(1995) 08 CAL CK 0028

Calcutta High Court

Case No: C. O. No. 6 of 1995

Parimal Mondal and Another		APPELLANT
	Vs	
The State		RESPONDENT

Date of Decision: Aug. 22, 1995

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 173, 302, 34

Citation: 99 CWN 1096

Hon'ble Judges: R. Bhattacharyya, J; Ajoy Nath Ray, J

Bench: Division Bench

Advocate: N.N. Nag, for the Appellant;A.K. Roy, for the Respondent

Final Decision: Dismissed

Judgement

Ajoy Nath Ray, J.
The deceased, in this murder trial, was killed in his own house in the latter part of the month of March, 1991. The victim, Manoranjans as it appears from a perusal of the Post Mortem report, and the various other circumstances, cannot by any stretch of imagination be said to have committed suicide.

2. The prosecution case ultimately crystallizes into this that Manoranjan was murdered by wife, Lakshmi Rani who is the second appellant and his wife''s paramour, Parimal alias Perumal. an employed kissan in the one-room household, who is the first appellant and that they acted with a common intention and in connivance with each other.

3. Laxmi Rani''s father has spoken against her. The two eye withnesses. being the children of Laxmi Rani and Manoranjan who were the 20th and 21st witnesses for the prosecution, said that they were sleeping and woke up at night, that they had seen their mother and Parimal kaku beating their father and dragging him out and

that they were thereafter put back to sleep by their mother who told them that an elephant had come.

4. It is impossible not to accept the statements of the two children that they had woken up at night. It is impossible not to accept their statements that their mother had tried to assauge them. It is equally impossible from a reading of the evidence to come to any conclusion but this, that Parimal was no doubt Laxmi Ranis paramour and that Laxmi Rani was deeply dissatisfied with the potency and ability of Manoranjan; according to her open declaration heard by a witness, who was no less a person than her own father, that he had lost his vigour after his intestinal operation.

5. The 10th witness for the prosecution heard Manoranjan shout for help the shouts were heard at the time the murdur was occurred.

6. There is no suggestion and there is no evidence that the murder might have taken place because of the instrumentality of anybody else. Manoranjan was not only not a rich man but there is evidence that he had borrowed money from his father-in-law and also from a neighbour. There is no evidence of neighbourly rivalry against Manoranjan.

7. Under these circumstances, even if we were to discount the judicial confession given by Parimal before the learned magistrate, we would either have to come to the conclusion that the charge of murder is well established or we would have to come to the conclusion that Manoranjan was killed by an elephant or a ghost. The latter alternatives are not rational ones. The medical examination revealed that there were abrasion on Manoranjan''s buttocks showing dragging of the body away from the room to near the tree where it was found. The details of the other injuries, as I have mentioned in the beginning rule out the case of suicide altogeter.

8. There is no reason to discard Parimal''s confession either, because it is corroborated by the other evidence, both of a general and circumstantial nature, and of a particular character, so as to be useable against both the accused.

9. Even considering the statement of his wife to his father-in-law that Manoranjan was addicted to liquor and that he was not a very powerful man and also in debt. 1 cannot help remarking that his wife. Laxmi Rani, the second appellant, is nothing short of a she-devil. The learned session Judge''s long judgement is thorough, painstaking, totally fair to the accused and it was a great help to me In deciding this appeal.

10. But had I not been restrained by the Victorian restraints which have been continued even in the presently amended Code of Criminal Procedure, I would have had no hesitation in enhancing the sentence to a capital punishment both for the noxious woman and for her paramour consort.

11. The law however being what it is the appeal by the two appellants is simply dismissed. Both the accused appellants are undergoing sentences and they will serve out the sentences as ordered by the learned Sessions Judge and the same is hereby confirmed.

B. Bhattacharyya, J.

12. I haw had the privilege to go through the Judgement of my learned brother and I am in full agreement with his conclusion. However. I write a different judgement which is a unity in diversity as the conclusion is identical the approach to such conclusion requires reflection, which I do in obedience to law and procedure.

13. This criminal appeal is directed against the order of conviction and insisted by the learned Sessions Case No. 16 of 1992 convicting the appellants and sentenced them to sutler imprisonment for life.

14. The factual exposure of the case reflects that it is a case of cruel and revolting murder of one Manoranjan in between the night of 19/20th March. 1991 of which the wife of the victim Smt. Lakshmi Rani Baroi and the Kishan Parimal Mondal alias Perumal who was inducted into the family of the deceased for his illness to help him in cultivation were the authors. Both Parimal and Lakshmi Rani developed an illicit relationship which assumed a considerable scandal and gossip over which her lather P.W. 22 Gauranga Chandra Das was much annoyed. The nocturnal illicit expedition fell heavily on Manoranjan. To desist her from pursuing the adulterous course of conduct with her paramour generated wrath and anger. A bad begining does not make good ending.

15. The deceased never knew that report of the scandal to PW. 22 would fall on him as Democles sword. It was the passion that conquered both the accused. Lakshmi forgot, as she was overpowered by lust, that her house where she lived was her castle. Allegations grew thick and fast about her relationship with Parimal. Allegations turned true. Dark deeds always take place in the night.

16. Ultimately Manoranjan was throttled to death associated with multiple injuries of which accused persons were the architects. The children of the deceased were the witnesses to the assult who woke up for the silence broken by the loud shreik of their father. Their curiosity was abated under the threat of rouge elephant being active and they were lulled to sleep by their mother. PW. 10 Biswanath Haldar and P.W. 12 Adhir Haldar, the neighbours who were also caught up with the voice of Manoranjan during the odd hour of the night by the intermittent quarrel in the house.

17. Thereafter. Lakshmi went to her father and reported the missing of her husband.

18. Manoranjan was found dead near the fallen tree with a rope tied on his neck. The neighbours found injuries on his person about which the behaviour of Lakshmi

was striking and suspicious. The neighbours who attended the hut found the trail of blood from the hut down the fallen tree and the courtyard bore the dragging mark. The accused never knew in which way the wind blew.

19. In the meantime, the father-in-law lodged an information with the police about the missing son-in-law.

20. One of the neighbours P.W. 1 reported the occurrence to the Police Station and lodged an information following which a police case was started being Mayabunder PS. Case No. 27 of 1991 u/s 302 / 34 of the I.P.C. In course of investigation, the police recorded the statements of the witnesses, visited the hutdrew the sketch map seized the alamats under seizure lists in presence of the witnesses who attested the seizures lists and sent them to the appropriate authorities for opinion and report. The Police apprehended the wife. Parimal was arrested on 23.3.91, who was absent from home, with an injury in his right index finger. He made a Judicial Confession which was subsequently retracted during the trial.

21. On conclusion of investigation, the police submitted the charge sheet against the accused persons u/s 302 / 34 of the I.P.C. and the case was committed to the Court of Sessions alongwith the accused-appellants to stand the trial.

22. The learned Sessions Judge framed the charge u/s 302/ 34 IPC against both the accused persons which was read over and explained to them, who pleaded not guilty and claimed to be tried.

23. The prosecution has examined as many as 24 witnesses and the accused examined none. The defence case as can be gathered from the trend of the cross-examination is of bare innocence.

24. The learned Sessions Judge on consideration of materials passed the order of conviction and sentence when this appeal came before this court.

25. The learned Counsel for the appellants has argued with much emphasis that there is no appreciation of evidence by the learned Trial Court who took an oblique view of the evidence in convicting and sentencing the accused persons. The learned Court below relied upon the evidence which is intrinsically weak and infirm as there is no evidence on record that both the appellants were the authors of the crime. Parimal was absent from home previous to the night of occurrence which the learned court below did not consider but ignored. The learned Court below made undue assumption of fact and law and convicted the accused-appellants extraneous to the materials on record. Not to speak of the evidence of the child witnesses, the testimonies are intangible and without considering the case of defence, the findings of the learned Court in fixing the accused persons with the crime are tainted. The Judicial confession is unwholesome as it was secured by force.

26. In developing his contentions, he has thoroughly contended that the place of occurrence is not the hut but elsewhere.

27. The evidence of Doctor is wholly unreliable and no conviction could be imposed on the accused persons.

28. The learned Counsel for the State has contended thoroughly that the evidence is so overwhelming and firm which inspires confidence. The motive for murder is preeminent that stands proved from the evidence and to accomplish the act. both the accused persons translated into action their motive in committing the murder of Manoranjan. The Judicial Confession is a sound piece of evidence, since consistent with oral and documentary evidence including the alamats.

29. Having given my anxious consideration to the contentions raised, if I take my journey through the evidence of the witnesses, the court will be assured of the truth or otherwise of the case. According to the evidence of Gaurpada Roy (P.W.1), Jagannath Sikdar (P.W. 7), Dulal Banerjee (P.W. 8), Biswanath Haldar (P.W.10). Adhir Haldar (P.W. 12), Gauranga Chandra Das (P.W. 22) and also from the evidence of Solaimuthu. the photographer, the evidence is clinching that the incident took place inside the hut as they found blood stained articles, blood on split bamboo walls and trail of blood from the hut to the fallen tree. The marks of dragging in addition to the above evidence leads to an irresistible conclusion that the hut was the P.O. which reached the fallen tree via Court yard. Ext. 17 evinces that there is no other room of the deceased. The contention that the incident occurred elsewhere fails. The police also seized different blood stained articles from the room of Manoranjan apart from Latti (Mat. Ext. XV) Dab (Mat. Ext. IX) mattresses and other articles.

30. P.W. 1 Gourpada Roy, P.W. 7 Jagannath Sikdar. P.W. 8 Dulal Banerjee, P.W. 10 Biswanath Haldar and P.W. 12 Adhir Haldar. have given a consistent testimony about the illicit relationship between Parimal and the wife of the deceased which has been attested by P.W. 22. Gauranga Chandra Das who was the lather of Lakshmi. his daughter. It is sought to have been discredited by the learned counsel for the appellants on the foot that it is hearsay. The illicit relationship which is secret in its origin cannot be seen but be felt and understood by the acts and conduct of the parties which received ample corroboration by the evidence of P.W. 22 Gauranga Chandra Das the father of the lady accused. He had no axe to grind against his daughter. He was tormented by the illicit relationship of his daughter with Parimal and the reasons assigned by her before her father leave no room for doubt that such relationship is not an idle allegation. The NCFIR. Ext. 15 is the earlier blush to the case of the defence on that score which was anterior in point of time. Suspicion ripens into belief which had its easy sailing in the evidence.

31. The witnesses named above are all villagers of the same village who had no motive to make profit out of the conviction and sentence of the appellants who were poor. There was no enmity between the appellants on one hand and the local witnesses on the other. If they were really foul of the appellants, they could introduce themselves as the eye witnesses to the occurrence. They have stated what they found in the premises of the appellant and its evidence surroundings. There

were adequate marks of dragging in the courtyard and their reflection on the persons of the deceased is borne out by the act which were antemortem and homicidal in nature. He has also opined that Latti (Mat. Ext. XV) and Dah (Mat. Ext. IX) might have been used for assaulting the deceased. It further stands proved that both the appellants inflicted assault with the above two weapons, in particular, when they are found by the Chemical Examiner that the blood had been detected. This evidence does not found to have been contradicted by any material worthy of credit. The injuries in the finger of Parimal proves the scuffling between him and deceased. Such injuries occurred 2/3 days before his examination by P.W. 9 Dr. Shariff which fits in with the occurrence.

32. There are discrepancies here and there about the evidence of the local witnesses but they are not discrepancies of truth. Even if I stare at the evidence of child witnesses P.W. 20 Arati Baroi and P.W. 21 Prasanto Baroi their evidence does not lurk any suspicion. I am not unmindful about the appreciation of evidence of child witness. It does not smack of foul play, it has been canvassed by the counsel for the appellants that they were child witnesses who were tutored to speak in favour of the prosecution. The lone contradiction in the evidence of PW 21 cannot outweigh his entire evidence as the other part of Aratis and his evidence lends considerable assurance to the case of the prosecution as the medical evidence and the Judicial confession afford reasonable belief about the authenticity and truthfulness of their testimonies. The loan taken by the deceased from his father-in-law, since not refunded by him. attributed to his murder is a far cry in the wilderness. Why the daughter will become a scapegoat for his alleged acts? It is a maneuver without any success.

33. The learned counsel for the appellants cultivate in his submission that no credence should placed to the judicial confession. Exhibit-18. which was retracted by the accused Parimal. The judicial confession. according to him. was not a reliable piece of evidence. The confession, since extracted from Parimal under police pressure and threat without affording any time for reflection is a worm in the apple nor it can be used against Lakshmi. Besides, the judicial confession in view of the guidelines laid down by the apex court and the procedure prescribed have not been followed in the letter nor the same can be used against the accused for being exculpatory in form.

34. This has been disputed by the learned counsel for the State. According to him, judicial confession is a sound piece of evidence which does not suffer from any infraction of law. It can be safely relied upon for the same being corroborated by the evidence both intrinsic and extrinsic. In making evaluation the claim of the learned counsel for the respective parties, it is manifest that the magistrate who recorded the confession was not examined. It has not been urged before me nor before the learned Trial Court that non-examination of the Magistrate who recorded the confession spelt any disaster and the rule of the procedure has been infringed.

35. It does not appear from the memo of appeal that any ground was taken about the non-examination of the magistrate who recorded the confession. On the contrary Ext. 18 has been admitted into evidence without opposition. The accused in this case was arrested on 23.3.1991 Who was produced before the court on 24.3.91. He was duly cautioned and warned by the magistrate before recording confession and that he was remanded to the judicial lock up for cool reflection. It is also patent that before recording confession on the day. the learned magistrate cautioned and warned him again and time was given for deliberation. The order sheets of learned magistrate reveal the due discharge of duties by him. The was no material before the learned magistrate that the statement was made involuntarily or under duress and coercion. Therefore, there was any infringement or infraction of the procedure before recording the judicial confession, as argues, is patently absent. On the other hand, the learned magistrate was satisfied about the voluntariness of the confession after due observance of the procedure. The certificate appended by the learned magistrate in respect of the judicial confession has not been challenged by the learned counsel for the appellants that the state of materials were contrary to the certificate given by the learned magistrate and the same is spurious.

36. Reverting back to examine the potency of the judicial confession. I leave on record that it is not the lone piece of evidence relied on by the learned court to base a conviction. The learned trial court exercised his Judicial wisdom is manifest from the Judgement. The law laid down by the apex court in Kashmira Singh Vs. State of Madhya Pradesh, is still holding the field and guidelines have been scrupulously followed by the court in the case before and the trial court examed it with due application on judicial conscience to which I cannot but agree.

37. The Id. Trial court examined the evidence independent of the confession and came to the conclusion that there is adequate evidence to connect both the accused with the crime. In my view, the evidence of the child witness, as indicated above, cannot be thrown overboard as they are children. There is no scope for fabricating false evidence against the mother and Parimal kaku. The judicial confession and the evidence of the child witnesses alongwith the evidence of the neighbours find corroboration from all corners. The evidence of PW. 20 Arati stands corroborated by the judicial confession about the mode and manner applied by them for the same. If the same was untrue, how did it agree with the judicial confession? The court must not forget that they were the worst hit by the occurence.

38. Parimal has given a graphic account of the occurrence which is in consonance with the evidence of PW. 1. PW. 7. PW. 8. PW. 10. PW. 12. PW. 20 PW. 21 and PW. 22 in all material particulars. Besides, the child witnesses had maturity of understanding and intellectual capacity to render an account of assault which never went contrary to the judicial confession. Mere omission to slate by PW. 1. Prasanto before PW. 24 that he had not seen Parimal Kaku to drag his father by tying a rope around his neck and saw the assault on his father by a Latti does not affect his

evidence nor the core of the prosecution case for the aforesaid reasons. The appellants were planning to liquidate Manoranjan that transpired even before the actual occurrence from Ext. 15 of which the father of Lakshmi was the maker.

39. She was feigning ignorance while she visited her father after the occurrence speaks a considerable volume against her conduct. She was speaking without thinking for which this calastrophe and it misses its aim.

40. Over and above, the injury sustained by Parimal in his right hand index finger, as found by the PW. 9 Dr. Shariff ensures with accuracy the voluntary character of judicial confession as it matches with the age of the injury and the circumstances leading to suffer such injury. It was the result of the biting and struggling that bore no dent.

41. The learned counsel for the appellants is sought to have exposed the infirmity of the prosecution case about the identity of the rope that found in the neck of the deceased and the tree. But the fact remains, since proven by the documentary evidence and the role played by each of the accused behind the offence. The evidence of PW. 1 sets at rest about the controversy of the rope.

42. Motive in a criminal trial is not consequential but in the instant case illicit relationship between the two appellants showed its head by the evidence of different witnesses and acknowledged by Parimal in his judicial confession. The death of Manoranjan will lead them to fortune to grab his land can hardly be ruled out in the absence of material to the contrary. Physical deficiency of Manoranjan was an agonising factor for her which is attested by PW. 22 the father of Lakshmi.

43. Upon scrutiny of the evidence it is found that the maker of the statement, namely Parimal has also implicated himself to a large extent in committing the offence about which the evidence as to pre-arranged plan is patent, since borne out by the NCFIR lodged by the father of Lakshmi.

44. In my view, judicial confession is not the only piece of evidence to connect the accused with the crime. There is other sound evidence independent of judicial confession which is so strong and convincing that conviction could be based even to the exclusion of the judicial confession.

45. Again the ease, in my view, does not rest on the circumstantial evidence alone. The evidence of PW. 20 and 2 could be taken aid of also as the incident occured in their presence.

46. The learned counsel for the appellants cannot convince me as to why the court should reject the testimonies of Arati and Prasanto under the pretence of their being child witness who were left to the care of their material grand-father. It is a fanciful immagination behind which there is no ring of truth. Non examination of Sukharanjan is attempted to have been made as capital, if. his examination would unveil the truth and that it would bring fresh showers to the case to the exclusion of

all other evidence on record. His non examination is not ipsofacto prejudicial unless the defence can prove that there was failure of justice which in the instant case is drawn to a blank. The court will decide the case on the basis of existing materials on record and not on anticpated materials.

47. Even if i throw their evidence out of consideration, I can make a legitimate inference for the materials on record that the case of the prosecution gathers assurance and proof from each circumstance by independent evidence forming a complete chain leading to the only hypotheses about the guilt of the accused which the learned trial court found. The court in Lakhjit Singh v. State of Punjab 1994 Supp (i) Sec. 173 laid down that in a case of circumstantial evident each circumstance must be proved beyond reasonable doubt to independent evidence and the circumstances so proved, must form a complete chain without giving any room to any other hypotheses and should be consistent with only the guild of the accused. I have also examined the circumstances in the background of the ratio decidendi laid down in the above decision and I am in full agreement with the learned court below. The evidence disclosed never left any gap nor created any break nor suspicion and conjecture took the place of. legal proof: but the evidence is immaculate forming the chain unbreakable.

48. In the perspective of the above, not only the occular testimonies but also the surrounding circumstances. Circumstantial evidence and the judicial confession proved the guilt of the accused to the hilt. if considered in isolation of each other or in conjunction with other, it appears that they bartered their conscience for lust and greed being oblivious of the fact that they were pelting stones to the glass house where they lived. It was a cloud which had no silver living.

49. I have gone through the explanation furnished by both the accused persons u/s 313 of the Cr.P.C. individually but I am not at all impressed by their answers and explanations. The explanation furnished is totally incredible and improbable.

50. The alibi defence as adumbrated by Parimal that he was working at the material point of time in the house of one Bikash is nothing but an attempt to catch the straw before drowning. He was gloating over the issue to shrieve his guilt but his silence and inaction to call in aid the said evidence has caused a shipwreck to his defence exposing its infirmity. The case of Surinder Grover v. State may called in aid, 1993 SCC (cri) 1030.

51. The learned counsel for the appellants has researched in his argument that the evidence of common intention is absent, for which. Lakshmi cannot be charged with an offence coming within the fold of common intention.

52. It is one of the settled principles of Law that common intention must be anterior in time to the commission of crime. It is also equally settled law that the intention of an individual has to be inferred from the overt act if conduct of from other relevant circumstances. Therefore the totality of the circumstances must be taken into

consideration in order to arrive at a conclusion whether the accused had a common intention in to commit the offence under which they can be convicted.

53. The prearranged plan may develop on the spot. In other words, during the course of commission of the offence all that is necessary in law is the said plan must proceed to act constituting the offence. The ratio decidendi in Joginder Singh v. The State of Haryana 1995 (Cri) 178 in still dominating the field.

54. In the perspective of the above ratio decidendi when the case is considered in the background of the occular testimonies, surrounding and circumstantial evidence in addition to documentary evidence, there can be no shred of doubt to come to the conclusion that the pre-arranged plan was conceived and the same was accomplished by the wife of Manoranjan and Parimal. The subsequent acts and conduct of both the accused persons add flavour to the crime which I have exhaustively discussed and copiously dealt with them. There was union of mind of the two to commit the murder as reflected by their acts and deeds is glaring. The combined action was aimed at to liquidate Manoranjan was complete.

55. In the background of the above the claim of the learned counsel for the appellants that Lakshmi should be exhonerated from the charge u/s 302 / 34 IPC is an argument ill-founded.

56. Thus on the whole, the prosecution has sufficiently brought home the guilt of the accused of murder blended with common intention.

57. I have gone through the judgement of the learned Trial Court meticulously which ran into several pages, the same in my view is not a prolix. It contains wealth of details and weighty reasons founded on law butteresed by impregnable facts and there is no material on record that any contrary view can be taken.

58. Thus upon examination of the conspectus of facts and circumstances of the case I cannot but hold that the order of conviction and sentence is water and airtight which does not call for any interference from this Court. Accordingly, the order of conviction and sentence is confirmed and the appeal stands dismissed. Let the L.C. record go down to the Ld. court below as expenditional as possible.