(2008) 11 CAL CK 0027

Calcutta High Court

Case No: C.R.A. No. 46 of 1990

Fatik Dey		APPELLANT
	Vs	
State of West Bengal		RESPONDENT

Date of Decision: Nov. 24, 2008

Acts Referred:

- Evidence Act, 1872 - Section 6
- Penal Code, 1860 (IPC) - Section 302, 306, 34, 498A

Hon'ble Judges: Kishore Kumar Prasad, J; Girish Chandra Gupta, J

Bench: Division Bench

Advocate: Y.J. Dastoor, for the Appellant; Abhijit Auddy, for the Respondent

Final Decision: Allowed

Judgement

Girish Chandra Gupta, J.

This appeal is directed against a judgment and order dated 19th January, 1990 passed by the learned Additional Sessions Judge, First Court, Bankura in Sessions Trial No. 1 of January 1988 arising out of Sessions Case No. 9 of August 1987 by which the appellant Fatik was convicted of the offence punishable u/s 302 and the rest of the six accused persons were acquitted of all the charges. The convict Fatik has been sentenced to suffer imprisonment for life for the offence punishable u/s 302 of the Indian Penal Code.

2. The facts and circumstances of the case briefly stated are as follows:

On 10th March, 1985 the deceased Putul was given in marriage to Fatik according to Hindu rites and customs. A female child was born. On 24th June, 1986 her dead body was found hanging in the bed-room of her matrimonial house. The brothers of the deceased were informed. They rushed to the place of occurrence. A written complaint was lodged on the same day alleging ill-treatment against all the in-laws including the husband, demand for articles including a T.V. and concluding that the deceased had committed suicide. It is on this basis an FIR was drawn and a criminal

case was started under sections 498A and 306 of the Indian Penal Code only against the mother-in-law and the sisters-in-law.

3. After investigation the police filed a charge-sheet not only against the mother-in-law and the sisters-in-law but also against the husband and some of his relations under sections 498A and 302 of the Indian Penal Code. The learned Trial Judge did not find any of the accused persons guilty of the charge u/s 498A of the Indian Penal Code. The appellant alone was convicted u/s 302 of the Indian Penal Code. Rest of the accused persons were also exonerated from the charge u/s 302/34 of the Indian Penal Code.

4. The appellant has come up in appeal.

5. Mr. Dastoor, the learned Advocate appearing in support of the appeal, submitted that the judgment under challenge is highly speculative and is also perverse. It. is not based on evidence adduced by the prosecution.

6. Mr. Auddy, the learned Advocate appearing for the State, has disputed the submissions made by Mr. Dastoor.

7. The marriage took place on 10th March, 1985 as already indicated. The death took place on 24th June, 1986. A period of slightly more than fifteen months elapsed between the date of marriage and the date of the death. Letters aggregating sixteen in number were tendered in evidence by both the parties. They include letters addressed by the deceased, to her mother, to and from her brothers; letters written by the mother of the deceased to the mother-in-law of the deceased and also letters exchanged between the couple. Not one of them discloses any animosity between the parties. There is no complaint whatsoever in any of the letters addressed either by the deceased Putul or by her brother or by her mother either against the husband or any of his relations.

8. To start with the first letter is dated 15th August, 1985 which has been marked Exhibit 5. This is a letter written by the deceased to her mother regretting cancellation of her schedule visit to the paternal house due to the death one of her in-laws. The second letter marked Exhibit 6 is dated 27th August, 1985 also written by the deceased to her brother. Not a word against any of the in-laws or against the husband is there in that letter. The third letter is dated 27th September, 1985. The fourth one is dated 24th October, 1985. The fifth one is dated 15th November, 1985. These are the three letters which really, are love letters written by the husband to the deceased which have been marked Exhibits A-1 and A-13 respectively. The sixth letter is dated 22nd November, 1985 marked Exhibit 9 addressed by Tukun, P.W.3 the second elder brother of the deceased to the appellant Fatik which is full of love and commendation for the appellant. The seventh letter is dated 16th December, 1985. The eighth letter is dated 23rd December, 1985. The ninth letter is dated 3rd January, 1986. The tenth letter is dated 11th January, 1986. The eleventh letter is 4th February 1986. These five letters were exchanged between the couple the contents

whereof signifying great love and affection between them which have all been exhibited. The twelfth letter has been addressed by the deceased Putul to her brother. The contents of the letter show that the deceased was happy with her child. No specific complaint is there against anyone including the appellant. The thirteenth letter dated 23rd March, 1986 is also a communication between the husband and the wife containing emotional outburst and poetry. The fourteenth letter is dated 30th March, 1986 addressed by one of the brothers of the deceased to the latter containing wholesome advise and inviting the appellant to their house together with Putul since deceased. The fifteenth letter is also from the elder brother of the deceased. There is no complaint against anyone. The sixteenth letter dated 23rd May, 1986 is also a letter from one of the brothers of the deceased signifying love and affection for the appellant. We have before us the last letter dated 23rd May, 1986 and the incident took place on 24th June, 1986. There may have been other letters not produced by the parties. It needs however to be clarified that many of the letters referred to above do not themselves contain any date. We have culled out the dates, where there was none in the letters themselves, from the postal stamps only to give an idea as to the timing when they may have been exchanged.

9. The relations of the deceased namely brothers, sisters, mother and the sisters-in-law who deposed in Court that the in-laws of the deceased tortured her and that the husband was a drunkard who used to beat her, did not drop any such hint in any of their letters.

10. The learned Trial Judge has advisedly disbelieved the oral evidence of these witnesses and his finding to that effect is as follows:

Now, cruelty has also been defined in this section as harassment of the woman where such of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property, or is on account of failure by her or any person related to her to meet such demand. In this case, half-hearted allegation has been made regarding the demand made by accused Fatik for T.V. set and cash from Putul''s brother. But, such allegation does not find corroborative from any of the independent source and also from the letters exhibited in this case by both the parties. I, therefore, hold that the prosecution has not been able to establish any act of cruelty in this case upon Putul by the accused persons within the meaning of the definition of section 498A IPC. All the accused persons, therefore, are found not guilty of the offence u/s 498A of the Indian Penal Code and they are entitled to be acquitted of that charge.

11. Let us now examine the findings of the learned Trial Judge which led him to conclude that the prosecution had proved beyond any reasonable doubt that the appellant was guilty of the offence punishable u/s 302 of the Indian Penal Code. In order to hold that the death was homicidal and not suicidal, the learned Trial Judge has largely been influenced by the medical evidence. His findings in that regard areas follows:

So, the circumstances of the case are quite consistent with one of murder and not of suicide. The act of murder and not of suicide. The act of murder might have been committed between the time after lunch and Fatik''s coining to the house of Paresh De. Banging of door was necessary to draw the attention of the P.Ws. who were gossiping near the house of Fatik and in the house of Paresh De, to show the innocence and ignorance of the inmates of the house of Fatik. The restlessness of Fatik was an act of pretension.

The medical evidences have given out that the fracture of the hyoid bone and the blackish discoloration of the trachea suggest ante-mortem bruise and fracture of the hyoid bone and from this, the medical expert, the P.W.24, came to the opinion that the death was due to the effect of strangulation which was ante-mortem and homicidal in nature. True it is that the P.W.13, Dr. Anabadya Sen, holding post-mortem examination over the dead body of Putul, found the hyoid bone intact, but still he sent the viscera and hyoid bone of Putul to the F.S.L. for chemical examination. The ld. defence advocate has argued that when no fracture was visible, to the P.W.13, there was no reason as to why the hyoid bone was sent to the F.S.L. and if any such hyoid bone was examined by the P.W.24, that may not be of Putul:

Moreover, according to the ld. advocate, there is no whisper anywhere that along with the hyoid bone some structure or tissues were sent to the P.W.24 for chemical examination. But, still the doctor found marks of bruise in the trachea. According to him, this finding of the P.W.24 casts a serious doubt about the veracity of the report. After having heard the learned Advocates of both the sides, I hold that the evidence of the medical expert which is found consistent with the circumstances of the case, as discussed above, cannot be thrown overboard on this score. The fact remains that the hyoid bone was examined by the doctor, P.W.24 and the post-mortem report goes to show that the hyoid bone was preserved. P.W.13 who is not an expert and who reserved his opinion till viscera test has also stated that the hyoid bone was preserved. The ld. lawyer for the accused persons has filed a copy of the post-mortem report where the fact of preservation of the hyoid bone is not noted. This copy of the p.m. report was not supplied from the prosecution to the accused persons. We get from the evidence of the P.W.13 that he granted a copy of the p.m. report subsequently on 9.8.1986 which is not a carbon copy of the original in the same mechanical process. I do not know under what authority such copy of a public document was granted to the accused persons. There is no indication also that prescribed fees were taken for obtaining an attested copy of the p.m. report. The original p.m. report is on record wherefrom it can be found that the item No. 4 was hyoid bone which was preserved for chemical examination. True it is that the tissues, as mentioned by Dr. Gupta (P.W.24) do not appear to have been sent to him for examination. The fact remains that Dr. Gupta, P.W.24, got the tissues examined along with the hyoid bone. I am quite aware that in such cases the opinion of the medical expert must be found to be consistent with the circumstances of the case and the evidence of the eye-witnesses. In this case, all the witnesses saw the dead

body of Putul and they are witnesses not of the incident of murder or of suicide. I, therefore, hold that the circumstances discussed above, coupled with the evidence on record, unerringly point out to the fact that Putul was murdered either by throttling or by strangulation with some ligature material the width of which was of about 1/2 as found by the P.W.13.

12. P.W.24, Dr. Gupta, pointed out the evidentiary distinctions between suicide and homicide as follows:

In case of suicidal hanging, fracture of the hyoid bone is a rare phenomenon. In case of strangulation, fracture of the hyoid bone is very common and usually of inward deviation type.

13. He added that in the present case "the injuries as I found on the hyoid bone, as I have stated above, were visible with the naked eyes."

14. Therefore, the crucial question is whether the hyoid bone of the deceased was found in a broken state at the time of the post-mortem examination. This question has been answered in the negative by the P.W.13 Dr. Sen who conducted the post-mortem. According to him, "the hyoid bone and the first cervical vertebra".

15. P.W.13, a qualified doctor deposed that the hyoid bone was intact. The specious reasoning of the learned Trial Judge that the P.W.13 is not, an expert is rather surprising, particularly when the evidence of the P.W.24 is that the fact that the hyoid bone was broken was apparent to the naked eyes. P.W.13 cannot be expected to have missed the fact that the hyoid bone was broken. P.W.13 also deposed that he reserved his opinion as to the cause of the death because he wanted to know the report of the chemical examination of the viscera. The viscera, according to him, did not include hyoid bone. His evidence in this regard is as follows:

By ''viscera'' we mean internal organs, namely heart, lungs, liver, kidney, intestines, stomach etc.

16. The view taken by the learned Trial Judge, in our opinion, is against the weight of the evidence. He also did not attach any importance to the fact that there was apparent confusion as to whether the hyoid bone was at all sent for examination. A copy of the post-mortem report furnished to the accused, which was also tendered and exhibited, did not indicate that the hyoid bone was preserved. P.W.24 may have found the hyoid bone broken but more important to know/whether the hyoid bone of the deceased Putul was examined by him which appears to be highly doubtful because the P.W.13 found the hyoid bone of the deceased intact. Moreover the P.W.24 also examined tissues which were not preserved even according to the postmortem report tendered by the prosecution. In this backdrop the learned Trial Judge was clearly wrong in holding that the death was homicidal and not suicidal.

17. A suicidal note was found from the place of occurrence containing a sentence that none was responsible for her death. The learned Trial Judge did not attach any

importance whatsoever to that note and concluded as follows:

That the discovery of the so-called suicidal note of Putul, found identical with the standard handwriting of Putul by the handwriting expert, is also surrounded with suspicion and uncertainties. It is not certain as to where it was kept. It is an unusual small piece of paper containing only seven words. There are two versions about this discovery of the suicidal note: (1) It was on the dressing table wherefrom it was handed over to the IO by the accused Biswajit De; and (2) it was on the floor of the room to be discovered by a girl of the neighboring house. The dot pen with which the note was allegedly written, was handed over to the IO by the accused persons without allowing the IO to find out the same in its original position by inspecting the surroundings of the room. It is not known wherefrom it was procured. Such a small piece of paper must rest under...of either dot pen in question, or other pen or any other article, if the purpose of such suicidal note is to exonerate the inmates of the matrimonial house of the accused persons of the liability attached to the unnatural death of Putul.

If the defence version of suicidal hanging is accepted to be true, Putul had to make the following arrangements before hanging herself: (a) after taking lunch undigested food particles was found in her stomach), she had to give her eight months'' old child to somebody''s custody as nobody found the child in the bed room. The child was not also with the father, Fatik, as he was in the neighboring house, and the child was also not with the cook who was busy in making tea and coming to summon Fatik to take tea. The child was not also with the grand-mother, the mother of Fatik, who was found crying standing in front of the door of the bed room before it was opened. The cry was heard by Paresh De, P.W.17, (b) Putul must bring the stool of 3'' height into the room, she herself being of short stature. Nobody stated that Putul herself brought the tool into the room or that the tool was a part of the furniture of the room in which Putul was found hanging or that the tool was kept there; (c) Putul must collect a small piece of paper and a dot pen to write out the suicidal note to exonerate and safeguard the relations of her matrimonial home with whom her relationship was very cordial or at least not bitter; and (d) Putul had to keep the door of the bed room ajar without bolting it from inside ignoring the fact that Fatik, who was at the relevant time at home, might enter into the room at any moment and thereby the plan of Putul of committing suicide might be frustrated, and thereafter to put on the ligature to commit suicide without any ostensible cause of serious nature.

We do not know from which time Fatik was gossiping in the house of his uncle, Paresh De, P.W.17, and upto what point of time Fatik was in his uncle''s house. But, it is more certain that the incident of suicidal hanging, if at all, took place not during the time when Fatik was in his house but within the time when he was in the house of Paresh De. In that case, should Fatik move restlessly from his house to that house pretending ignorance about what happened in this house instead of joining the

banging on the door of his bedroom.

So, the circumstances of the case are quite consistent with one of murder and not of suicide. The act of murder and not of suicide.

18. P.W.12, P. K. Moitra, a handwriting expert attached to C.I.D., West Bengal after comparing the handwriting of the suicidal note was of the view that the same was written by the deceased Putul. His evidence in that regard is as follows:

I examined the writings of the disputed and the admitted One and compared the same carefully from all aspects of handwriting examination with the help of scientific appliances, namely illuminating comparator, magnifying lenses of different magnifications.

I am of the following opinion that the writing marked ''4'' were definitely written by the writer of the standard writing marked ''B'', as I have stated above. Agreement in the writing characteristics are significant and sufficient to prove the common authorship. As to the dot pen, I jotted down few strokes with the help of that pen and on physical comparison with the help of high power magnifying lenses of the writing strokes of the suicidal note marked ''A'' by me with those test strokes jotted down by me. I found that shares of the strokes in the document and as jotted down by me were more or less similar, although no definite opinion was possible as to whether that particular dot pen was used for writing that suicidal note.

19. P.W.16, who had brought down the dead body, deposed as regards the suicidal note as follows:

A girl living in the neighboring house found a piece of paper from the floor of that room and made it over to somebody there, most probably to Paresh De. Paresh De kept it in his pocket.

20. Paresh De, P.W.17, corroborated his evidence which is as follows:

A village girl collected the note left on the floor of the room in which the body of Fatik''s wife was found hanging and made it over to me. I made it over to Biswajit, a younger brother of Fatik.

21. P.W.23, the Investigating Officer, has deposed that the aforesaid suicidal note and the dot pen was made over to him when he went to the place of occurrence after being informed about the incident. Whether the suicidal note was lying on the floor or the same was lying on the dressing table is not of much significance when there is no dispute that the suicidal note was lying in the bedroom of the deceased where her dead body was found. On the top of that, the evidence of the handwriting expert satisfactorily shows that the suicidal note was scribed by the deceased herself. Inspite thereof the learned Trial Judge chose to attach no importance thereto is something which has really surprised us.

22. The learned Trial Judge in order to hold that the death was homicidal relied on the following circumstances:

(a) Fatik exhibited signs of restlessness before the sound of banging on the door of his bedroom was heard.

(b) The doors of the bedroom were not bolted from inside and, therefore, the banging was a mere pretension.

23. These are two circumstances which the learned Trial Judge has taken into consideration for the purpose of arriving at the conclusion that the death was homicidal. We are sorry to say that neither of these two circumstances did, in fact, exist. It is lack of perception on the part of the learned Trial Judge that he did not realize the essence of the evidence before him.

24. From the evidence of P.Ws. 15, 16 and 17 it would appear that these three persons along with Fatik were gossiping together.

25. P.W.17, Paresh, deposed that at 4/4.30 p.m. a sound of banging on the door of the room of the first floor of the house of Fatik attracted his attention. At that time, maid-servant of the house of Fatik came to summon him. The evidence of P.W.15 is that at 4 p.m. while they were taking tea Fatik went back to his house and returned in no time. The evidence of P.W.16 is that at about 4.30 p.m., Fatik was summoned from his house for the purpose of taking tea. Fatik went to his house but came back very soon. Therefore, the evidence of the P.W.17 is that Fatik was summoned after the sound of banging on the door of his bedroom was heard whereas the evidence of the P.Ws. 15 and 16 is that before any such sound was heard, Fatik had been summoned from his house.

26. We shall proceed on the basis that the evidence of the P.Ws. 15 and 16 is true. That is to say Fatik was summoned before any sound of banging was heard. Fatik went to his house and came back in no time. Each of the P.Ws. 15, 16 and 17 deposed that Fatik was restless and he climbed the roof of Paresh, the P. W. 17, Paresh in his cross-examination deposed as follows:

Close to that roof of my house there is a window of Fatik.

27. It is, therefore, clear that the window in the bedroom of Fatik faced the roof of the house of Paresh. Through that window the interior of the bedroom of Fatik could be viewed if one stood on the roof of the house of Paresh. We have evidence to show that Fatik was summoned from his house. He went there and came back in no time and rushed to the roof of the house of P.W.17. It is not difficult to see the reason why he rushed to the roof of the P.W.17. From there he wanted to have a glimpse of what was happening inside his bedroom. When he had gone to his house he must have been told that Putul was not opening the doors. He naturally got panicky and rushed to the house of P.W.17 and climbed the top and from there he wanted to see what was she doing. Thereafter, the inmates of the house of Fatik

must have started banging the door.

28. The learned Trial Judge made a guess work when he held that the doors of the bedroom had not been bolted from within. Twenty-five witnesses were examined in this case and no one suggested that the room was not bolted from within. On the contrary, there is evidence before us to show that the room was bolted from within. P.W.1, the de facto complainant, in his evidence described the information supplied to him when he reached the place of occurrence after knowing about the death of his sister which reads as follows:

I asked Fatik and his mother as to how Putul died. Both of them told me that in the morning of that day Prasanta, a brother to Fatik, took in his arms the child of my sister at which the child went on crying bitterly. At that, Putul took back her child from Prasanta. Fatik, who was present at that place, snubbed my sister by impressing it upon her that he already made it clear to his wife i.e. my sister, that she need not look after any business of the family except that she must look after her child. They also told me that Putul and her husband had exchanged of words over this episode in the morning. They also told me that they took their midday meal and thereafter Putul locked the door of her bedroom from inside and committed suicide by hanging by using that ''sari'' as rope.

29. There is thus evidence before us to show that the room was locked from the inside. This statement was made by the accused to the P.W.1 shortly after the deceased had died and before there was any scope for concoction or deliberation. Therefore, this statement has the trapping of res gestate u/s 6 of the Evidence Act. Moreover no one suggested that the doors were not locked from inside.

30. This aspect of the matter gets further corroboration from the evidence of the P.W.15 who deposed that the "Door was opened by banging". Had it not been bolted from inside, the question of banging would not arise. Slight pushing would have been enough.

31. The evidence of the P.W.23, the Investigating Officer, who visited shortly after intimation as regards the incident deposed as follows:

I do not remember in what state I found the leafs of the door and the bolt at the door of the room in which I saw the dead body.

32. The door leafs of the bedroom were seized by the police. No attempt was made to establish that the doors were not locked from inside. We thus have plethora of evidence before us to hold that the learned Trial Judge was utterly wrong in holding that the door was not bolted from the inside.

33. These are the two circumstances which weighed with the learned Trial Judge in coming to the conclusion that the death must have been homicidal. We are sorry to say that these circumstances cannot be inferred if the evidence on record is properly viewed.

34. Lastly, as to who the murderers were, the learned Trial Judge expressed his mind as follows:

On this score, it cannot be said that more than one joined in committing the murder of Putul. The death took place in the bedroom of accused Fatik. Fatik had full access in his bedroom and he was present in the house on the date of the incident and also he was the custodian of his wife, Putul. There is no evidence that the other accused persons also joined in perpetrating the murder or in helping Fatik to keep the dead body of Putul hanging. So, all the accused persons other than Fatik are entitled to get the benefit of doubt and also entitled to get a verdict of acquittal of the charge under sections 302/34 IPC. I, therefore, hold that Fatik alone was liable for committing murder of his wife, Putul, by strangulation and therefore he is found guilty u/s 302 IPC.

35. The reasoning adopted by the learned Trial Judge is contrary to the canons of justice. Because Fatik had access to his bedroom therefore he must have murdered his wife is a conclusion which has shocked the conscience of the Court.

36. All the circumstances relied upon by the learned Trial Judge for the purpose of holding that the death was homicidal and that Fatik was the murderer, according to us, are altogether bad, contrary to the evidence on the record and are also perverse.

37. In the result, the judgment and the order under challenge are set aside. The appeal is allowed. The appellant is acquitted of all the charges.

38. The appellant was granted bail by an order dated 16th February, 1990. His bail bond is discharged.

39. Let a copy of this judgment together with the lower court records be sent down to the learned Court below forthwith for information and necessary action.

40. Let Xerox certified copy of this judgment, if applied for, be delivered to the parties upon compliance of all formalities.

Kishore Kumar Prasad, J.

41. I agree.