnesses for unfolding any material part of the prosecution story. The evidence, both oral and documentary is absolutely trustworthy and above blemish and so non-examination of the other boarders is of no consequence.

20. It would appear that the accused falsely introduced the deceased as his wife. The deceased was the wife of late Robert Gomesh of Ukil Para, Baruipore, P.S. Barui-pore and her real name was Dolly Gomesh. It is clear from the evidence of her son PW 11 Jiban Gomesh. The accused is known to PW 11 and it appears from the evidence of PW 11 that the real name of the accused is Bhaskar Purkait who is a resident, of Tripura Nagar, P.S. Baruipore. The evidence of PW 3 also shows that the accused disclosed his real name as Bhaskar Purkait and of the deceased as Dolly Gomesh.

21. It would appear from the above that the prosecution has firmly established the following circumstances beyond any shadow of doubt:

- i) The accused and the deceased stayed in hotel Ambi on 28-2-79 in Room No. 4 on the first floor and the keys of the room were handed over to the accused ;
- ii) The accused booked the accommodation in the hotel falsely introducing the deceased as his wife and suppressed their identity by giving out pseudo names and signed in the visitors" Register of the hotel in the pseudo names;
- iii) The accused was alone with the deceased in Room No. 4 of the hotel on the fateful night between the 28-2-79 and 1-3-79;
- iv) Early next morning the accused slipped away from the hotel on the false plea of taking a tea outside leaving the door of his room under lock and key with the deceased inside and was trying to escape by boarding a bus on Route No. 76

when he was apprehended by PWs. 1 and 3;

v) The key was found in possession of the accused and it was the accused who opened the door with the key after he was brought to the hotel;

vi) The accused made a false statement that due to heavy drink on the previous night the deceased was fast asleep and ordered for two cups of tea in a bid to conceal death of the deceased and remove suspicion from the minds of the witnesses when the deceased did not respond to his calls;

vii) When the accused removed the blanket from the face of the deceased, the deceased was found dead with profuse bleeding from her mouth and nose soaking pillow, bed sheet etc.;

viii) The medical evidence shows that the death of the deceased was due to throttling, fracturing hyoid bone which was ante-mortem and homicidal in nature.

22. The above circumstances which have been firmly established by the prosecution are clinching and form a complete chain of events leading to the irresistible conclusion that it was the accused and the accused only who caused the death of the deceased by throttling. The extra-judicial confession which is found by us to be free and voluntary lends further assurance to the said conclusion. It also supplies the motive for the crime. It has, therefore, been established beyond any shadow of doubt that the accused caused the death of the deceased.

23. With regard to the nature of the offence committed the learned Advocate for the appellant has contended that the offence is one u/s 304A or at best u/s 304, Part-II of the Indian Penal Code. The contention is based upon the finding of PW 10 that the deceased was suffering from tuber culosis of both lungs. The contention is devoid of merit. The clear opinion of the doctor is that throttling had caused the fracture of the hyoid bone and bleeding is a must when the hyoid bone is fractured. So, the profuse bleeding was not due to tuberculosis but due to the fracture of hyoid bones. The opinion of the doctor does not leave any doubt whatsoever that the death was due to throttling which was ante-mortem and homicidal in nature. At best the tuberculosis of both lungs might have hastened death. The circumstances leave no doubt whatsoever that the accused brought the deceased to the hotel with the intention of causing her death in order to get rid of her inasmuch as the illicit connection of the accused with the deceased threatened to disturb the matrimonial peace and break the marriage for the visits of the deceased to his house and to the house of his father-in-law. It was a pre-planned murder. The accused was, therefore, rightly convicted u/s 302, Indian Penal Code.

24. In the result, the appeal is dismissed. The order of conviction and sentence is upheld.