

(2004) 10 CAL CK 0036

Calcutta High Court

Case No: C.R.A. No. 272 of 1999

Mongat Ram Singh and Another

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Oct. 15, 2004

Acts Referred:

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

Citation: (2005) 1 CHN 421

Hon'ble Judges: Bhaskar Bhattacharya, J; Arun Kumar Bhattacharya, J

Bench: Division Bench

Advocate: Dilip Kr. Dutt, Biplab Kr. Mitra, Swapan Kr. Mallick and Debabrata Acharya, for the Appellant; Ashim Kr. Roy and Rupa Bandopadhyay, for the Respondent

Final Decision: Allowed

Judgement

Bhaskar Bhattacharya, J.

This appeal is at the instance of two convicts in respect of charges u/s 302/34 of the Indian Penal Code and is directed against the findings of guilt dated 10th August, 1999 and the consequent sentence dated 11th August, 1999 by which they were sentenced to suffer imprisonment for life and pay a fine of Rs. 1000/- each. In default of payment of such fine, they were directed to undergo a further imprisonment for a period of one month.

2. The facts giving rise to filing of this appeal may be summarised thus:

(a) At the instance of the Commandant, 140 Battalion of Border Security Force, a written complaint was lodged before the police that on July 31, 1995 at about 19:30 hrs., one B.S.F. Constable named Basant Singh of his Unit was murdered at Bhutkirhat at a distance of about 150 yards from the State High Way No. 12A by some unknown miscreants of Bhutkirhat on that day.

(b) On the basis of such complaint, Rajganj P.S. Case No. 61 of 1995 dated July 31, 1995 u/s 302/34 of the Indian Penal Code was initiated.

(c) After completion of investigations, ultimately, chargesheet u/s 302/34 of the Indian Penal Code was given against both the appellants herein. Both of them pleaded "not guilty" and claimed to be tried.

(d) The prosecution produced as many as eighteen witnesses altogether including the Investigating Officer. Documents marked as Exbts. 1 to 8 were relied upon by the prosecution in support of its case. The accused decided not to lead any evidence in support of their respective defences.

(e) The learned Sessions Judge on the basis of materials on record arrived at the findings that although there was no eye-witness to the incident of the murder, yet, as the appellants were "last seen together with the deceased" immediately before his death, the prosecution had been able to prove by circumstantial evidence that the appellants committed the murder. Thus, on the basis of the alleged circumstantial evidence, both the appellants were found to be guilty and as indicated earlier, were sentenced to suffer life imprisonment in addition to fine of Rs. 1000/-.

3. Being dissatisfied, the appellants have come up with the present appeal.

4. Mr. Dutt, the learned Senior Advocate appearing on behalf of the appellants has made threefold submission in support of this appeal.

5. According to Mr. Dutt, even if, we accept all the prosecution evidence to be true, there is no material to indict appellant No. 1 namely, Mongat Ram Singh (hereinafter referred to as Mongat).

6. As regards the other appellant, namely, Baxis Singh (hereinafter referred to as Baxis), according to Mr. Dutt, the prosecution had failed to prove any motive behind such murder and as such it will be unsafe to convict even Baxis on the basis of evidence adduced by the prosecution by applying "the last seen together" theory.

7. According to Mr. Dutt, in order to convict a person on the basis of circumstantial evidence, motive behind the murder must be well-established. Mr. Dutt contends that in this case, the only allegation against Baxis about the motive of murder is that he had illicit relation with the daughter-in-law of the landlord of the premises where the appellants and the victim were staying as tenants, for which the victim after hearing about the aforesaid illegal relationship from Mongat cautioned Baxis and for the above reason, Baxis was annoyed with victim.

8. According to Mr. Dutt, if on the basis of complaint by Mongat to the deceased, the latter admonished the appellant No. 2, in such a case, there was no justification of inferring motive of murder of the deceased alone but Baxis should also be angry with Mongat, the other accused who allegedly informed the victim about such

relationship. But in this case, Mr. Dutt continues, the prosecution has charged both Mongat and Baxis as the culprit which is a preposterous theory.

9. Mr. Dutt lastly contends that in the case before us, so far the questions put to the accused persons u/s 313 of the Code of Criminal Procedure are concerned, those were improperly framed and for such inappropriate framing of questions the appellants have been prejudiced resulting in unfair trial and consequent injustice. He, thus, prays for setting aside the order of conviction and the resultant sentences.

10. Mr. Roy, the learned Counsel appearing on behalf of the State-respondent at the very outset conceded before this Court that framing of questions u/s 313 of the Code of Criminal Procedure was not proper. Mr. Roy, thus, submitted that this Court should remand the matter to the learned Sessions Judge for retrial from the stage of framing questions u/s 313 of the Code of Criminal Procedure. This Court, Mr. Roy continues, therefore, should give an opportunity to the appellants to disclose their defence or to explain the circumstances after directing the learned Trial Judge to frame proper questions regarding involvement of the accused on the basis of evidence already adduced.

11. After hearing the learned Counsel for the parties and after going through the materials on record, we find that so far Mongat is concerned, the prosecution has miserably failed to make out any case whatsoever for implicating him in this case. As indicated earlier, there is no eye-witness of the incident. According to PW-1, the widow of the deceased, on the critical night, immediately after coming back from office, the deceased left for purchasing battery for his torch and immediately after he went away, she had seen Mongat who is also a tenant of the self-same premises to follow the deceased.

12. PW-2, a shop owner of the locality, in his evidence stated that on 31st July, 1995, in the evening the deceased who was his customer-came to his shop and he found two other persons along with the deceased who were in civil dress. According to this witness, the two accused persons were standing at a little distance from the shop while the deceased was paying his dues. Thereafter, he found the deceased to talk with the appellants near a cycle repairing shop and all the three were proceeding towards canal. However, PW-18, the Investigating Officer in his cross-examination admitted that PW-2 did not tell him that both the accused were standing at a little distance from his shop while the deceased was paying his dues to him. The said Investigating Officer further admitted that the PW-2 did not tell him that the victim was not only accompanied by appellant No. 2 but also by appellant No. 1 or that they went towards the canal on the day of occurrence. It is, therefore, apparent that on the face of such admission of PW-18, the evidence given by PW-2 regarding company of appellants with the victim on the eve of the incident should be excluded for consideration.

13. PW-3, the owner of the cycle repairing shop has stated that he saw the deceased to walk towards the west side of the road being accompanied by appellant No. 2 and within half an hour, he heard that there was a murder near the canal. The PW-3 did not mention the presence of the appellant No. 1 along with the victim and the appellant No. 2.

14. PW-4, a local resident claimed that on the said evening at about 7:35 p.m., he was gossiping in front of the shop of PW-3 and he found that the deceased and appellant No. 2 were proceeding together and within 15-20 minutes he heard hue and cry and came to know that the deceased was murdered.

15. From the aforesaid evidence it is clear that even according to the prosecution, appellant No. 1 was not "last seen together" with the deceased but it was appellant No. 2 who was last seen together. PW-1 the widow of the deceased had merely seen the appellant No. 1 to go out of the premises after the departure of the deceased and PW-2 had also seen both the appellants with the deceased; but PW-3 and PW-4 thereafter have seen appellant No. 2 alone with the deceased. The aforesaid evidence adduced by the PW-3 and PW-4 indicate that even according to prosecution, appellant No. 1 was not last seen together with the deceased as narrated by those two witnesses. Moreover, appellant No. 1 cannot have any motive of murdering the deceased as it was he who according to the prosecution informed the alleged illicit connection of appellant No. 2 with the daughter-in-law of the landlord and on the basis of such information, the deceased reprimanded the appellant No. 2 lest the deceased and other B.S.F people tenanted in that house are evicted by the landlord.

16. Thus, in this case there was no justification of implicating Mongat as he was not last seen together with the deceased on that evening and at the same time, there could not be any motive of Mongat to kill the deceased as he himself was the informer of the alleged relation of the appellant No. 2 with the daughter-in-law of the landlord to the victim and as such, no question of bearing any ill feeling against the victim arose for making conspiracy with the appellant No. 2 to kill the victim.

17. We, therefore, propose to set aside the conviction and sentence imposed upon the appellant No. 1 namely, Mongat as the prosecution has failed to make out any case against him for murder.

18. So far the appellant No. 2 is concerned, before entering into the merits of the allegations made in this case, we find that in examination u/s 313 of the Code of Criminal Procedure, the learned Trial Judge asked him four questions. The English translation of those questions and the answers given by the appellant No. 2 are quoted below;

"Q. No. 1 . I shall ask you some questions on which you may of may give (sic.) any reply and if so, that may be used against you as evidence. Understand ?

Ans. ; Yes.

Q. No. 2. Do you understand Bengali ?

Ans. :.....

Q. No. 3. P.W. 1 stated in his deposition that on 31.7.95 last at about 6.45 p.m. in evening her husband Basant Singh returned home from his duty and within 10 minutes he went out for purchasing torch light battery. Thereafter he did not return home. Accused Mongat Ram told her husband that you had illicit connection with the wife of the son of Niranjana Lal Dutta, the owner of the house and requested you to abstain from illicit connection. While her husband went out from his house he was put on a Khaki uniform pant, Gangee, T-shirt and one pair Howai Chappal and she proved these articles marked Mat. Exbt. I (collectively). On the following day of the incident you and Mongat Ram Singh along with your families went to the house. P.W.2 stated that on 31.7.95 last in the evening Basant Singh came to his bittle nut cum stationary shop to pay the dues money. You and Mongat Ram then stood in front of cycle shop at a little distance. Thereafter, you and Basant Singh went towards the canal. Thereafter at about 7:15 in the evening one boy informed about one murder. He identified you before the Court. Thereafter he heard that the person murdered was a B.S.F. staff. P.W.3 stated that on 31.7.95 last at about 7.15 in the evening he was in his cycle shop. He saw that you, Basant Singh and Mongat Singh were going towards west. He identified you. After half an hour, on receiving information he accompanied by some villagers saw that Basant Singh sustained injuries on his back, right-leg and right rib and lying dead. P.W. 4 stated that on 31.7.95 in the evening while he was talking with Pulak Sarkar in front of the shop of Pulak Sarkar he saw that two B.S.F. staff were passing by his side, one of them was you and the other was deceased Basant Singh. P.W. 5 stated that his brother Nakul Bhusun Das told that one B.S.F. staff named Basant Singh was murdered. On 31.7.95 at about 8 p.m. in the evening he accompanied by some other persons went near the canal and saw that the deceased lying dead with bleeding injuries by the side of the canal. P.W. 6 stated that on 31.7.95 he saw that one B.S.F. staff named Basant Singh being murdered lying by the side of Teesta Canal. P.W. 7 examined the deadbody of the deceased Basant Singh and proved P.M. report Exbt. I. He stated that death was due to shock and haemorrhage. P.W. 8 proved his signature on the deadbody challan Exbt. 2/1 and also signature on the seizure list Exbt. 3/1. He also proved the Khakipant and Ganjee Mat Exbt. 1 (collectively). P. W. 9 proved his signature on the carbon copy of the seizure list Exbt. 4/1. P.W. 11 identified both of you before this Court. P.W. 11 saw that the deadbody worn a Khakipant and Ganjee. P.W. 13 proved his signature on the seizure list of bloodstained fullpant, while Ganjee and P.M. blood Exbt.3/2. He also identified the articles Mat Exbt. I. He proved P.M. blood Mat. Exbt.II. P.W. 14 proved his signature on the inquest report Exbt. 4/2. P.W. 15 proved the written FIR Exbt. 6 and identified you before the Court. P.W. 16 proved his signature on the inquest report Exbt. 5/2 and identified you before the

Court. P.W. 17 proved his signature Exbt. 5/3 on the inquest report and identified you before the Court. P.W. 18 proved formal FIR Exbt. 7, sketch map of the P.O. Exbt. 8, inquest report, Exbt. 5, deadbody challan Exbt. 2, seizure list of seized articles Exbt. 3, endorsement on the written complaint Exbt. 6/1 and stated that after completion of proper investigation he submitted chargesheet against you according to law. What do you want to say ?

Ans. : Sir, I am innocent.

Q. No. 4. Will you adduce any defence witness?

Ans. : No."

19. It appears that the learned Trial Judge did not record any answer to the question No. 2 put to the appellant No. 2 whether he understood Bengali. Nevertheless, the questions were framed in Bengali. At the bottom of the answers, the learned Sessions Judge has certified that he dictated the questions in Hindi language and the accused admitted those to be correct. But what was the actual Hindi translated version is not available from the record. If the learned Trial Judge decided to translate the questions also in Hindi, there was no reason why those translated versions were not put into black and white. It further appears from record that the appellant No. 2 signed his name not in Hindi but in English.

20. In our view, since the appellant No. 2 did not sufficiently know Bengali to understand the complicated lengthy question put to him, it was the duty of the learned Sessions Judge to put separate questions drawing his attention to different allegations put forward by various witnesses implicating him so that he could understand the implication of those questions. Moreover, the translated version in Hindi put to him ought to have been recorded. In the absence of any answer whether the appellant No. 2 really knew Bengali at all, it was useless to certify that the appellant approved the translated version in Hindi to be correct translation from Bengali. The way questions were framed u/s 313 of the Code, it is very difficult to understand the actual allegations levelled against appellant No. 2 and thus, there has been no fair trial as regards appellant No. 2.

21. At this stage, it will be apposite to refer to the following observations of the Supreme Court in the well-known case of [Tara Singh Vs. The State](#), where the Apex Court emphasised on the requirement of complying with the formalities prescribed in Section 342 of the old Code of Criminal Procedure which is equivalent to Section 313 of the present Code:

"I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342, Criminal P. C. It is not a proper compliance to read out a long string of questions and answers made in the Committal Court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the

answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342, Criminal P. C, is so gross in this case that I feel there is grave likelihood of prejudice."

22. As mentioned earlier, no answer of the appellant No. 2 was recorded to the question No. 2 disclosing whether he understood Bengali and the fact that the questions were translated to Hindi itself suggests that he did not sufficiently understand Bengali. In view of such fact, it was the duty of the learned Trial Judge to be more cautious in putting questions when those were written in Bengali and translated in Hindi. We have already indicated that actual translated questions in Hindi ought to have been brought on record so that we could verify whether those were appropriate translations in Hindi. He should have asked him short questions indicating the circumstantial evidence adduced in the case which sought to implicate him so that the appellant No. 2 could understand clearly the implications of the circumstantial evidence. The duty of the learned Judge was more onerous in this case as there was no direct evidence of committing the alleged crime. In a case of murder based solely on circumstantial evidence, the motive behind the alleged crime being a vital factor, it was the responsibility of the learned Trial Judge to precisely point out the evidence, if at all, adduced against him disclosing the motive so that the accused could, if he so desired, explain the circumstances for dispelling the doubts, if any. The nature of the questions put to him in this case leaves no doubt in our minds that the irregularities committed by the learned Trial Judge in this case have definitely prejudiced the trial.

23. So far the allegations against appellant No. 2 are concerned, as indicated earlier, there has been no fair trial against the appellant No. 2 in view of nature of questions put to him u/s 313 of the Code of Criminal Procedure and at the same time, there is no material on record showing the exact translated form of those questions in Hindi

for our scrutiny and as such, in our view, the matter should be remanded back to the learned Sessions Judge for proceeding afresh only against appellant No. 2 from the stage of asking questions under Sections 313 of the Code. After framing appropriate questions, those should be translated in the language desired by the appellant No. 2 and such translated version must be kept on record. The appellant No. 2 should be given an opportunity to explain and if he so desires, he would also be free to lead evidence in support of his defence. We refrain from entering into the merits of the case against him at this stage and the learned Sessions Judge while hearing the case further will not be influenced by our observations while acquitting Mongat. We make it clear that we have not at all considered the veracity of the evidence adduced against the appellant No. 2 and we restricted our scrutiny only to the evidence adduced against the appellant No. 1.

24. The appeal thus succeeds. The order of conviction and the sentence imposed upon the appellant No. 1 is set aside. The appellant No. 1 be acquitted of the charges framed against him and be released from the Judicial Custody immediately if not wanted in any other case. So far the appellant No. 2 is concerned, although the conviction and the sentence imposed upon him are set aside, the matter is remanded back to the learned Sessions Judge for retrial in the light of the observations made in the body of this order. Since the matter is pending for the last nine years, we direct the learned Additional Sessions Judge, First Court, Jalpaiguri to conclude the proceedings positively within two months from the date of arrival of the Lower Court Records.

Arun Kumar Bhattacharya, J.

25. I agree.