

(2005) 11 GAU CK 0016

Gauhati High Court

Case No: Criminal Appeal No. 114 of 2000

Parimal Mazumdar

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: Nov. 29, 2005

Acts Referred:

- Evidence Act, 1872 - Section 27
- Penal Code, 1860 (IPC) - Section 201, 302, 387

Citation: (2006) CriLJ 2296

Hon'ble Judges: P.G. Agarwal, J; A. Hazarika, J

Bench: Division Bench

Advocate: A.M. Bora and M. Chaudhary, for the Appellant; A. Begum, PP, for the Respondent

Final Decision: Dismissed

Judgement

P.G. Agarwal, J.

Heard the learned Counsel appearing on behalf of the accused -appellant and the learned P.P.

2. This appeal is directed against the judgment arid order dated 10-3-2000 passed , by the Sessions Judge, Nagaon in Sessions Case No. 4(N) of 1999 whereby the accused-appellant was convicted u/s 302, IPC and sentenced to imprisonment for life and to pay a fine of Rs. 5000/- in default further imprisonment for six months. The accused-appellant was also convicted u/s 201, IPC and sentenced to imprisonment for two years and to pay a fine of Rs. 1000/- in default further imprisonment for three months. The accused was also convicted u/s 387, IPC and sentenced to imprisonment for two years and to pay a fine of Rs. 1000/- in default further imprisonment for three months. All the sentences were directed to run concurrently,

3. The prosecution case in brief is that a ransom note was received by the complainant (P.W. 5) Narendra Ch. Das demanding a sum of Rs. 10,000/- . Thereafter, the nephew of the informant namely Mithun Das aged about 12 years was taken away by the accused-appellant-Parimal Mazumdar on 25-9-1998. Thereafter another ransom letter demanding Rs. 50,000/- was received by the Informant. The complainant suspected that the ransom letters have been issued by the accused-appellant-Parimal Mazumdar and immediately the FIR (Ext. 4) was lodged before police. The accused was apprehended and he confessed about taking away of the deceased-Mithun and killing him. The accused led police to the recovery of the dead-body in presence of a large number of villagers. Police held inquest over the dead body and thereafter it was sent for postmortem examination which was conducted by Dr. B. C. Kakati. The doctor found as follows :-

Dead body of a young boy in partially decomposed condition. Stout built. Immature maggots were present. Tongue was protruded out. Neck was engorged. Nails cyanosed. Facial matters are coming out of oral orifice.

On examination of cranium and spinal canal, I found that brain and membrane were congested.

On examination of thorax I found that there was fracture of hyoid bone on both lateral angles were congested and cyanosed. Heart left side empty and right side contains clotted blood.

On examination of abdomen, I found viscera was congested and stomach was empty. There was fracture of hyoid bone as has been already mentioned.

No other superficial injury on the dead body except the fracture of the hyoid bone,

In my opinion, the cause of death is due to suffocation as a result of strangulation. These injuries were sufficient to cause death in the ordinary course of nature.

4. From the medical evidence on record, we find that the hyoid bone was fractured and as such the doctor was very specific that this is a case of death by strangulation. As regards the presence of any echymosis, there was finger mark Impression which has been opined by the doctor as the decomposition of the body has set in and the marks become invisible.

5. The trial Court for the reasons mentioned in the judgment has relied on the medical evidence to hold that this is a case of homicidal death caused by strangulation. We also find that the medical evidence is reliable and considering the fact that the hyoid bone was found fractured, we concur with the finding of the trial Court that the deceased Mithun Das was killed by strangulation. In the present case, there is no direct evidence as regards the killing of the deceased, The entire prosecution case rests on the circumstantial evidence and on perusal of the evidence on record, we find that the prosecution has relied on the following circumstances :-

(1) The accused sent ransom letters to the informant (PW 5) demanding money.

(2) The deceased was last seen alive in the company of the accused appellant.

(3) Soon after the missing of the deceased Mithun, the accused sent another ransom letter demanding money for release of the boy.

(4) The accused led police to the recovery of the dead body.

6. The law is well settled that in a case based on circumstantial evidence, the prosecution is required to establish the circumstances on which reliance has been placed by leading reliable and cogent evidence and hence let us see whether the prosecution has been able to establish the circumstances as stated above.

7. Narendra Das (PW 5) is a school teacher and he has deposed that about two months prior to the present incident, he has received a ransom letter (Ext. 2) demanding Rs. 40,000/- in the name of ULFA. As the accused was his student and also a relative, he found that the letter is in the handwriting of the accused appellant Parimal Mazumdar. However, PW 5 remained silent and did not react. Thereafter about 5/6 days prior to the Durga puja, he found another letter (Ext. 3) inside a polythene bag. On the next day of receiving of this letter, PW 5 was informed that his nephew Mithun had left his house with the accused appellant Parimal Mazumdar on the previous day around 10 a.m. and since then Mithun is missing. On reacting Ext. 3 letter, PW 5 found that the accused has demanded Rs. 50,000/- and has threatened to kill Mithun, if the amount is not paid. PW 5 thereafter went to the house of father-in-law of the accused and met the accused there and enquired him about Mithun and thereafter brought the accused to the shop house of one Swapna Chakravorty and lodged the FIR, Police picked up the accused appellant and brought to the police station and interrogated him. The accused confessed his guilt, made a statement before police (Ext. 6) that he will be able to show the place where the dead body has been kept. Thereafter the accused led police and the villagers to Karaibari jungle and showed the place where the dead body of Mithun was lying. Police held inquest over the dead body.

8. PW 5 has categorically deposed that Ex. 2 and 3 are in the handwriting of the accused and as he was a teacher of the accused, he knows his handwriting and he identified the same. On perusal of Ext. 2 and 3, we find that these are related. In Ext. 2, there was a demand for Rs. 40,000/- to be paid by four persons on or before a particular day whereas in Ext. 3 it has been mentioned that the boy has been kidnapped and they will have to pay Rs. 50,000/- otherwise the boy will be killed. Out of the above, a sum of Rs. 30,000/- may be paid immediately and the balance be paid at a latter date. The handwriting of Ext. 2 and 3 are identical which shows that the ransom letters were given by one and the same person and Ext. 3 was given after kidnapping of the boy. PW 5 has been cross-examined at length and except bringing out minor discrepancies which are natural, we find that this school teacher has withstood his cross-examination very well and from his evidence, it is well

established that the accused-appellant wrote the ransom letters. The specimen handwriting of the accused was taken and it was marked and proved as Ext. 14. On perusal of Ext. 14 and comparing Ext. 2 and 3, there is no room to doubt that these letters are in the handwriting of one and the same person,

9. Ashok Rajak (PW 3) was a washer man and he has also deposed that the accused used to (wash) his clothes at his laundry. He came to his shop in the month of September, 1998 and asked for a fountain pen and thereafter the accused wrote a letter and returned back the pen to him.

10. Biturani Das (PW 4) has deposed that the accused had a visiting term to their house. The deceased Mithun Das used to reside with PW 4 and few days prior to the Durga puja, the accused came to their house around 10 a.m. with Mithun Das, a boy of 10/12 years and took her permission to go to PW 5's house. PW 5 was present in the house and thereafter offered to take the nephew with him and accordingly Mithun left PW 4's house in the company of the accused appellant. Mithun, however, did not return back till evening. PW 4 was not party as she had gone to the house of PW 5 only. However, on the next day morning when PW 4's sister went to PW 5's house, she came to know that Mithun had not reached PW 5's place. Thereafter the family members tried to search him and they were informed that Mithun who had left with the accused on the previous day is missing. The evidence of this witness PW 4 has remained more or less unchallenged except some stray suggestion given to her and it was denied by her. Besides PW 4, we find that there is another witness (PW 8) who had seen the deceased in the company of the accused-appellant. He has deposed that the accused had worked as a carpenter in his house and as such the accused is known to him. One day while he was coming to his shop in between 10/12 a.m., he saw accused Parimal proceeding on the road along with the deceased Mithun and both of them were proceeding towards Koroi Bagan. As the accused and the deceased were relations, PW 8 did not think much about them. On the next day, he had found that some people assembled at the police station and when he went there, he found that the accused has been interrogated. The accused admitted his guilt and led police to the recovery of the dead body. PW 8 is an independent witness and he is no way related either to the deceased or the accused. He has deposed as to what he had seen and there is no earthly reason to disbelieve his testimony.

11. Upon consideration of the evidence of PW 4 and PW 8, we hold that the deceased was last seen in the company of the accused appellant and next day his dead body was recovered at the instance of the accused.

12. The investing police officer has deposed that on interrogation the accused told that he will be able to show the dead body and accordingly he led police to Karaibari jungle and pointed out that the dead body was concealed behind the bush. Ex. 8 to 11 are the photograph of the dead body of the deceased lying concealed as well as the photographs of the accused-appellant. The evidence of the police officer has

been corroborated/supported by PW 1, PW 2, PW 5 and PW 8. So far the confessional part, it is not admissible in evidence. But the statement leading to the discovery of the dead body has been well substantiated and supported by all these witnesses. Hence, from the evidence of these witnesses, we find that this is a case of discovery of fact referred to in Section 27 of the Evidence Act. The law regarding discovery u/s 27 of the Evidence Act is well settled and it is not an object recovered but the fact exposing the place from which the object is recovered and the knowledge of the accused to it. The investigating police officer has deposed that he has recorded the statement of the accused as regards the recovery, but surprisingly enough the prosecution has failed to prove or brought the same on record during trial, which goes to show callous attitude/ sheer negligence on the part of prosecution and a time has come to get up the prosecution machinery under the State and for this, the public prosecutors should be given sufficient training as to how the sessions/murder trial is required to be presented. The absence of the statement of the accused, however, does not debar us from holding that recovery of the dead body was made u/s 27 of the Evidence Act.

13. In the case of *Alphas Munda v. State of Assam* reported in (1996) 3 GLT 588 a Division Bench of this Court held that Section 27 does not provide for any written information given by the accused and the information can be verbal also.

14. In the present case, we find that the evidence of the investigation police officer has been corroborated and supported by as many as four seizure witnesses.

15. In this case, we also find that so far as the circumstances as mentioned above have been fully established by the prosecution by leading reliable and trustworthy evidence. So far the taking away of the boy is concerned, this has been admitted by the accused who in question No. 4 stated as follows :-

Ans-Sir, I did not take Mithu who was my maternal uncle's son. They had sent him (with me) forcibly, I entered my house and Mithu went towards the house of his (Mithu's) paternal uncle who is my maternal uncle too.

16. The accused has also admitted that his maternal uncle PW 5 taught him how to read and write and he has not disputed the evidence of PW 5 that the letters were written by him.

17. So far the application of the principle of last seen together is concerned, the matter stands settled by the Apex Court in the case of *State of U.P. Vs. Satish* . The above circumstance stands fully proved as the dead body was recovered at the instance of the accused and the accused himself admitted about taking away of the boy which leads to the only conclusion that it was the accused-appellant alone who himself master minded the entire incident. It is also seen that even after killing the boy the accused tried to obtain ransom by sending Ext. 3. This is one of the most heinous offences and the trial Court had showed compassion in the matter of sentence and as such we do not propose to interfere with the same.

18. In view of the above, we find no merit in this appeal and the appeal stands dismissed. Send down the records.