

Tilok Panika and Another Vs State of Assam and Others

Court: Gauhati High Court

Date of Decision: May 28, 2008

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313
Penal Code, 1860 (IPC) â€” Section 201, 302, 34

Citation: (2008) 3 GLT 952 : (2008) 3 GLT 951

Hon'ble Judges: Anima Hazarika, J; Aftab H. Saikia, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Aftab H. Saikia, J.

Heard Mr. M. Nath, learned amicus curiae appearing for the appellants and Mr. Z. Kamar, the learned P.P., Assam.

2. This criminal appeal from jail is directed against the judgment and order dated 21.1.2002 rendered by the learned Sessions Judge, Sibsagar in

Sessions Case No. 166 (S-C)/2000 on being committed by the learned Judicial Magistrate 1st Class, Charaideo, Sonari in GR. Case No.

70/2000, dated 22.11.2000 whereby the appellants were found to be guilty for the cause of death of the victim minor girl of the accomplice

appellant No. 2 and accordingly they were convicted under Sections 302/201, IPC and sentenced accordingly to undergo rigorous (R.I.)

imprisonment for life with a fine of Rs. 1,000/- each u/s 302, EPC and also R.I. for 3 years with a fine of Rs. 520/- each u/s 201, IPC.

3. A spine-chilling story in real life was depicted in this criminal appeal as unfolded by the prosecution wherein two appellants namely Shri Tilok

Panika and Smti Durgi Panika, the wife of the informant PW 1, Gandhi Panika and the mother of the helpless victim, had caused death to Bobby

Panika (hereinafter referred to as, "the deceased") as the said innocent minor girl of 6 years saw the sinful act of sexual intercourse of her mother,

the appellant No. 2 with another person i.e. appellant No. 1, Shri Tilok Panika on the ill-fated day.

4. The facts in brief leading for occurrence of such tragic event as projected in the FIR are that the minor daughter of PW 1, the deceased who

went missing since 3.30 p.m. of 19.2.2000, was found on search, lying dead in a drain at the Tea Estate of Sri Jagannath Bania in Luhdiagaon

bearing a cut injury on her neck and to that effect the father of the victim lodged an ejahar with Borhat Police Station.

5. During investigation the police found a prima facie case against both the appellants and filed the charge-sheet against them u/s 302/201/34, IPC

and in the trial before the learned Sessions Judge, Sivsagar, the prosecution examined as many as seven witnesses including two official witnesses

namely PW 6, Dr. Biman Kr. Das and PW 7, S.I. Mustaqul Hussain, Investigating Officer (for short, "the I.O.").

6. The learned Judge having meticulously appreciated and evaluated the material evidence on record and also keeping in view the discovery of the

offending weapon used in killing of the minor girl and after hearing the learned Counsel for the parties, found both the appellants guilty u/s 302/201,

IPC and convicted and sentenced them as already indicated above. Hence this criminal appeals from jail by both the appellants.

7. PW 1, the father of the victim and husband of the appellant No. 2 being the informant in this case deposed that appellant No. 1, Tilak Panika

was a neighbour and appellant No. 2 Smti Durgi Panika was his wife and appellant No. 1 was related to appellant No. 2. According to this

witness at the time of death of the victim minor girl, she was 5 years old and on the ill fated day when he returned home from duties at about 5 p.m.

he did not find his daughter Bobby in the house. On being enquired, his wife accused Durgi told him that Bobby was taken by the sister of the

accused, Rupa @ Kolimoti. On the next day when he returned home at about 4 p.m. he again enquired about his daughter Bobby from his wife and

his wife told him that their daughter Bobby had returned home and she might have gone somewhere along with their eldest son Janglu Panika.

Thereafter, Janglu returned home before dusk and on being enquired, his son Janglu told him that Bobby did not go with him. Again the informant

enquired about his daughter from his wife who replied him that their daughter might have gone with the children of accused Tilak in the Namghar

where a religious function was going on.

8. This witness further deposed that the accused/appellant No. 1 Tilak used to live behind his house at a distance of about 3/4 nals. Since it was a

winter season he thought it would be proper to carry woolen garments of his daughter so that Tilak could carry the same to the Namghar. Then

Tilak himself was available at his doorstep and accordingly he handed over the cloths to Tilak. In the evening two sons of accused/appellant No. 1

came running from the Namghar and reported him that his daughter Bobby was not there. Immediately he went in search of his daughter Bobby in the

Namghar and could not trace out her and ultimately on 26.2.2000 (Monday) he orally informed Borhat Police Station about the missing of his

daughter. In continuation of his search this witness further narrated that after 2/3 days two boys namely Tutu and Gitartha got some bad smell in a

drain near the house of accused Tilak and they enquired from his son Ramu as to if they had thrown human excreta at that place. At that time those

two boys also noticed that accused Tilak was also piling some waste products near the place and they suspected some foul play. Suddenly

daughter of this witness was found lying dead in the drain. Immediately the witnesses rushed to the Police Station and reported the police about

noticing the dead body of his daughter Bobby. He also lodged an FIR before the police station which was written by one Sadhan Panika at his

instruction.

9. PW 1 evidenced that the police visited the place of occurrence and recovered the dead body from the drain and examined the dead body and

prepared the inquest report vide Ext. 2. Both the accused appellants were arrested. This witness in his deposition suspected that the appellant No.

1 might have maintained illicit with his wife and his daughter might have been killed because of her witnessing the co-habitation of the appellants. In

continuation of his deposition, in cross, this witness reinforced and fortified his deposition as given in the chief.

10. The learned trial Court while rendering the impugned conviction and sentence basically relied upon the evidence of PW 3, Sri Babul Deb and

PW 4, Sri Sachin Dutta.

11. PW 3 in his evidence testified that on getting the news of the death of the deceased, he went to the house of the accused appellant No. 2 who

was the mother of the deceased. Appellant No. 2 was found weeping. Before the villagers, accused appellant No. 2 told that while she was having

illicit sexual intercourse with the appellant No. 1, the deceased witnessed them and as such the deceased was killed by the accused appellant No.

1. This witness had also given a vital information by narrating that in his presence, the accused-appellant No. 2 brought out one old torn white

Dhoti", one torn piece of "Dhoti", 2 nos. of hessian bags, one Naga dao and one kerosene lamp made of bottle. Police seized all these articles

vide Exhibit 3 and he was the signatory of said Exbt. 3(2). In cross he reiterated that extra-judicial confession was made by the appellant No. 2 in

presence of the police officers. He also denied the suggestion that he did not say before the I.O. about the extra-judicial confession made by the

accused appellant No. 2. He further stated that during his visit he also found PW 4, Sri Sachin Dutta, Navi Gopal Singh, Gopendra Dey, Pahindra

Deb etc.

12. Another important witness in the person of PW 4, as named by PW 3 deposed that after getting the news he went to the place of occurrence

and he saw the deceased lying dead in a drain inside the tea garden and accused appellant No. 2 was standing nearby and weeping. After 15

minutes police came. The accused appellant No. 1 also arrived at the place of occurrence and dead body was lifted by PW 1 and accused

appellant No. 1 at the direction of the I.O. police took the dead body. According to this witness the police personnel again came to the place of

occurrence after about 2 hours and they interrogated the accused appellant No. 2 inside the house. Later she was taken to the house of the

accused appellant No. 1 where from she brought out one torn white ""Dhoti"", a piece of torn ""Dhoti"", jute bags, one Naga dao and one ""Chaki

made of glass bottle. Police seized the aforesaid articles. Corroborating the evidence of PW 3 as regards extra-judicial confession, this witness

stated that accused appellant No. 2 told them while she was doing illicit sexual intercourse with appellant No. 1, the deceased child witnessed them

and therefore the accused appellant No. 1 tied her hands with a Dhoti and also gagged her mouth with a piece of cloth and pushed the Baby under

a bedstead. Appellant No. 2 also told them that after four days, the dead body was thrown in the drain. In cross this witness reinforcing his

evidence in chief clearly stated that it was a fact that he did not say before the police about the extra-judicial confession of accused appellant No. 2

as the story was already narrated in presence of the police officer and he denied the suggestion that the gave a new story in the Court.

13. PW 7, the I.O. Mustaqul Hussain corroborating the evidence of PWs 3 and 4 deposed that during interrogation he came to know that the

accused was maintaining illicit relation with the mother of the deceased and then again he went to the place of occurrence and interrogated the co-

accused Durgi who disclosed that her daughter was killed by accused appellant No. 1 since the deceased witnessed their sexual intercourse. He

also corroborated the testimony of PWs 3 and 4 to the effect that the accused Durgi led him to the house of the appellant No. 1 and produced torn

piece of Dhoti which was used for the purpose of gagging the deceased. The accused also produced another Dhoti and one hessian bag which

were used for wrapping the deceased after her murder. The accused also produced one dao and one Kerosene lamp. All these articles were

seized vide Exbt. 3.

14. In their examination u/s 313, Cr PC both the appellants denied the circumstances put to them by way of question as regards death and

recovery of the body of the deceased.

15. Having closely noticed the testimony of the witnesses as scrutinised above it is admitted that there was no eye-witness to prove the killing of

the deceased. The entire case is basically based on extra-judicial confession made by the accused Durgi and recovery of the offending weapons

used in the commission of the alleged crime as well as abnormal conduct of the accused appellant No. 1 reflected from the evidence of PW 4 and

statements recorded u/s 313, Cr PC, wherein he answered against the question No. 5 that he himself helped the mother and father of the girl to

trace out their child. That apart from the statement of PW 4 it reveals that he was present at the time of recovery of the dead body of the deceased

from the drain where from the dead body was lifted by him along with accused appellant No. 1 and the father of the victim girl.

16. It is settled position of law that if extra-judicial confession appears to be made voluntary and without any pressure or influence, the same can

be relied upon by the Court. The value of evidence so as the extra-judicial confession depends on the reliability and veracity of the witness who

gives evidence and under what circumstances it has been given and to whom it is made. It is not open to any Court to start with a presumption that

extra-judicial confession is a weak type of evidence. In the case in hand, having properly scanned the evidence of PWs 3 and 4 and PW 7, the

I.O., it transpires that such evidence of those witnesses project corroboration and trustworthiness as regards making the extra-judicial confession

to them by the appellant No. 2 who made it voluntary and the same was not the result of inducement, threat or promise as there is nothing on

record to indicate that she was compelled to make such statement before the witnesses under certain extraneous consideration.

17. In view of what has been stated, discussed and observed above, we are disinclined to interfere with the impugned conviction and sentence and

have no hesitation to hold that the appellants had committed murder of the deceased. Situated thus, we do not find any convincing or sufficient

materials to dislodge the impugned conviction and sentence and, we are rather, in full agreement with the views expressed and findings recorded by

the learned Sessions Judge, Sibsagar and consequently the same stands confirmed.

18. In the result this appeal fails and stands dismissed.

Send down the LCR immediately.

19. Before parting with the case at hand, we would like to put on record our appreciation to Mr. M. Nath, learned amicus curiae for rendering his

valuable assistance in arriving at the aforesaid decision for which he is entitled to get his professional fees which is quantified at Rs. 5,000/-

(Rupees Five Thousand). At this stage, Mr. Nath, the learned amicus curiae has fairly submitted that the professional fee so granted to him as

amicus curiae may be deposited with the Gauhati High Court Advocate's Welfare Fund. We do order accordingly.