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**(2010) 07 CAL CK 0012**

**Calcutta High Court**

**Case No:** C.R.A. No. 97 of 2002

Munshi Hembram and Others

APPELLANT

Vs

The State of West Bengal

RESPONDENT

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**Date of Decision:** July 7, 2010

**Acts Referred:**

- Evidence Act, 1872 - Section 106, 113A, 113B
- Penal Code, 1860 (IPC) - Section 201, 302, 304B

**Hon'ble Judges:** Raghunath Ray, J; Ashim Kumar Banerjee, J

**Bench:** Division Bench

**Advocate:** Sandipan Ganguly and U.S. Dewan, for the Appellant; S.K. Mahato and Amajit De, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Ashim Kumar Banerjee, J.

**FACTS:**

Ramali Hembram was married to Ruplal Hembram, the appellant No. 3 above named. The facts reveal that Ramali died an unnatural death due to strangulation. Her death was certified by the post mortem doctor being PW 14 as anti-mortem and homicidal in nature. As per the written complaint lodged by her mother Champa Hansda, being PW-1. Ramali was married two years before her death. She had a baby aged one year old. The baby was unwell. On September 9, 2000 Champa paid a visit to in-law's house of Ramali where she was staying. There had been some scuffle on the issue of preparation of rice where Munshi Hembram, the appellant No. 1 rebuked Ramali. Dukhu and Madhu, the appellants Nos. 2 and 4 brothers of Ruplal supported their father on the issue. Champa accepted their hospitality and stayed there overnight. On the next morning she returned home and left for work. While she was working in the land of Kistu Soren, her son Rabin went to the field and called her back and informed her that a person from Pashoi Village (Ramali's

in-law's place) had come and informed that Ramali had died. She rushed to Ramali's place and found Ramali was lying on the varandah of Ruplal. She had a mark of rope on her neck. Dukhu, Madhu, Ruplal and Munshi took the body to the burial ground as would appear from her evidence. After the ritual was over she came back to her place. She narrated the incident to her brother Radha Soren, PW-11 who advised her to lodge a complain at the Police Station. Accordingly she lodged a written complaint on September 11, 2000.

## 2. INQUEST:

The police, acting on the complaint, exhumed the body from the burial ground in presence of the Executive Magistrate being PW-5. As per the Inquest Report, the body was decomposed. The tongue came out from the mouth, eyes were closed, left ear was partially torn. A black stain was seen on the throat of the deceased. The Magistrate observed that it was a case of murder.

## 3. PROSECUTION EVIDENCE:

PW-1 (Champa Hansda):

>Champa supported her complaint. While elaborating, she deposed that the accused persons used to assault Ramali. She saw the deadbody with the mark of injury on her neck. She requested the villagers to bury the deadbody and wait till her relations came. However, nobody paid any heed to her request. One Debashis Dhar wrote the written complaint as per her instruction. She put her L.T.I. The police went to the place of occurrence and exhumed the dead body from the grave and held inquest. The body was brought to Jangipur Hospital for post mortem examination and after post mortem the body was cremated at Berhampore Cremation Ground. During cross- examination she however admitted that she had doubt over the dead body. Champa however specifically did not depose whether she was present at the time of exhumation of the deadbody or who identified the grave and/or the dead body, as the case may be, to the police. She however deposed that at about 4.30 p.m. she left the place when the dead body was buried. She further deposed that she alone was present. When the dead body was exhumed it was decomposed and difficult to be identified.

PW-2 (Rabin Hansda):

Rabin was the brother of Ramali. He found mark of injury on her neck. According to him, Ramali became indisposed after delivery of her child and as such could not do much work.

PW-3 (Sambhu Sengupta):

The witness was a neighbour of Champa. He was declared hostile.

PW-4 (Kista Soren):

The witness was also a neighbour of the appellants. He was also declared hostile. He deposed that he did not know how Ramali had expired.

PW-5 (Sabuj Baran Sarkar):

The witness was the Executive Magistrate. He went there as being directed by the Sub-divisional Officer, Jangipur. On September 11, 2000, the dead body was exhumed in his presence. He made the inquest. He found mark of injury on the dead body. He referred the dead body for post mortem examination. He proved his report.

PW-6 (Debasish Dhar):

The witness was the scribe to the FIR. He proved the FIR being Exhibit 2.

PW-7 (Kamal Soren):

The witness was also a neighbour. He deposed that Ramali was murdered by Munshi, Ruplal, Dukhu and Madhu by throttling. She was laid to rest in the graveyard. Police and Magistrate exhumed the dead body from the graveyard after being informed. He was present at that time. He signed the inquest. According to him, the graveyard was at Kanchanpur being five kilometres away from their place. He, however, did not witness the burial.

PW-8 (Bablu Sarkar):

The witness was a neighbour of the accused. He was a member of the Gram Panchayat. According to him, Munshi, Madhu and Ruplal used to torture of Ramali. As a member of Gram Panchayat, he requested them not to torture the victim who was sick. He also noticed a mark of black spot at her neck. He saw the accused returning after burial and then fleeing away from their house. On September 11, 2000 Police and Magistrate came to the village and exhumed the dead body from the graveyard. They examined the dead body and found a mark of injury on the neck of the victim in his presence. He disclosed his identity to the Police and Magistrate. He stated to the Magistrate and Police that the accused tortured the victim and the victim had mark of injury on her neck.

PW-9 (Rameswar Mardi):

The witness was a neighbour of Champa. He was declared hostile. According to him, his signature was obtained at Pashoi (the village where the appellants were residing). Champa, Rabin and Kamal also signed at Pashoi.

PW-10 (Kesto Soren):

The witness was a neighbour of Champa. He was declared hostile.

PW-11 (Radha Soren):

Radha Soren was the brother of Champa. According to him, Ramali became sick after giving birth to the child. Her in-laws used to torture her as she was not in a position to work. They buried the dead body. On being informed, the Police and Magistrate went to the village and exhumed the dead body from the graveyard. He also found a mark on the neck of the victim as also bleeding and oozing from the neck. She also found urine and stool coming out. The dead body was sent to Jangipur Hospital for post mortem and was taken back after post mortem. She also witnessed the inquest report. According to her, the dead body became decomposed.

PW-12 (Arjun Hansda):

Witness was a Home Guard who carried the dead body for post mortem examination.

PW-13 (Ratan Kr. Choudhury):

The witness was the Sub-inspector of Police attached to Raghunathganj Police Station. At the relevant time he registered the complaint made by Champa. He also took up the investigation and got the body exhumed in presence of Executive Magistrate. He prepared the inquest report. He collected the Post mortem Report from the hospital and ultimately submitted chargesheet and arrested the accused persons.

In cross-examination he deposed that he did not know the victim from before. He denied the facts that the body exhumed from the graveyard was not of Ramali. In cross-examination he also deposed that had there been any responsible person like Panchayat member or school teacher he would have taken his signature.

PW-14 (Dr. Santosh Kr. Bhuia):

The witness was the Medical Officer attached to Berhampore General Hospital on the relevant date. He conducted the post mortem examination and proved his report during trial.

#### 4. EXAMINATION OF THE ACCUSED:

All the accused were examined. They pleaded not guilty and faced trial. During their examination they contended that the body which was exhumed from the graveyard was not of the victim Ramali Hembram.

#### 5. JUDGMENT:

Considering the evidence so analyzed above, the learned Judge held all of them guilty of the offence and convicted them accordingly. The learned Judge sentenced all the accused to suffer rigorous imprisonment for life for their conviction u/s 302 of the Indian Penal Code coupled with a fine of Rs. 3000/- and in default to suffer further rigorous imprisonment for one year each. The convicts were also sentenced

to suffer rigorous imprisonment for three years for the conviction u/s 201 of the Indian Penal Code coupled with a fine of Rs. 1000 each and in default to suffer further rigorous imprisonment for six months.

#### 6. APPEAL:

Being aggrieved, all the four accused preferred the above appeal which was heard by us on the above mentioned dates.

#### 7. APPELLANTS' CONTENTION:

Mr. Sandipan Gangully, learned Counsel appearing for the appellants contended that the independent witnesses being PW-3, 4, 9 and 10 were declared hostile. According to him, PW-8 although an independent witness was not trustworthy. According to him, PW-8 did not sign the inquest although claimed to be present at the time of exhumation of the dead body. The Investigating Officer deposed that had there been any panchayat member present he would have certainly noted his presence and taken his signature. Mr. Gangully further contended that the prosecution witnesses particularly PW-1, 2, 5, 8 and 11 stated that they had seen marks on the neck of the victim whereas the post mortem report did not mention about any external injury. According to Mr. Gangully, the chargesheet was defective. FIR was contrary to the deposition of PW-1 given during trial. Mr. Gangully harped on the fact that there was no direct evidence to the effect that the body was identified by any relation or neighbour after it had been exhumed. In this regard, he referred to the evidence of PW-1 where she stated that it was difficult to identify as the body got decomposed. Mr. Gangully concluded by submitting that when there was anomaly in the evidence, contradictions were apparent, no external injury was found during post mortem, chargesheet was defective and nobody specifically identified the grave or the body as the case may be, the learned Judge was not correct to sign the judgment of conviction. He prayed for setting aside of the judgment and order and consequent acquittal of the accused/appellants.

In support of his contention Mr. Gangully relied on the decision in the case of [Sharad Birdhichand Sarda Vs. State of Maharashtra](#), .

#### 8. PROSECUTION CONTENTION:

Opposing the appeal, Mr. Sushil Kumar Mahato, learned Counsel contended that it was not necessary to give minute details in FIR. PW-1 informed the police about the incident and expressed her suspicion. Such complaint was registered as FIR. During trial PW-1 elaborated the incident which would rather explain the FIR than to contradict the same. According to Mr. Mahato, PW-1 and 2 were present when the dead body was taken to the graveyard. Both of them noticed injury even after the body had been exhumed. Her statement was corroborated by PW-8, an independent witness who was present when the body was exhumed. Merely because PW-8 did not sign the inquest, it would not make his deposition unreliable. Mr. Mahato

prayed for dismissal of the appeal.

#### 9. OUR VIEW:

We have carefully considered the evidence so analyzed above. PW-1 lodged the complaint to the effect that there had been some altercations on the issue of cooking of rice when the father in-law rebuked the victim. The other witnesses being PW-2, 8 and 11 corroborated to the extent that the victim became sick after delivery of her son and was not in a position to perform the household activities which annoyed her in-laws. So victim was not happy in her in-law's place this fact was proved. Victim died an unnatural death, this fact was also proved through post mortem. The external injury on the neck might have been overlooked by the post mortem doctor and it was not unnatural as the body was decomposed. The incident occurred on September 9, 2000 whereas the post mortem was held on September 13, 2000. Merely because the post mortem report did not specifically mention about the external injury, it would not per se vitiate the entire post mortem report which clearly provided that the death was unnatural, anti-mortem and homicidal.

Since the dead body of the victim was exhumed in the presence of the mother, maternal-uncle and other villagers of the deceased's parental village, as is evident from the Inquest Report of deceased Ramali Hembram (Ext. 4) conducted by the Executive Magistrate, Jangipur (PW5), and none of the family members raised any objection before the Executive Magistrate, there is hardly any scope to doubt the identification of the graveyard as also the dead body of the Ramali Hembram since deceased. More so, whenever there was no specific suggestion to the Executive Magistrate PW-5 from the side of defence that the dead body which was exhumed at his instance was not the dead body of deceased Ramali Hembram.

That apart, the Doctor (PW 14) also categorically asserted that he performed the Post Mortem Examination over the dead Body of Ramali Hembram as per Police Inquest Report. Such PM Examination Report (Ext. 6) was also not challenged by the defence during his cross-examination. No suggestion to the effect that he did not conduct Post Mortem Examination Report over the dead Body of Ramali Hembram was offered to him

In such view of the matter we are unable to accept the defence argument that the dead body of the victim was not properly identified.

Question now comes who committed the crime? Victim was last seen alive in her in-law's place. She died an unnatural death within two years of her marriage. Hence, it was obligatory on the part of the in-laws to explain how the death occurred. Continued silence of the in-laws would certainly lead to an adverse inference being drawn as against them and the Court would safely be in a position to complete the chain of events which would lead to an irresistible conclusion that the in-laws were responsible for such unnatural death. The learned Judge proceeded on such basis. We do not find any scope of disagreement on that score.

Section 113A and 113B of the Evidence Act, 1872, read with Section 304B of the Indian Penal Code, even though not strictly applicable, would come into play as the basic underlying principle of law on the subject, in our view, to render complete justice to the victim's parents and her next kin. When an unfortunate girl dies an unnatural death in her in-law's place and no eyewitness is forthcoming or not available the basic principle as enunciated u/s 106 of the Evidence Act must be applied putting the obligation upon the in-laws to explain how such death was caused and their prolonged silence must lead the Court to draw adverse inference as against them. It is true that there was no demand for dowry. However, the element of torture was amply proved by the witnesses as discussed above. Hence, the history of torture followed by unnatural death would certainly cause an obligation upon the in-laws to explain how such unnatural death occurred. If they fail they must suffer the consequence. In this regard the golden rule of analysis of circumstantial evidence as enunciated by the Apex Court in the case of Sharad Birdhichand Sarda (Supra) would be apt to be mentioned -

1. the circumstances from which the conclusion of guilt is to be drawn should be fully 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.

The learned Judge, in his judgment and order considered the Apex Court decisions on the issue and ultimately believed the evidence of the relations as well as the villagers who supported the prosecution case. Based on the ratio decided in the Apex Court decisions discussed in the said judgment and applying such ratio in the facts of this case the learned Judge held the accused guilty of the offence and sentenced them accordingly. We do not find any scope of interference.

#### 10. RESULT:

The appeal fails and is hereby dismissed.

#### 11. DIRECTION:

A copy of this judgment be sent to the correctional home where the accused are suffering their sentence.

Lower Court Records be sent down along with a copy of this judgment at once.

Urgent xerox certified copy will be given to the parties, if applied for.

Raghunath Ray, J.

12. I agree.