
(1999) CriLJ 2648

Calcutta High Court

Case No: Criminal Appeal No. 207 of 1993

Sambhu Nath Das

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: April 16, 1999

Acts Referred:

Penal Code, 1860 (IPC) " Section 302

Citation: (1999) CriLJ 2648

Hon'ble Judges: Sujit Barman Roy, J; Ranjan Kumar Mazumder, J

Bench: Division Bench

Advocate: Debashish Roy, for the Appellant; S. Moitra, Assistant Public Prosecutor and Ranjit Kr. Ghosal, for the Respondent

Final Decision: Dismissed

Judgement

Sujit Barman Roy, J.

This appeal is directed against the judgment dated 23-6-93 passed by the learned Sessions Judge, 2nd Bench, City

Sessions Court, Calcutta in Sessions Case No. 67 of 1992 (Sessions Trial No. 1 of February, 1992) convicting the appellant u/s 302, I.P.C. and

sentencing him thereunder to suffer imprisonment for life and to pay a fine of Rs. 2,000/- and in default to undergo R.I. for further six months.

2. Prosecution case, in short, is that on 9-5-92 at or about 2.35 p.m. P. W. 1 Smt. Laxmi Karmakar lodged an oral complaint before Jorasanko

P.S alleging, inter alia, that for the proceeding one year the informant was residing as a tenant at Lankapara, Khidirpur. About 14 years prior

thereto her husband died. To earn her livelihood and to maintain her children, she had to work as domestic help in various houses. She had three

children. The eldest one being daughter Kalpana (since deceased) was given in marriage with the appellant and since her marriage her daughter

started living at the residence of her husband being the appellant in Calcutta at the address mentioned therein. Her elder son worked in a goldsmith

shop. At the time of marriage of the deceased she gave dowry to the appellant according to her capacity. Despite this, the appellant and his mother

were not satisfied with the dowry and the informant could learn from her elder sister's daughter being Sibani Karmakar (P.W.8) and her elder son

being Shibu alias Ashok (P.W.14) that the appellant and his mother used to torture the deceased severely in their residence at Calcutta. On the

preceding 1st May P.W.14 Shibu came to his aunt's house at Paikpara, Calcutta, From there about 4/5 days ago P.W. 14 Shibu came to the

house of his sister being the deceased and from the deceased he could learn that the appellant and his mother were torturing her and such

oppression was unbearable. Such oppression/torture was mounted upon her for dowry. According to the appellant and his mother sufficient

articles/dowry were not given at the time of marriage of the deceased. On one occasion the appellant tried to kill her by throttling. However, the

deceased somehow managed to escape and came out after opening the door of the house. On the previous day at about 9.00 p.m. the informant

came to her sister's place. At that time, P.W.14 Shibu reported her about the aforesaid torture upon the deceased. P.W.8 Shibani also reported

the informant that the deceased had told her some days ago about such torture perpetrated upon her by the appellant and his mother. On the

previous day the informant stayed back with her son at the place where her elder sister used to work. However, in the morning of 9-5-92 at or

about 6 O" Clock when the informant and P.W. 14 Shibu were preparing to visit the house of the deceased, one Swapan Dawn being the younger

brother-in-law of the appellant came and reported them that the deceased suddenly fell ill and for that reason she had been admitted in the Medical

College Hospital. Soon after that the informant and her son being P.W.8 rushed to the matrimonial residence of the deceased and there he could

learn from the people that in the previous night at about 1.00 a.m. deceased was brought to the Medical College Hospital and thereafter the

Medical Officer of that Hospital declared the deceased to be dead. People of that area further informed the informant that the deceased was then

gasping when she was taken to the Hospital. In these circumstances, the informant expressed her belief that the appellant and his mother jointly

murdered the deceased Kalpana in the preceding night as sufficient articles/dowry could not be given by the informant as demanded by the

appellant and his mother. On the basis of the said oral complaint, an F.I.R. was registered at the said P.S. against the appellant and his mother u/s

302, I.P.C. After usual investigation police submitted a charge-sheet against the appellant.

3. In course of time, the case was committed to the Court of Sessions. On transfer the case was tried in the Court of the learned Sessions Judge,

2nd Bench, City Sessions Court, Calcutta.

4. Upon perusal of the materials on record, the learned trial Court framed a charge u/s 302, I.P.C. against the appellant to which he pleaded not

guilty. In course of the trial, prosecution examined in all 16 P.Ws. Defence of the appellant was that the prosecution case is totally false and the

appellant did not adduce any evidence in his defence. On conclusion of the trial, appellant was convicted and sentenced, as already stated.

5. We have already stated above that P.W. 1 Smt. Laxmi Karmakar is the mother of the deceased and she was informant in this case. She gave

her evidence in the trial Court. The version disclosed in her evidence is more or less similar to the statement she made in the F.I.R. Of course, there

are some variations. Such variations do not relate to vital part of her story. These variations are of most minor and insignificant nature and,

therefore, we do not attach much importance to the same. We have also gone through her evidence including the statement this witness made in

course of her cross-examination. After considering the same we are of the view that nothing substantial could be elicited from her in course of her

cross-examination so as to discard her evidence. We find that her evidence has remained unshaken despite such cross-examination. P.W.3 Badal

Sarkar used to live as a tenant in a room adjacent to the room of the appellant. He was living in the said room for about 10/12 years. He stated in

his evidence that the appellant used to sleep in his room with his wife. In front of the room of the appellant there was a verandah where mother of

the appellant used to sleep. Though this witness could not recollect the date of occurrence, yet he was specific in his statement that at midnight one

day at about 12 noon he heard some noise raised by the mother of the appellant. He further saw the door of the room of the appellant was open

and that wife of the appellant was lying on the floor. She was unconscious. She was brought out. Except this he could not say anything more. Of

course, he stated that many people then collected in the house. Inside the room of the appellant there was a cot. Later on, this witness could learn

that the wife of the appellant had died. He further stated in course of cross-examination that he did not see any marks of injury on the person of the

deceased. He also did not hear any altercation or quarrel between the deceased and the appellant or his mother. It needs to be mentioned here

that according to prosecution deceased was throttled to death. So her body apparently did not bear mark of any major injury. There were marks

of some abrasions etc. only. So such apparently minor injuries might not have been noticed by this witness as he saw the deceased at midnight. It is

not the case that her body was closely examined by him. That apart, deceased being a lady, her body was surely covered with clothes. Therefore,

it is nothing unusual that such apparently minor injuries escaped his notice.

6. P. W.4 Alo Datta is also resident of the same building in a part of which the appellant and his wife were the residents. The appellant occupied

one room of the same building. There is a verandah in front of the rooms. Appellant used to reside with his mother and wife being the deceased.

Mother of the appellant used to sleep on the verandah. The appellant and his wife used to sleep inside the room. This witness was living in the

same building in a part thereof since her birth. On the date of occurrence at night the appellant and his wife were sleeping in their room and mother

was sleeping outside. This witness woke up at midnight after hearing some cries. So, she opened the door and found that the deceased was being

taken to the Hospital.

7. P.W.3 Badal Sarkar brought the deceased outside from the room of the appellant. Of course, this witness could not say as to where Badal

Sarkar kept the deceased after her body was brought out from the room of the appellant. The appellant along with 3/4 boys went to the Hospital.

Of course, it has been stated by her in course of cross-examination that she never heard any quarrel or altercation between the deceased and the

appellant or his mother. Not a single suggestion has been given either to this witness or to P.W.3 that their story that mother of appellant used to

sleep in the verandah and that the appellant used to sleep along with the deceased inside the room and in the night of occurrence also" appellant

slept with the deceased inside the room and mother of the appellant slept in the verandah is a false story.

8. No suggestion has been given on behalf of the appellant that the prosecution story that mother of the appellant used to sleep outside in the

verandah is false. Therefore, this part of the prosecution story remained unchallenged from the side of the appellant.

9. P.W.9 Babla Sarkar also used to reside in a room of the same building in which in another room appellant along with the deceased used to

reside. In his evidence he stated that the appellant lived as a tenant in a ground floor room with his wife and mother. There was a verandah in front

of the room of the appellant. Appellant's mother occasionally slept inside the room and generally in the verandah. Appellant used to sleep with his

wife inside the room. One night he suddenly woke up after hearing some commotion. He came to the ground floor and saw that the deceased was

lying on the verandah. He could not say whether or not deceased was conscious. Some neighbours came to their house. Thereafter this witness

along with P.W.6 Samir Datta and P.W.7 Jyotirmoy Das and also the appellant took the deceased to the Emergency Department of the Medical

College Hospital in an Auto Rickshaw. However, when the deceased was brought to the Hospital, she was declared dead by the Medical Officer.

After that this witness accompanied the appellant to the house of P.W.14 Sibani at Belgachia. Sibani is stated to be the sister of the appellant. Said

Sibani and her husband accompanied this witness and the appellant up to the house of the appellant. Of course, this witness could not say as to

whether the appellant and the deceased were sleeping in the same room on the night of the occurrence. This witness then was declared hostile by

the prosecution and was accordingly cross-examined by the Public Prosecutor with leave of the Court. Be that as it may, it appears to us that this

witness was also trying to help the appellant and for this reason he was rightly declared hostile by the prosecution. But substantial part of his

evidence supports the prosecution case to a great extent.

10. When the evidence of other witnesses as regards prosecution story that the appellant and the deceased slept in that night in the room and none

else slept in that room has remained unchallenged, evidence of this witness to the contrary ;cannot be accepted. Evidence on this point as given by

other witness having remained unchallenged from the side of the appellant, it seems to us that this part of the prosecution story has been accepted

by the appellant as true despite that was stated by this witness.

11. Similarly, P.W.6 Samir Datta is also resident of a part of the same building in which appellant and the deceased used to reside in a room. He

stated in his evidence that the appellant along with his wife and mother used to live in one room of the same house as tenant. The appellant and his

wife used to sleep in the room while his mother used to sleep in the verandah. On the date of occurrence at midnight at about 12/12-30 O" Clock

this witness heard a sound and immediately on opening the door of his room he saw that some boys were carrying the deceased to the Hospital.

This witness also accompanied them to the Hospital. They took the deceased in an Auto Rickshaw to the Hospital. They were accompanied apart

from this witness by the appellant and others. Babla Sarkar further stated that deceased was taken to the Medical College Hospital in the

Emergency Department where Doctor declared her dead. Of course, he stated in his evidence that he was not aware whether there was any

quarrel between the deceased and the appellant as most of the time he used to remain outdoor. Evidence of this witness also remained

unchallenged by the appellant. No part of the evidence of this witness has been suggested by the appellant to be false. Therefore, we find that

evidence given by this witness has been accepted by the appellant to be true. Evidence of this witness is also of similar nature like the evidence

given by P.W.6. Here also not a single suggestion has been given by or on behalf of the appellant that the story given by him is false. Therefore,

evidence given by this witness has remained unchallenged.

12. P. W.8 Smt. Sibani Karmakar is a relation of the informant. She is the daughter of the elder sister of the informant. Since the marriage of the

deceased with the appellant, they started living together as husband and wife in the residence of the appellant at Calcutta. On some occasions this

witness visited the deceased at her husband"s place. So, also the deceased occasionally visited the house of this witness. During that time the

deceased complained to her that the appellant used to ill-treat her as satisfactory articles and other things were not given at the time of marriage as

dowry. A few days before the death of the deceased, the deceased visited her as mother of this witness was ill and at that time deceased again

complained about the ill-treatment meted out to her at her matrimonial house. On 9-5-92 one Swapan Daw being a close relation of the appellant

visited the residence of this witness and reported her that the deceased was admitted in Calcutta Medical College Hospital as she fell ill. On

hearing this news, she sent P.W. 1 and P.W. 14 Shibu to Medical College Hospital. Said Swapan Daw instead of taking P.W.1 and P.W.14 Shibu

to the Hospital, took them to the residence of the appellant. As the informant as well as P.W. 14 did not return back for a long time, this witness

along with some of her neighbours being P.W. 10 Benoy Saha and one Bishu Sana went to Calcutta Medical College Hospital and yet they could

not collect any relevant information in this regard, and, therefore, they together came to the house of the appellant. There this witness could learn

that the deceased had already expired and P.W. 1 and others went to Jorasanko P.S. in connection with this matter. Here at the P.S. this witness

saw the appellant, her mother and her two brother-in-laws. Police Officer of the P.S. collected nail scrappings of the appellant and seized the same

under a seizure list and this witness was a signatory in the said seizure list. This is in short the evidence, this witness gave before the trial Court. We

have scanned her evidence in course of cross-examination. We find nothing therefrom. Nothing could be elicited from this witness in course of

cross-examination for which this witness can be disbelieved. Her testimony has remained unchallenged. Not a single suggestion has been given to

her that her testimony is false. We are, "therefore, constrained to hold that there is nothing to disbelieve this witness.

13. P.W.9 Smt. Seema Das is also resident in a room of the same building in which appellant used to live as a tenant. In her evidence before the

Court she stated that since the marriage appellant used to sleep with his wife being the deceased inside the room and mother of the appellant used

to sleep at night on the verandah. After hearing some commotion in the night of 9-5-92, she came down and saw that the deceased was lying on

the verandah and others were nursing her with water and hand fan. She was then unconscious. This witness also tried to give some milk to the

deceased but the deceased could not drink the same and then some boys took the deceased to Hospital in an Auto Rickshaw. In the morning she

could learn that when the deceased was taken to the Medical College Hospital she expired. This is in short her evidence. During cross

(examination) this witness admitted that in the night of occurrence he did not see whether the appellant with his wife slept in the room and also

whether mother of the appellant slept on the verandah. This statement does not help the defence in any manner. This statement rather disclosed that

this witness is most trustworthy and reliable witness. Otherwise, she could have given false evidence, yet she did not do so. She gave evidence on

the basis of what she saw in the past that as usual appellant used to sleep with the deceased in the room and mother used to sleep in the verandah.

In that particular night she did not notice where they slept and for this reason she could not specifically say whether in the night of occurrence

appellant and deceased slept together in the room and mother slept in the verandah. On the basis of what this witness had generally observed she

gave her evidence. She fairly conceded that she did not see on the night of occurrence as to where the appellant and the deceased had slept or

where mother of the appellant had slept. This statement clearly indicates that this witness is most trustworthy and truthful witness.

14. P.W.12 Dr. Sitangshu Sekhar Panja stated in his evidence that on 9-5-92 she was attached to Emergency Department of the Medical College

Hospital. On that day the deceased was brought in the Emergency Department at midnight. Deceased was brought dead to the Hospital. In the

case history it was recorded as per the statement of the appellant that the deceased consumed some tablets. This is in short the evidence of

P.W.12.

15. Therefore, from the evidence of P.W. 12, it appears that when the dead body of the deceased was first produced before Emergency

Department of the Calcutta Medical College Hospital the appellant, falsely reported to P.W. 12 that deceased consumed some tablets. From this it

appears that the appellant suggested that the deceased died because of some effect on her system caused by such tablets. It would be evident from

further materials on record to be discussed hereinafter that this information given by the appellant is totally false and hence from the very outset the

appellant made an attempt to mislead investigation by giving false information to the Medical Officer-in-Charge of the Emergency Department.

16. It appears that the Doctor, who held the post-mortem examination on the dead body of the deceased, preserved Viscera and some sample of

blood of the deceased for their examination at the Forensic Laboratory. These were sent to the Forensic Science Laboratory, Government of

West Bengal, Calcutta. The report is available with the record of the case. The Scientific Officer-cum-Assistant Chemical Examiner, Forensic

Science Laboratory, Government of West Bengal, gave his final opinion after examining the Viscera and the blood sample of the deceased that no

poison could be detected either in the Viscera or in the blood of the deceased. Said report has been marked as Ext. 7.

17. Mr. Debasish Ray, the learned Counsel, for the appellant, strenuously argued before us that the deceased consumed some tablets in the night

of occurrence and may be for that reason she died. This theory is totally belied by the report of the said Scientific Officer-cum-Assistant Chemical

Examiner. If the alleged consumption of tablets had any poisonous effect upon the deceased which brought about her death, it would have been

easily detected during examination of the Viscera and blood sample of the deceased. Therefore, this theory agitated before us by the learned

Counsel for the appellant that in the night of occurrence deceased consumed some tablets and because of its effect she died has been completely

belied by the said report. In this connection what is very important is the evidence of P.W.15 Dr. Dipankar Guha Roy, who held postmortem

examination over the dead body of the deceased. While dealing with the evidence of this witness, it has been vehemently agitated by the learned

Counsel for the appellant that this witness did not hold post-mortem examination over the dead body. But from the post-mortem report, we find

that this witness is also one of the signatories to the Post-mortem Report. Assuming that this witness did not hold autopsy over the dead body of

the deceased, it cannot be denied that he gave evidence on the basis of the Post-mortem Report made available before the Court. If his testimony

is corroborated by post-mortem report, it is not of much consequence whether this very witness held post-mortem examination over the dead

body or any other signatories to the postmortem report held post-mortem examination. It appears from the post-mortem report that apart from

P.W.15 two other Medical Officers also signed the post-mortem report. As the postmortem report does not belie the statement of this witness

before this Court, we can safely rely upon testimony of this witness if it is found to be otherwise reliable and credible and corroborated by

contemporaneous document like post-mortem report.

18. In his evidence P.W. 15 stated that in 1992 he was posted in the Calcutta Medical College Hospital. His service was requisitioned for holding

post-mortem examination over the dead body of the deceased in connection with the E. Case No. 254 dated 9-5-1992. The dead body in

question was received in the Morgue on 9-5-1992 at about 9.50 a.m. The connected papers were received on 11-5-92 at 12.45 p.m. and

accordingly post-mortem examination was held over the dead body of the deceased at about 3 p.m. on 11-5-92. Her dead body was identified by

Constable Ashim Kumar Ray. Following injuries were detected by him on the person of the dead body :--

Injuries : 1. One abrasion $\frac{3}{4}$ " x $\frac{1}{8}$ " on left side of chin, 1" lateral to midline, 1" above the lower border of mandible.

2. One abrasion $\frac{3}{4}$ " x $\frac{1}{8}$ " on left side of neck, 2" lateral of midline, 1" below left angle of mandible.

3. One abrasion $\frac{3}{4}$ " x $\frac{1}{4}$ " on left side of neck, 1" lateral to midline, 2" below the chin.

4. One abrasion $\frac{3}{4}$ " x $\frac{1}{8}$ " on right side of neck, 2" lateral to midline, 2 $\frac{1}{2}$ " below the right angle of mandible.
5. One crescent shaped abrasion $\frac{1}{4}$ " x $\frac{1}{8}$ " on lateral aspect and right breast, 5" right to midline at the level of forth rib.
6. One abrasion $\frac{1}{2}$ " x $\frac{1}{8}$ " on lateral aspect of arsoia of right breast, 2 $\frac{1}{2}$ " lateral to midline, at the level of sixth rib.
7. One abrasion $\frac{1}{2}$ " x $\frac{1}{10}$ " on left angle of mandible 4" lateral to midline.
8. One bruise $\frac{1}{2}$ " x $\frac{1}{4}$ " on lateral aspect of upper lip of right side.
9. Extravasation of blood in the subcutaneous tissue and muscles on left of neck over an area of 3" x 1" corresponding to injury Nos. 2 and 3.
10. Extravasation of blood in a round larynx, trachea and Oesophagus, corresponding to injury Nos. 2 and 3.
11. Sub. luxation of hyoid bone on its greater cornu at its left side.
19. Ultimately P.W.15 opined that the death was caused by manual stangulation, and all injuries were anti-mortem and homicidal in nature.

P.W.15 also preserved, inter alia, the Viscera and blood sample of the deceased. It has been vehemently argued by the learned Counsel for the

appellant that P.W.15 did not hold post-mortem examination over the dead body of the deceased. But we find from the evidence of P.W. 15 that

he himself wrote out post-mortem report. Therefore, there is no reason for us to hold that this witness is not the author of the post-mortem report

or that he did not hold post-mortem examination.

20. From the marks of various injuries noted by P.W.15 in course of post-mortem examination over the dead body of the deceased as also the

report of the Scientific Officer-cum-Assist-ant Chemical Examiner of Forensic Science Laboratory, Government of West Bengal we have no

hesitation in our mind to observe that the deceased died a violent death and it rules out the case of natural death or death due to poisonous effect

of some tablets allegedly taken by the deceased in the night of occurrence as vehemently agitated by the learned Counsel for the appellant. We

have observed the statement made by P.W. 15 in course of cross-examination that no suggestion was put forward to him on behalf of the appellant

that this evidence is false or that his post-mortem examination was perfunctory. In these circumstances, we have no reason to reject the testimony

of P.W.15 that he himself hold post-mortem examination over the dead body of the deceased.

It was of course also argued by the learned Counsel for the appellant that in view of the evidence on record it would be seen that dead body in

question over which P.W.15 claimed to have hold post-mortem examination was not the dead body of Smt. Kalpana Das (Karmakar). We have

seen the evidence on record. The I.O. has clearly stated in his evidence that in the Morgue, the dead body in question was identified by P.W.1,

P.W.1 is the mother of the deceased. We do not believe that the mother of the deceased committed any mistake in identifying the dead body of

her own daughter before the Investigating Officer. The Investigating Officer again identified the dead body before Constable Ashim Roy. It

further appears from the evidence of P.W.15 who held the post-mortem examination over the dead body in question that the said Constable

Ashim Ray identified the dead body before P.W.15. Therefore, so far as the identification of the dead body in question over which the post-

mortem was held is concerned there cannot be any doubt that it was the dead body of Kalpana Das (Karmakar).

21. Therefore, this case entirely rests on circumstantial evidence. There is no direct evidence in this case as to who murdered deceased. After

considering the medical evidence on record as well as the report of the Chemical Examiner we do not have even the slightest doubt in our mind

that the deceased died a homicidal death. Now, the question is who is the author of this crime?

22. We are aware that when a case rests upon circumstantial evidence, such evidence must satisfy three tests : (1) the circumstances from which an

inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly

pointing towards guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the

conclusion that within all human probability the crime was committed by the accused and none else. Circumstantial evidence should not only be

consistent with the guilt of the accused but should also be inconsistent with his innocence. Such circumstances must be complete and incapable of

explanation of any other hypothesis than that of the guilt of the accused.

23. In the instant case all the aforesaid tests have been fully satisfied beyond all reasonable doubt. In that night appellant slept with the deceased in

the room in question. It has been further proved beyond all reasonable doubt that none else slept in that room in that night. It is also in evidence

that appellant, himself brought out the deceased in half dead condition from that room. From there deceased was taken to the hospital where she

was declared dead. All through appellant apart from others accompanied the deceased to hospital. In these circumstances how the dead body of

the deceased came to bear so many marks of violence on her body. Who inflicted them unless it was appellant himself who inflicted them? It is not

the case of the appellant that any other intruder entered the room and inflicted these injuries.

24. These facts and circumstances have been proved beyond all reasonable doubt. Taken together, these facts and circumstances form so

complete a chain that there is no escape from the conclusion that within all human probability the crime was committed by the appellant himself and

none else. They are incapable of explanation of any other hypothesis than the guilt of the appellant.

25. In view of the aforesaid, we find that in this case prosecution is based upon some mute circumstances. A witness may lie these mute

circumstances cannot lie. These are so reliable and trustworthy and their message is so loud and eloquent that we are left with not even the slightest

doubt in our mind to unhesitatingly hold that these circumstances are entirely incompatible with the innocence of the appellant. Conviction and

sentence of the appellant must be upheld.

26. In the result, we find nothing to interfere with the impugned judgment and accordingly, appeal is dismissed.

Ranjan Kumar Mazumder, J.

27. I agree.