
(2012) 04 CAL CK 0009

Calcutta High Court

Case No: C.R.A. No. 727 of 2005

Sudhir Das

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: April 4, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 26, 27, 8
- Penal Code, 1860 (IPC) - Section 201, 302, 34

Citation: (2012) 3 CHN 466

Hon'ble Judges: Asim Kumar Ray, J; Ashim Kumar Roy, J

Bench: Division Bench

Advocate: Tushar Sinha Mahapatra, for the Appellant; Sanjay Banerjee, for the Respondent

Final Decision: Allowed

Judgement

Ashim Kumar Roy, J.

The appellants Sudhir Das, Ashok Das and Sagari Das were placed on trial before the learned Additional Sessions Judge, Fast Tract, 4th Court, Raghunathpur, Purulia on a charge that they committed murder of one Jamini Kanta Das of their village and also caused disappearance of evidence of such offence punishable u/s 302/201/34 of the Indian Penal Code.

In the trial all three were found guilty of the offences they were charged with and sentenced to suffer imprisonment for life.

Hence this appeal.

It is the case of the prosecution that on 2nd June, 1988 at around 2.30 p.m. the victim Jamini Kanta Das, a postal peon left his house for his duty in a bicycle with postal papers. On the same day at about 5/5.30 p.m. a beheaded dead body of an

unknown person was found in a paddy field near Hetpukuria Dam under Tetulhiti Kenktia Mouza after search the truncated head was found in a ditch at a distance of 150/250 yards away from the place where the said dead body was found. Subsequently the dead body was identified as that of Jamini Kanta Das, who after leaving home for his duty never returned. However, his bicycle and the wristwatch was found missing. The deceased Jamini Kanta Das had an extra-marital affair with the appellant Sagari Das, the wife of appellant Sudhir Das and a couple of months earlier on the Kali Puja day the appellants threatened Jamini with dire consequences over the said issue. After arrest at the behest of the appellant Sagari Das the wristwatch of the deceased and her bloodstained wearing apparels were allegedly recovered from their house and the offending weapon Axe was recovered from nearby pond and similarly at the instance of appellant Sudhir Das police recovered the bicycle of the deceased. The appellants according to the prosecution witnesses after their arrest also confess their guilt.

2. To establish the charge of the appellants prosecution entirely relied on circumstantial evidence. It is settled law in a case depends on circumstantial evidence, it is for the prosecution to fully establish the circumstances from which conclusion of guilt is to be drawn and such circumstances must be proved beyond all reasonable doubt. The circumstances shall be consistent only with the hypothesis of the guilt of the accused, be conclusive in nature and should be such so as to exclude all hypothesis but the one propose to be proved and there shall be nothing consistent with the innocence of the accused. In a case of this nature there is always danger nor it is legally permissible to proceed with surmises and conjecture.

3. During the course of the trial prosecution examined 11 witnesses, out of those witnesses 5 witnesses were declared hostile while PW/3 is the wife of the deceased, PW/7 and PW/4 are local villagers and PW/10 is the post-mortem doctor and the PW/11 was the Investigating Officer of the case.

4. The prosecution case that the death of Jamini Kanta Das, husband of the PW/2 Puspala Das was due to the injuries suffered by him and the same were ante-mortem and homicidal in nature was not disputed from the side of the defence. We have gone through the medical evidence on record and have no doubt the prosecution has been able to prove its case that Jamini suffered a homicidal death.

5. In this case the prosecution relied on following circumstance to prove its case:

(a) Deceased Jamini had an extra-marital affair with the appellant Sagari, the wife of appellant Sudhir and she is the sister-in-law of the appellant Ashok.

(b) A few months before the occurrence the appellants threatened the deceased Jamini with dire consequences for having such illicit affairs with appellant Sagari.

(c) On the date of the occurrence the deceased left his house in his bicycle and wearing a watch.

(d) At the place where the dead body was found near to that some pieces of broken bangles were found scattered.

(e) After arrest pursuant to the statement of the appellant Sagari the wristwatch of the deceased was recovered from her house as also her bloodstained wearing apparels. The disclosure statement was exhibited and marked with Exhibit - 10.

(f) At the instance of appellant Sagari the offending weapon Axe was also recovered by the police.

(g) The bicycle of the deceased was recovered by the police after the arrest of the appellant Sudhir pursuant to his statement. The disclosure statement of Sudhir was exhibited and marked with Exhibit - 11.

(h) After the occurrence the police brought a dog and tracked the appellants.

(i) The appellants after their arrest confessed their guilt.

6. The learned Counsel appearing on behalf of the appellants contended that the case against them is absolutely false and out of some family dispute they have been falsely implicated in the case. He draws our attention to the answers given by the appellants in their examination u/s 313 Cr.P.C. and contended the appellants have denied all the allegations against them. He contended out of total 7 independent witnesses, 5 witnesses were declared hostile by the prosecution as they did not support its case, whereas other 2 independent witnesses have no direct knowledge as to how Jamini was killed. The evidence of Puspala Das, wife of the deceased based on mere suspicion.

On the other hand, the learned Counsel for the State vehemently contended the prosecution has proved its case beyond all reasonable doubt. This is a case where from the place of occurrence the broken bangles "pala churi" were found at the place of occurrence which all village women wear in their hands during the lifetime of their husband and after the arrest the same were found missing in the hands of the appellant Sagari. He then contended after their arrest at the instance of the appellants the wristwatch and the bicycle of the victim were recovered and the same being discovered pursuant to their statements recorded and exhibited during trial not only such fact is admissible in evidence u/s 27 of the Evidence Act but the same is a strong circumstance against them pointing to their guilt. He contended that after their arrest the appellants have confessed their guilt. The motive of murder has been proved by the prosecution beyond all reasonable doubt and that was due to the extramarital affair between the appellant Sagari and the deceased Jamini and some months before the occurrence for the same the victim was threatened with dire consequences.

7. We have heard the learned Counsel appearing on behalf of the parties, perused the impugned judgment and findings on which the order of conviction is based and the grounds on which the same is under challenge has also been very carefully considered as well as the testimony of the witnesses and other materials on record.

8. We find from the evidence of PW/2 Puspala Das that there was an extramarital affair between the deceased Jamini and Sagari and a few months before the incident her husband Jamini was threatened by the appellants. The 2 witnesses out of 5 witnesses who supported the prosecution case PW/7 Bholanath Das is the uncle of both the deceased and the appellants. However this witness in his evidence never stated anything as to the alleged extra-marital affair between Jamini and Sagari or anything about the incident of threat held out to the deceased by the appellants. The only other villager who supported the prosecution case PW/8 also did not lend any support the prosecution case in this regard. So far as the confession of guilt by the appellant in an extra-judicial confession is concerned we find that the PW/7 categorically denied his knowledge as to the same while PW/8 had not spoken anything about the same. According to the PW/11 Trilochan Roy, the Investigating Officer of this case that the appellants confessed their guilt after their arrest during interrogation by the police there was no evidence that before arrest and when they were not in the custody of the police the appellants confessed anything as to their guilt, accordingly the alleged confession of the appellants being hit by the bar contained in section 26 of the Evidence Act is kept completely out of our consideration Now coming to the circumstance of discovery of the offending weapon of assault, bloodstained wearing apparels of the appellant Sagari the wristwatch of the deceased pursuant to the statement of the appellant Sagari and the bicycle of the deceased pursuant to the statement of the appellant Sudhir recorded u/s 27 of the Evidence Act, we find during trial the prosecution tried to prove the same by exhibiting those statements which were marked as Exhibits -10 and 11. We have very carefully gone through those two statements, while the statement of appellant Sagari was marked as Exhibit-10, the statement of appellant Sudhir was marked as Exhibit-11, we find both the statements are post recovery statements inasmuch as in those statements it is recorded that after disclosing the facts to the police as to the place where the same were concealed the appellants took led the police to the place and in presence of the witnesses brought out those articles from the place same were hidden. Therefore, those two statements of the appellants cannot be admitted into evidence u/s 27 of the Evidence Act at best same may be admitted into evidence u/s 8 of the Evidence Act as the conduct of the appellants. In this regard it is pertinent to note all the seizure witnesses, viz. PW/1 Bhaskar Mahato, PW/3 Bhairab Ch. Mahato and PW/6 Ram Pada Mahato did not support the factum of seizure of offending weapon and were declared hostile. Similarly PW/3 Bhairab Ch. Mahato and PW/5 Surat Mahato who were examined by the prosecution as the witness of seizure of the Anglo Switch Watch of the victim Jamini also did not support the factum of seizure and were declared hostile. Similar

is the position as regards to the seizure of bicycle is concerned. The witness Gobardhan Mudi and Ramdhan Mahato while were not examined, the witness PW/4 Gurupada Mahato has not supported the factum of seizure. The offending weapon in chemical examination although was found to be stained with blood but the origin of blood could not have been detected. So far as the recovery of bloodstained wearing apparels of the appellant Sagari is concerned, in her examination u/s 313 she claimed those were stained with menstruation blood. The witness to the seizure of the said wearing apparels, viz. Kinkar Chandra Das was not examined during the trial. We find from the seizure list, Exhibit-5 although it was everywhere noted there that such seizure was effected on 4th June, 1988 but we find all the witnesses after their signature put the date as June 2, 1988 and during the trial defence suggested to the I.O. that the signature of the witnesses were taken in blank paper. However in examination at FSL neither the blood group nor the origin of blood could be detected. The recovery of broken pieces of "Pala Churi" from the spot where dead body was found lying being an incriminating circumstance was not put to anyone of the appellants nor it was also put to the witnesses that according to the customs all married women during their lifetime used to keep such "churi pala" in their hands and at the time of arrest the same were not found in the person of appellant Sagari. The only other circumstance as against the appellants that they were tracked by the police dog. There is no dispute that such evidence is admissible but have little probative value and acceptability of the same depend on reliability and complete record as to the exact manner the dog tracking was done and on the evidence of handler. In this case nothing was brought on record as to the manner in which the dog tracked the appellants as the alleged accused and the handler was also not examined. Therefore, we are not inclined to give any reliance on the same.

9. Now, on our findings as above after scrutiny of the prosecution evidence on record we are of the opinion the case against the appellants has not been proved beyond all reasonable doubt and in a case based on circumstantial evidence prosecution has not been able to bring on record any circumstance which is only compatible with the guilt of the accused far less to complete every link in the chain of circumstance. Accordingly, we are of the opinion, that the order of conviction and sentence is liable to be set aside and the appellants are entitled to an acquittal.

In the result the appeal stands allowed and the appellants are acquitted.

The appellants who are now on jail, if not detained there in connection with any other case at once be released from there.

The Lower Court Records also to be sent down to the Trial Court.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

Asim Kumar Ray, J.

I agree.