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**(1986) 02 CAL CK 0027**

**Calcutta High Court**

**Case No:** None

Krishna Ch. Santra

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision:** Feb. 12, 1986

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302

**Citation:** (1986) CriLJ 2077

**Hon'ble Judges:** Sankari Prosad Das Ghosh, J; Lilamoy Ghosh, J

**Bench:** Division Bench

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### **Judgement**

Lilamoy Ghosh, J.

On the 18th of Dec. 1978, the dead body of Champa Santra was found. The prosecution case is that the accused, Kesto left with Champa the previous night and never returned. After the dead body was discovered at a different place, an F.I.R. was lodged by P. W. 1, Shri Mrityunjoy Bhakta. However, at the other end, that is in the village of the deceased, the family members did not know about the death of Champa. It is said on behalf of the prosecution that some persons, including Sunil (P. W. 15) made queries of the accused as to the whereabouts of Champai not knowing that by that time Champa was dead. Later on, according to prosecution version, the accused, Kesto, on being pressed, confessed before villagers that Champa was murdered by him. It may be mentioned in this connection that the prosecution case is that that night Champa left with Kesto with a radio in her hand. Besides, she had with her a muffler which has been exhibited also. On the basis of these pieces of evidences a charge u/s 302 of the I.P.C. was framed against the accused, Krishna Chandra Santra alias Kesto.

2. On behalf of the prosecution, 33 witnesses were examined. The accused declined to examine any witness. On a consideration of the materials on the record, the learned Additional Sessions Judge,

Hooghly found the accused guilty of the offence u/s 302 of the I.P.C. He was convicted accordingly and sentenced to R.I. for life.

3. Against that this appeal has been preferred by the accused Krishna Chandra Santra (alias Kesto Santra).

4. The learned advocate for the appellant Mr. B. N. Das has assailed the judgment of the Court below on several grounds. It has been submitted by him that there is no reliable evidence that the accused left with Champa on that fateful night and did not return. As regards extra judicial confession, the learned advocate has argued that the same has not been proved; secondly according to him, even if the said extra judicial confession be taken to have been proved, it could not be was assaulted by the villagers (sic). Then as regards recovery of certain incriminating articles, namely, the muffler and the radio the argument of the learned advocate for the appellant has been that these are concocted matters and in fact they were not recovered from the accused.

5. The learned advocate for the State has supported the judgment of the Court below. In short, his argument has been reverse to the argument of the learned advocate for the appellant. He has argued that there is clear and cogent evidence regarding the extra judicial confession of the accused, Kesto. As to the last journey of Champa and Kesto together, he has referred to the evidence of several witnesses that these two persons left together on 17-12-1979. Regarding recovery of the muffler and radio, said to have belonged to Champa, his argument has been that the evidence on the side of the prosecution is complete and trustworthy.

6. It would now be necessary to scrutinise the evidence independently and come to a conclusion as to whether the guilt of the accused has been proved. At the very outset a preliminary point may be disposed of and that is regarding the death itself of Champa. In short, death has been proved by the several members of the family of Cham A.P. W. 32, the constable, took the photograph of the dead body of Champa, Ext. VIII, P. W. 15 and P. W. 22 have proved that that is the photograph of the deceased Champa. It is felt that it is needless to dwell further on the point; death of Champa has been proved.

7. As to the incriminating circumstances against the accused relating to the death of Champa, there is, first, that group of evidence which goes to prove that Champa and Kesto left together on 17-12-79 and never came back. Incidentally, it may be pointed out that the death of Champa was the result of some injuries, homicidal in nature has been proved by medical evidence (and by) P. W. 28. Now P. W. 21 (sister), P. W. 22 (mother), and P. W. 25 (sister) have all proved that Champa and the accused Kesto left together that night. P. W. 21 is Renu Bala Baital. She is a married lady and she came to her father's house in connection with delivery of a child. It is deposed to by her that, that night, Champa borrowed some ornaments from her and ultimately left home in the company of the accused, Kesto. It is further stated by her

that Champa left the house for attending a Fulsojja ceremony. There is a background and the same too is narrated by the witness. It is made out that the accused and Champa were in love with each other and it was understood that they would get married. So against that background, it was not improbable that Champa would be leaving the house in the company of Kesto, and that is exactly what is deposed to by P. W. 21, the elder sister of Champ A.P. W.21 further proves that at the time of leaving the house Champa took with her one transistor radio (marked Ext. VI), and a muffler (Ext. V). Then comes P. W. 22, the mother of Champa. She deposes in the similar fashion that Champa left that night in the company of Kesto and took with her the radio (Ext. VI) and the muffler (Ext. V) P. W. 25 is another sister of Champa. This witness, Menoka Santra, narrates the same story with some additions. But for the present it is enough to notice that she confirms P. W. 21 and P. W. 22. These three witnesses, P. W. 21, P. W. 22 and P. W. 25, being the members of the family of Champa, must be the very competent witnesses as to the movements of Champa. They have also no reason to make out a false case that Champa left that night in the company of Kesto. It is unlikely the relations-of the deceased would unnecessarily try to rope in an innocent person. Now these P. W. 21, P. W. 22 and P. W. 25 are further corroborated by P. W. 8 and P. W. 15. They have stated that the other witnesses mentioned to them about the incident of Champa's having left in the company of Kesto. It goes without saying that the evidence on record also clearly makes out that Champa did not return after that night. So accepting the evidence of these witnesses referred to. we get a serious incriminating fact against the accused : he left with Champa that night and Champa did not return after that. The accused, after that did not make any effort for finding out Champa. He did not even care to inform the family members as to the missing of Champa. The link between Champa's leaving her house that night and her ultimate death, somehow becomes visible though not clearly yet established by itself. So we now turn to the next item of evidence, namely, the recovery of certain articles said to have belonged to Champa. It has been mentioned before that the witnesses have stated that Champa had with her the muffler (Ext. V) when she left with Kesto. P. W. 21, P. W. 22 and P. W. 25, to repeat, have proved that Ext. V belonged to Champa. Now we are concerned with the other link, namely, whether after Champa left with the muffler, the same was found in the possession of the accused, Kesto. It is narrated by the witnesses, namely P. W. 21, P. W. 22 and P. W. 25 that after the incident, Kesto was found moving around that area with the muffler. It is not safe to place much reliance on that part of the evidence; very likely that is an exaggerated version on the basis of imagination. It is most improbable that an accused would be brandishing the stolen property in the open. But even if that part is discarded, it is not necessary that the whole episode or story in that respect must be rejected outright. Kesto might not have brandished the articles but still he might be found to have been in possession of the same at some point of time or other. P. W. 8 and P. W. 15 have proved that the muffler was recovered from the possession of Kesto. It is true that there are some contradictions or discrepancies here and there. P. W. 15

had stated that in the Chinsurah P. S. he came to know that a muffler was recovered from the person of the accused. Thus, at first P. W. 15 does not claim that the muffler was seized by the police in his presence. Later on, however, he improves himself and says that the muffler was seized in his presence. Ext. 12/2 is the seizure list in respect of the muffler. It is noticed that there are some overwriting on the dates put by the seizure list witnesses. It may also be noticed that according to the S. I. P. W. 26, nothing objectionable was found on the person of accused Kesto when he was brought in the Singur P. S. It may be borne in mind that the accused was first produced in the Singur P. S. and he was taken to the Chinsurah P. S. It may strike at first that if the muffler was on the person of the accused, the same should have been seized by the Singur P. S. but P. W. 26 did not seize and has said instead that nothing objectionable was found. But though it may appear irreconcilable, the explanation of the same may not be far to seek; the Singur P. S. might not have thought the muffler objectionable, but ultimately the Chinsurah P. S. may have thought worthwhile to seize it. In spite of some over-writings on the dates of the seizure list etc. and in spite of some little discrepancies here and there it may not be doubted that the muffler was found from the person of Kesto. That Champa left with the muffler has been abundantly proved by the witnesses already referred to. The witnesses who first saw the dead body never saw the muffler : they saw some polythene packets etc. So the muffler was missing from Champa after she left with Kesto, and the prosecution have led some evidence that the said muffler was found from the person of Kesto. In spite of the discrepancies, there is no reason to disbelieve that ultimately the muffler was found from the possession of Kesto. That is most incriminating circumstance.

8. There is another important circumstance transpiring in evidence against Kesto and it is the recovery of the radio from the house of Kesto. P. W. 22, the mother of Champa and P. W. 25, the sister of Champa, have clearly proved that the radio (Ext. VI) belonged to Champa and that she took it with her when she left in the company of Kesto. P. W. 24 is a witness going to prove that Champa had purchased the radio from his shop. So one end of the case, namely, that the radio belonged to Champa and that she took it with her when she left with Kesto, has been proved by the unimpeachable evidence already discussed. Now P. W. 8 and P. W. 29 have clearly proved that this radio was found from the house of Kesto and his brother. P. W. 8 is Shri Tustu Charan Malik. P. W. 29 has proved that the radio (Ext. VI) was recovered from the house of Kesto and his brother. According to him, on 10-1-80, he, along with the police went to the house of the accused. His version is that the elder brother of Kesto brought out the radio, being requested by the latter. This radio is Ext. VI. There is nothing to disbelieve P. W. 29 that the radio was recovered from the house of Kesto. P. W. 30 is the elder brother of Kesto. He has, no doubt, denied that the radio was brought out by him from the house on the request of Kesto. There is nothing unusual in it. He being the elder brother of Kesto would undoubtedly try to shield him. He was declared hostile by the prosecution. Therefore the evidence of P.

W. 30 may be brushed aside. But on the evidence of P. W. 29 and considering the circumstances that the radio was missing since Champa left with Kesto, we are persuaded to believe that it was found from the house of Kesto. that is another link in the story.

9. These facts, by themselves are sufficient to prove the guilt of the accused. The case rests on circumstantial evidence and the circumstances disclosed above are quite sufficient to implicate the accused. But there are also other pieces of evidence against him.

10. So we now turn to the extra judicial confession of Kesto. This extra judicial confession of Kesto has been proved by P. W. 8, P. W. 15, P. W. 25 and P. W. 27. P. W. 8 is Sri Tustu Charan Malik. He is a member of the Panchayat. The case made out by him is that Sunil reported to him that Champa was missing for the last 3 or 4 days. Then on 3-1-80, while Kesto was passing along the District Board Road Sunil and some other persons called Kesto and took him to his shop. Later on, P. W. 8 further narrates, Kesto was taken to Barowaritola and there he confessed that he had murdered Champa. Similar is the version of P. W. 15 (Sunil), P. W. 25 Menoka Santra, and P. W. 27 Gobinda Chandra Koley. From P. W.25 Menoka, however, we have got that Kesto was assaulted by the villagers. Kesto was then crying, as stated by her. But it is not clear whether Kesto was assaulted before he made the confession or after the confession. It is quite natural that after one confesses that he has committed murder he would be assaulted. That by itself would not vitiate the extra-judicial confession. Even if one is assaulted before the said confession, to our mind that would not always vitiate the confession. What the Court has to see is whether the confession made was voluntary or not. If the confession was made voluntarily, and if it was not just a proposition put forth by the villagers or the police then in spite of assault the confession so far as the information disclosed is concerned might be called voluntarily. (From evidence of) witnesses, P. W. 8, P. W. 15, P. W. 25 and P. W. 27, we have no doubt that Kesto made the confession before the villagers that he murdered Champa. It has not been shown that these witnesses were in any way inimical towards the accused, Kesto. The said confession being reliable must also be accepted.

11. The chain is complete. The accused left with Champa that night and did not return. The deceased took with her one muffler and one radio and they were subsequently found from the possession of the accused Kesto and the accused made an extra-judicial confession before the villagers that he had murdered Champa. The guilt of the accused is proved beyond reasonable doubt. The learned Additional Sessions Judge has rightly convicted him u/s 302 of the I.P.C. The judgment and the order of the learned Additional Sessions Judge, sentencing him to imprisonment for life must be upheld. It may be mentioned that the learned Additional Sessions Judge, in his order has mentioned R. I. for life. The R. 1. for life is a misnomer; imprisonment for life itself is a kind of punishment and it cannot be

qualified by the words R. I. In any way the substance of the sentence is quite all right and the same must be maintained. The Appeal is dismissed. The judgment and order of the learned Additional Sessions Judge, convicting the accused/appellant u/s 302 of the I.P.C. and sentencing him to imprisonment for life are hereby upheld.

Sankari Prosad Das Ghosh, J.

I agree.