

(2000) 12 CAL CK 0028

Calcutta High Court

Case No: Criminal Appeal No. 278 of 1990

Sonatan Mahato

APPELLANT

Vs

State of W.B.

RESPONDENT

Date of Decision: Dec. 19, 2000

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 164, 173, 313
- Evidence Act, 1872 - Section 27, 8
- Penal Code, 1860 (IPC) - Section 302

Citation: (2001) CriLJ 3470

Hon'ble Judges: Sujit Barman Roy, J; Joytosh Banerjee, J

Bench: Division Bench

Advocate: Arup Ch. Chatterjee, for the Appellant; Sudipto Moitra S. Panchhal and Krishna Ghosh, for the Respondent

Final Decision: Dismissed

Judgement

Joytosh Banerjee, J.

This appeal is directed against the order of conviction u/s 302 passed on 24-3-90 against the accused/appellant and

against the sentence of imprisonment for life on such conviction.

2. In a nutshell, the case of the prosecution is that on 11-1-87 one dead body of unknown person was seen lying on the land of Jagabandhu

Mahato at village Krishnapur, P.S., Raipur, Dist. Bankura. The dead body was of a person aged about 40 years approximately, wearing green

underwear and white blood stained Genji. There was a deep bleeding injury on the left of the eyes. After the informant Prafulla Kumar Mahato

lodged an information to this effect to the O.C., Raipur P.S., Police Officer came to the place at about 12 noon on the same day.

Accused/appellant Sanatan was brought to the spot from his house which was situated near that place. Besides the informant (P.W. 1),

Nityananda Mahato (P.W. 4), Sitaram Mahato (P.W. 3) and others also came to that spot. The accused/appellant identified the dead body as that

of Chakradhar Mahato. Subsequently, Budhiswar Mahato (P.W. 9), the cousin brother of Chakradhar also came to this spot and identified the

dead body. The police officer held inquest over the dead body of the deceased and prepared a report. He also seized the blood stained lungi,

blood stained earth and control earth under seizure list. Thereafter accused/appellant, Sanatan led the police and the persons present, to his

thatched hut about 100 yards away from the spot. He opened the door by his keys. There was stain of blood at the side of a cot kept inside the

hut. Drops of blood were also found on the floor and walls. Accused/appellant, Sanatan brought out a small blood stained Kurul from the southern

rack of the wall and the same weapon was seized by the police officer under a seizure list in presence of the witnesses. The accused/appellant,

Sanatan also brought out a wrist watch which belonged to Chakradhar and which was hanging, from a nail on the eastern wall, of the room, police

officer seized the same. Accused/appellant Sanatan also brought out one blood stained white underpant. The police officer seized the garment

along with blood stained earth. Then accused, Sanatan led them to the land of the Jatin Mahato and brought out one red bed sheet and muffler

from there. It is also alleged, Sanatan the accused made extra judicial confession in presence of witnesses regarding murder of the victim. In course

of investigation of the case, police got the confession of the accused/appellant in respect of the murder of the victim, recorded by a judicial

magistrate u/s 164, Cr.P.C. The police"" on completion of the investigation submitted chargesheet u/s 302, IPC against the accused/appellant.

3. Subsequently, the learned Court below on the basis of the document referred to u/s 173, Cr.P.C. raised charge under Section, 302 IPC against

accused/appellant. The learned Court below on consideration of the evidence on record and in the facts and circumstances of the case came to a

finding that the accused committed the murder and thereafter convicted the accused and sentenced him as stated above.

4. The only question before us is whether in the facts and circumstances of the case and on the basis of the evidence on record, the

accused/appellant should be convicted, as done by the learned Court below or not.

5. In order to bring home the charge prosecution has examined in all 11 witnesses including P.W. 2 Ajit Mete, Defadar of Natunpur Gram

Panchayat through whom the informant Profulla Mahato, then Pradhan of the Anchal sent a written complaint to Raipur P.S. (subsequently the P.S.

has been re-named Sarenga). Besides this witness there is evidence of P.W. 5 Dr. J.N. Dey who was associate Professor and Head of the

Department of Forensic and State Medicine & B.S. College, Bankura and who on 12-1-87 at about 13.10 hours held P.M. Examination on the

dead body of the victim Chakradhar Mahato, P.W. 6, B.N. Biswas who at the relevant point of time was a Judicial Magistrate posted at Bankura

and who on 13-1-87 recorded the statement of the accused/appellant u/s 164 Cr.P.C, P.W. 7 Haridas Moira who was posted as Senior Scientific

Officer-cum-Assistant Chemical Examiner, State Forensic Science Laboratory, Government of West Bengal, Calcutta in January, 1987 and who

examined some Alamats in connection with the investigation of the case and submitted the report which was marked Ext. 9, P.W. 8, Jaleswar

Hansda who on 11-1-87 was posted as a Constable attached to Raipur P.S. and who accompanied the police officer to village Krishnapur on that

day along with another Constable to bring the dead body of the victim of the case Chakradhar to Bankura Morgue for Post Mortem examination.

The witness also stated about the seizure of the green underpant and white Genji, sample hair and other articles under a seizure list in his presence

by the Police Officer. P.W. 10 A. N. Tewari was O.C. Raipur P.S. on 11-1-87 who on the basis of a written complaint from the informant started

the police case and took up the investigation of the case. Practically this witness investigated the case and for that purpose visited the spot, seized

articles and examined the witnesses. We will discuss his evidence later on. P.W. 11 is S.I. T.K. Chakradar who on 13-7-88 took over the

investigation and after collecting the F.S.L. report and after observing certain formalities submitted the charge-sheet against the accused/appellant.

6. In this case, as it transpires from the judgment impugned, the order of conviction is based on the evidence of P. Ws. 1, 4, 9 and 10. So before

proceeding further with the discussion of evidence we should look into the total evidence adduced by these witnesses.

7. P.W. 1 stated in his evidence that on 11-1-87 on getting an information that a dead body was lying in the land of Jagabandhu Mahato at

Krishnapur P. S. Sarenga (formerly P.S. Raipur), the witness rushed to the spot at about 8.30 a.m. The witness found the body was lying there

and the dead person was wearing one green underpant and a blood stained genji. The witness found bleeding injuries in the left side of the mouth

near the left eye and the lips were found cut. Such body had also lacerated wound on the right side of the forehead. Then the witness through

Dafadar Ajit Mete sent, a written complaint to the local P.S. It further transpires from the evidence of P.W. 1 that the Police Officer visited the

spot at about 12 noon on the same day and that point of time such Police Officer brought the accused/appellant Sanatan from a nearby hut.

Accused Sanatan disclosed before the witnesses and other persons present there that the dead body was of Chakradhar Mahato of village

Thutasol, P.S. Rani Bandh and in this way he identified the dead body. Subsequently, such dead body was also identified by a relation of the

deceased, namely, Budhiswar Mahato (P.W. 9). The witness has further disclosed that after seizure of blood stained lungi and control earth on a

seizure list in his presence by the Police Officer, the accused Sanatan led the persons present including the Police Officer to his south facing

thatched hut at Krishnapur about 100 yards away from the spot that is to say the land of Jagabandhu Mahato. It was found that the door of the hut

was locked. Accused Sanatan opened the door by a key. Then the witness and others entered inside the hut and accused brought out a small

Kurul from a rack in the Southern wall of the hut. There was stain of blood on the blunt side of the said, weapon. Moreover, some hairs were

found pasted on the blunt side of such weapon. The Police Officer seized the weapon in presence of the witness and others on a seizure list.

Accused also brought out a wrist watch which belonged to the deceased Chakradhar from inside a bag kept hanging from the eastern wall of the room.

8. P.W. 4 Nittyananda Mahato stated in his evidence that on 11-1-87 he reached the spot at about 1.30 to 2 p.m. and he found the police officer

and other villagers who were present there. He also found a dead body with injuries on various parts on the body was lying at that spot. Accused

Sanatan identified the dead body as that of Chakradhar Mahato. The witness has substantially corroborated the evidence of P.W. 1 regarding the

fact that the accused led the persons present including the police officer to his hut and the subsequent events as described by P.W. 1.

9. P.W. 9 Budhiswar Mahato deposed stating that Chakradhar Mahato deceased was his cousin. The officer-in-charge of Rani Bandh P.S. asked

him to go to village Krishnapur P.S. Raipur and the said Police Officer took him to Krishnapur by his jeep and he found his cousin Chakradhar

lying dead on a land beneath a tree. Many persons had assembled there. Darogababu who held the inquest over the dead body of his cousin was

also there and at the time of such inquest the witness identified the dead body.

10. P.W. is A.N. Tewari who at the time of deposition before the Court of Session on 13-3-90 was the O.C. Barjora P.S. in the District of

Bankura. In January, 1987 he was O.C. Raipur P.S. He disclosed that on that day he received a written complaint from P.W. 1 and on receiving

the same started the case filing the formal F.I.R. and thereafter took up the investigation of the same. He along with the members of the force

rushed to Krishnapur under Raipur P.S. (at present Sarenga P.S.). He held inquest over the dead body of the victim who was identified as

Chakradhar by the accused/appellant Sanatan and P.W. 9 Buddhiswar cousin of the deceased. He prepared the inquest report and he sent the

dead body to Bankura Morgue for P.M. Examination. The witness added in his evidence that accused Sanatan had led them to his hut which was

under lock and key and the accused opened the lock by his key wherein a cot with marks of blood was found. The floor and the wall of the room

were also stained with blood. The witness seized the wearing half-pant stained with blood from the person of the accused on a seizure list. He

further stated accused Sanatan brought out a small Kurul from the southern rack of the wall and the blunt side of the weapon was stained with blood. The weapon, namely, Kurul was produced before the Court and on being identified it was marked Mat. Ext. 1. The witness further disclosed that besides examining the witnesses and recording their statements u/s 161, Cr.P.C. he seized sample of blood, sample of hairs, green coloured under-pant and white Genji of the deceased Chakradhar on being sent by Autopsy Surgeon. He also sent accused Sanatan to get his confessional statement recorded by the Judicial Magistrate, Bankura. He also sent sample blood, hair, kurul and other alamats seized in connection with the investigation of the case to the Forensic Science Laboratory for chemical examination and report. But before he could submit the report in final form on completion of the investigation he was transferred and he handed over the further investigation to another Police Officer. In the cross-examination, the witness admitted that he did not seize lock and key of the hut of the accused Sanatan. But he denied that accused Sanatan did not identify the dead body of Chakradhar or that said accused did not lead him and others to his hut or to the land of Jotindra or that he did not bring out any articles from his hut or from the land of Jotindra.

11. On going through the evidence of different witnesses, it is found that the conviction of the accused/appellant here is based on circumstantial evidence as there is no direct evidence to establish the involvement of the accused/appellant in the murder of the deceased Chakradhar Mahato.

12. It is well established now when a case rests upon circumstantial evidence, as in this case, such evidence must satisfy the following tests :-

(a) the circumstances from which an inference of guilty is sought to be drawn, must be cogently and firmly established;

(b) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused.

(c) the circumstances, taken cumulatively, should form a chain so complete that this points towards the accused and none else as the person

responsible for commission of the offence;

(d) the circumstantial evidence is of such nature that it should not only be consistent with the guilt of the accused but should also be inconsistent

with his innocence.

13. The learned Sessions Judge in the judgment impugned has relied on the following circumstances for satisfying himself regarding the guilt of the

accused and these are :- Firstly, that the accused led P.W. 1 Prafulla, P.W. 3 Nittyananda Mahato, P.W. 10 A. N. Tewari, I.O. to his hut which

was locked and he opened the lock by his key. This shows that accused Sanatan was in exclusive possession of the hut at the material point of

time. Secondly, Sanatan brought out the weapon of assault kurul Mat. Ext. 1 from the rack in the wall of the room which was not visible by the

witness, also, his blood-stained under-pant and the wrist-watch of the victim Chakradhar Mahato hanging from the wall of the room. The autopsy

surgeon gave his opinion that the head injury causing the death of Chakradhar Mahato might have been caused by the weapon like blunt side of the

kurul (Mat. Ext. 1). Thirdly, that the murder of Chakradhar was committed on the cot in the hut as there were marks of blood on the cot inside the

room, floor and wall of the room and the recovery of the wrist-watch of the victim Chakradhar established the fact that the victim was murdered

inside the hut and as such the wrist-watch was found there. Moreover, there was recovery of the bed-sheet and the muffler of Chakradhar the

2001 Cri.L.J. 218 deceased at the instance of accused Sanatan. Lastly, the learned Judge has pointed out that Sanatan made confession before

P.W. 3 Nittyananda immediately after the occurrence that he committed the murder of the victim. Along with these circumstances, the learned

Judge also considered the fact that on being examined u/s 313 Cr.P.C, the accused did not try to give any explanation, when he was asked

questions touching material facts. Even he did not offer any explanation regarding his confession as per deposition of P.W. 4 Nittyananda.

14. At the time of advancing his argument, learned Counsel for the accused/appellant has argued that the prosecution has failed to lead any

evidence to show the precise reason why the accused/appellant should be called to the spot. In this respect, the attention of the Court has been

drawn to the evidence of P.W. 11, the Police Officer who started the police case on the basis of an information that a dead body of an unknown

person was lying at the spot and who after starting the case came to the spot being accompanied by members of the force for the purpose of

investigation, to show that such police officer even could not give any explanation under what circumstances he called the accused/appellant to the

spot or to speak it more specifically the reasons for suspecting the involvement of the accused/appellant in the offence complained of. Secondly, it

is argued by the learned Counsel that the prosecution has not led any evidence to supply the motive behind the commission of such murder.

Thirdly, it is contended that since the police did not record the statement of the accused before the accused led the police and others to his house,

the evidence of the witnesses on the point that the accused led them to the house wherefrom the weapon of assault and other articles were

recovered, should not be admissible u/s 27 of the Evidence Act. Lastly, it is the further contention of the learned Counsel that the confession of the

accused recorded u/s 164 Cr.P.C. by the Judicial Magistrate is not in accordance with law and therefore there is only the alleged confession of the

accused/appellant before P.W. 3 which could not be relied on in the absence of corroboration from any other facts and circumstances.

15. Learned Additional Public Prosecutor appearing on behalf of the State on the other hand has submitted that motive is not absolutely necessary

for conviction in a case based on circumstantial evidence. If there is clinching evidence, pointing towards the guilt of the accused, there is no

necessity of supplying the motive in addition to such evidence. In other words, to bring home the charge levelled against accused on circumstantial

evidence, the prosecution has got no obligation to supply the motive for commission of such offence from the side of the accused. Regarding the

accused/appellant leading the police and others to his house and the subsequent events thereof, the learned Additional Public Prosecutor has

contended that in the facts and circumstances of the case it should be admitted u/s 27 of the Indian Evidence Act and if the same is not admitted

due to the fact that the information received from the accused, was not recorded by the police before working out the information, the same

Should be admissible u/s 8 of the same Act. It is submitted that the evidence of circumstances simpliciter that the accused led a Police Officer and

pointed out the place where the weapon which might have been used in the commission of offence, was found hidden would be admissible as

conduct, irrespective of whether any such fact would be admissible u/s 27 or such Act or not. He has further submitted that the learned Sessions

Judge is perfectly justified in not relying on the confession recorded by the Judicial Magistrate as the same was not recorded in accordance with

law. But at the same time, he has contended that the confession of the accused/appellant to the witness lends support to the chain of circumstances

disclosed in the evidence on record. Finally, he has submitted that the failure on the part of the accused/appellant to give any explanation regarding

material circumstances which go against him, on being examined u/s 313 Cr.P.C. should also be considered as one of the relevant circumstances.

In this respect he has placed his reliance on a decision of the Apex Court in State of Tamil Nadu Vs. Rajendran, .

16. Taking the first thing first, true it is that there is no evidence from the side of the prosecution to establish the precise reason for the Police

Officer to call the accused to the spot. But in our considered opinion, the absence of such evidence cannot go to the very root of the prosecution

case, to make the entire case improbable. The facts that accused was present at the spot where the dead body of the victim was discovered, has

been established by the oral testimonies of all the witnesses on the point of incident as discussed above. It is also to be noted that the witnesses like

P.W. 1, P.W. 3, P.W. 4 have stated very clearly that the Police Officer called the accused to the spot from his house and also that the house of the

accused was near the spot. This specific evidence regarding the presence of the accused/appellant at the spot, gets corroboration from the

evidence of P.W. 10, S.I., A.N. Tewari who as O.C. Raipur P.S. had been to the spot for the purpose of investigation of the case and who stated

categorically in his evidence that the dead body of the victim Chakradhar Mahato was identified by the accused and the cousin of the deceased

Buddheswar Mahato (P.W. 9). It further transpires that there is no cross-examination from the side of the defence disputing the presence of the

accused at the spot on that day and no cross-examination was also effected in respect of the statements of the witnesses that accused came to the

spot on being called by the Police Officer. Therefore, we have got no reason to disbelieve the version offered by the witnesses that soon after the case was started and the Police Officer came to the spot for the purpose of investigation, the accused was called there and he identified the dead body as that of the victim Chakradhar Mahato.

17. Regarding the absence of motive as alleged by the learned defence lawyer it should be pointed out that it is not necessary for the prosecution

to prove by any affirmative evidence which impelled the offender to commit the murder. It is not necessary for the prosecution to allege and to

prove a motive, much less the adequacy of motive. It is also true that in a case where motive has been alleged and has not been proved, the

prosecution must rest on firmer footing by the production of direct evidence beyond all reasonable doubt in order to sustain the charge against the

accused. In other words in a criminal case based on circumstantial evidence it is not essential for the prosecution to establish motive as one of the

circumstances but if such motive as a circumstance is put forward, it must be fully established like any other incriminating circumstances. In the case

of *Mulakh Raj, etc. Vs. Satish Kumar and others*, . The Apex Court has clearly indicated the position of law regarding the presence or absence of

motive in a case based on circumstantial evidence by observing as follows (Para 17):-

Undoubtedly in cases of circumstantial evidences motive bears important significance. Motive always locks up in the mind of the accused and some

time it is difficult to unlock. People do not act wholly without motive. The failure to discover the motive of an offence does not signify its non-

existence. The failure to prove motive is not fatal as a matter of law. Proof of motive is never an indispensable for conviction. When facts are clear

it is immaterial that no motive has been proved. Therefore, absence of proof of motive does not break the link in the chain of circumstances

connecting the accused with the crime, nor militates against the prosecution case.

Considering all these we find that the argument canvassed by the learned defence Lawyer that this case being a case based on Circumstantial

evidence, absence of motive will be fatal, has got no force.

18. Now the question is how far we could rely on the evidence on record on the point that the accused led the police and others to his house

wherefrom the weapon of assault and other incriminating articles were recovered. At the very outset, it should be pointed out that in dealing with the evidence on this point it should be stated very clearly that such evidence cannot be admissible u/s 27 of the Indian Evidence Act. On a bare reading of the terms of the Section 27 it appears that what is allowed to be proved is the information or such part thereof as it relates distinctly to the facts thereby discovered. The information would consist of a statement made by the accused to the Police Officer, who of course, is obviously precluded from proving the information or part thereof unless it comes within the four corners of Section 27. It is the statement giving information leading to discovery which is admissible in evidence. The mere discovery by following the accused cannot be admissible u/s 27 of the Indian Evidence Act, if it is not preceded by the informative statement. But still then, we are of the opinion that the conduct of the accused regarding his leading the police and other persons present at the spot to his house will be admissible u/s 8 of the Evidence Act. Of course, in doing so, we are required to take into account the conduct of the accused in its entirety. Now from the evidence on record we have already pointed out that it is an admitted position that the accused was present at the spot where the dead body of the deceased was lying and he was one of the persons who identified the dead body before the Police Officer in presence of the other witnesses. We get from the oral testimonies of P.W. 1 Prafulla Kumar Mahato, P.W. 4 Nittyananda Mahato that accused Sanatan led them to his south facing thatched hut at Krishnapur about 100 yards away from the land of Jagabandhu Mahato, the place where dead body was found lying. They found the door was locked. Accused Sanatan opened the door by his key. Thereafter, the witnesses along with police officer P.W. 11 entered into the hut and found that there was stain of blood at the side of a cot and one of its leg. Drops of blood were also found on the floor and walls. Then accused Sanatan brought out a small Kurul from a rack in the southern wall of the hut which had blood on its blunt side. Some hairs were also found pasted on the blunt side of the kurul. Accused also brought out a wrist-watch of the deceased Chakradhar from the eastern wall of the hut in presence of the witnesses and the Police Officer and also one

blood-stained white under-pant was taken out for the "Alna". The witnesses saw the Police Officer seize the cot, under-pant along with blood-

stained earth and control earth under seizure list. Accused Sanatan also took them to the land of Jatin Mahato and brought out one red bedsheet

and muffler which was also seized by the Police Officer. In his judgment the learned Trial Court rightly pointed out the relevant circumstances, as

noted above.

19. We have already seen that u/s 313 of the Evidence Act the conduct of any party to any proceeding any reference to any fact in issue therein, is

relevant, if such conduct influences or is influenced by any fact in issue or relevant fact and whether it was previous or subsequent thereto. In the

instant case, the fact in issue was whether the accused committed the murder of the deceased and the fact that he led the O.C and other witnesses

present at the spot, to his hut nearby, the fact that he opened the door of the hut which was kept under lock and key with his key, the fact that the

floor as well as the cot inside the room were stained with blood and that accused brought the weapon of assault from a place which was not visible

from out side along with the wrist-watch of the deceased are relevant facts under the provisions of Section 313 of the Indian Evidence Act.

20. Coupled with the aforesaid facts if we consider the evidence of P.W. 4 that the accused confessed his guilt before him and at that point of time

there was no police present where the accused made the confession, then chain of circumstances would be complete and such chain would point

out to the guilt of the accused and none else. Here we should add that P.W. 4 has clearly alleged in his cross-examination that on the date of

incident he went to the land of Jagabandhu Mahato at Krishnapur and accused Sanatan confessed before him at about 10.30/11 a.m. and at that

point of time no police was present. This witness was cross-examined at length but no suggestion even was given to such witness that the accused

did not make; any confession before him or that he did not disclose such material fact before the police on being examined by the I.O. in course of

the investigation of the case.

21. In this way, it is evident from the evidence of circumstances simpliciter that the accused led the Police Officer and others to his house and

pointed out the place wherefrom the weapon of assault and other articles were found, would be admissible u/s 313 of the Evidence Act and such

circumstances lend support to the confession made by the accused before one of the prosecution witnesses, namely, P.W. 4 and about which there

was no cross-examination or suggestion, any way pointing out that such confession should not be relied on.

22. Along with the aforesaid circumstances, the reported case of State of Tamil Nadu Vs. Rajendran, , relied on by the learned Additional Public

Prosecutor in advancing his argument will be much helpful for coming to the conclusion that considering the entire facts and circumstances of the

case which have been established through evidence, it can be said that such circumstances are consistent only with the hypothesis of the guilt of the

accused and inconsistent with his innocence. The Apex Court in the reported case has made the following observation (para 6) :-

In a case of circumstantial evidence, when an incriminating circumstance is put to the accused and the said accused either offers no explanation or

offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete.

In the instant case, the accused was questioned relating to all the materials circumstances including his confession before P.W. 4. He merely denied

those circumstances but did not offer any explanation/So the proposition made in the observation of the Apex Court fully apply to the

circumstances of the present case and on consideration of the circumstances noted above which have been established by the prosecution we have

no hesitation to come to the conclusion that the charge of murder raised against the accused/appellant has been proved beyond reasonable doubt.

23. In the result, the appeal fails. We do not find any reason to interfere with the conviction and sentence recorded by the learned Additional

Sessions Judge. Appeal is accordingly dismissed.

Sujit Barman Roy, J.

I agree.