

(2011) 08 CAL CK 0118**Calcutta High Court****Case No:** C.R.A. No. 371 of 1990

Ramesh Chandra Debnath

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Aug. 3, 2011**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 201, 302, 498A

Citation: (2011) 5 CHN 501**Hon'ble Judges:** J.N. Patel, C.J; Ashim Kumar Roy, J**Bench:** Division Bench**Advocate:** Navanil De, for the Appellant; Debasish Roy and Anasua Sinha, for the Respondent**Final Decision:** Dismissed

Judgement

J.N. Patel, C.J.

In Sessions Trial No. 18 of 1989, the Appellant-accused was prosecuted on a charge of having committed murder of his wife by throttling and alongwith his mother for having committed offence under Sections 498A, 201 of Indian Penal Code. By judgment and order dated 24.7.1990 he was convicted and sentenced to suffer imprisonment for life and to pay a fine of Rs. 5,000/-, in default to suffer rigorous imprisonment for one year for offence u/s 302 of Indian Penal Code and Appellant and his mother were acquitted of the charge u/s 498A and 201 of the Indian Penal Code, against which this appeal has been filed.

2. It is the prosecution's case that in between the night of 29th and 30th April, 1984 (16th Baishak in Bengali Calendar) the Appellant-accused Ramesh Debnath, son of Ramani Mohan Debnath committed murder of his wife, Bedana Debnath in their bedroom and lodged a report with Alipurduar Police Station on 2.5.1984 at 8.30 hours of the incident that Bedana was lying dead in her bed room. On getting information, the police visited the place of occurrence and prepared an inquest

report by registering an U.D. Case No. 40/1984 dated 30.4.1984 with Alipurduar Police Station.

3. The deabody was sent for post-mortem examination. After conclusion of investigation, the police filed charge sheet against the Appellant-accused for having committed murder of his wife u/s 302 of the Indian Penal Code and for having committed offence under Sections 498A/201 of Indian Penal Code alongwith his mother Smt. Parul Debnath. The case was committed to the court of sessions.

4. In reply to the charge, the Appellant-accused pleaded not guilty and claimed to be tried. According to Appellant-accused, he along with his mother had gone to attend a "kirtan" and on returning he found that Bedana was dead and denied of having lodged any report with the police that his wife died on her bed room during that night.

5. The prosecution examined in all 18 witnesses to prove their case. On conclusion of the trial, the learned Additional Sessions Judge found the Appellant-accused guilty of having committed offence of murder and acquitted 3 him and his mother for the charges under Sections 498A, 201 of the Indian Penal Code.

6. Learned Counsel appearing for the Appellant-accused submitted that the prosecution having failed to establish any motive, the trial Court acquitted the Appellant-accused and his mother of the charges under Sections 498A/201 of the Indian Penal Code. Therefore, in the absence of any evidence on record to show that the Appellant-accused had any strong motive to commit the murder merely because the victim was found dead in her bed room will not be sufficient to hold that the Appellant-accused has committed the murder. It is further submitted that there is evidence on record to show that the Appellant-accused, his family members and his wife have settled their domestic quarrel by "salish" and, thereafter, Bedana was residing happily in the matrimonial home and, therefore, there is no reason for the Appellant-accused to have committed her murder.

7. It is submitted that on the day of the incident along with the family members there were other guests in the house and as such it is doubtful whether the Appellant-accused would commit murder of his wife. It is submitted that the First Information Report came to be lodged on 1.5.1984 after the arrest of the Appellant-accused. It is submitted that the prosecution case that the accused reported that his wife died in the home is not correct as no such complaint was lodged, and this is an attempt to falsely implicate the accused.

8. It is further submitted that the prosecution also claim an extra judicial confession alleged to have been made by the accused to P.W.1 who does not support the prosecution case and has been declared hostile. Further, the 4 prosecution witnesses 2, 3 and 4 do not corroborate or support the prosecution and, therefore, no reliance can be placed on extra judicial confession.

9. It is submitted that the trial Court has sub served its own reasons to fill up lacuna in the prosecution case which led to finding of guilt without there being any evidence on record.

10. Reliance has been placed on the case of Ranjit Singh v. State of Punjab, reported in (2011) 2 C CrLR (SC) 467, in support of the contention that just because the incident happened in the matrimonial home and there is an extra judicial confession it cannot be presumed that husband has committed murder.

11. The basic onus of the prosecution to prove its case does not change mainly because the victim is the wife of the Appellant-accused and, therefore, it is submitted that this is a fit case where the Appellant-accused can be acquitted by extending a benefit of doubt.

12. On the other hand, learned Public Prosecutor appearing for the State submitted that this is a case based on circumstantial evidence and prosecution has proved that the Appellant-accused had a motive to commit murder of his wife as she was treated with cruelty and was tortured by the family members.

13. It is submitted that it has come on record that a "salish" was held in a Panchayat and after persuasion the victim, Bedana agreed to reside in the matrimonial home.

14. It is submitted that taking advantage of the fact that there was a "kirtan" in the neighbour's house, the Appellant-accused strangulated his wife which is established by the medical evidence.

15 It is submitted that the witnesses, particularly the guests who have stayed back in the house of the Appellant-accused after the "kirtan", have supported the prosecution, so also the neighbours and, therefore, the trial Court was justified in convicting the Appellant-accused.

16. It is submitted that though the Appellant-accused and his mother have been acquitted of the charges under Sections 498A/201 Indian Penal Code for want of evidence, this does not necessarily mean that the Appellant-accused is not guilty of having committed murder of his wife.

17. In reply to the submissions of the learned Counsel appearing for the Appellant-accused that as there was no material to prove that the Appellant accused is responsible for murder of his wife, it is submitted that the Appellant accused had given a false explanation in respect of cause of death of his wife and, therefore, non-explanation or false explanation forms an additional link in the chain of circumstances and is sufficient to hold that the Appellant-accused is guilty of having committed murder of his wife who died a homicidal death. In support of his conclusion, the Learned Public Prosecutor has placed reliance on two decisions of the Supreme Court in the case of Swamy Shraddananda v. State of Karnataka, reported in (2008) 2 SCC (Cri) 332, and in the case of Manu Sao v. State of Bihar, reported in (2011) 1 SCC (Cri) 370.

18. The only point which arises for determination is whether the Appellant accused had committed murder of his wife by strangulating her to death. In order to prove that the victim Bedana, wife of Appellant-accused died homicidal death, the prosecution has examined Dr. Bidhan Kumar Sanyal, P.W.15. According to him, the dead body of Bedana was sent to Alipurduar Hospital on 1.5.1984 for postmortem examination which was conducted by Dr. Sanyal. Dr. Sanyal, P.W.15. in his evidence has deposed:

On examination I found the following external features:

Rigor mortis absent, cyanosis in nail bed present, sign of hemorrhage inside both the eyes.

1. There are two bruises over the neck 1 1/2" apart with congestion of muscle underneath accompanied with fracture of hyoid bone.

2. Bruises over 1 1/2" left side of mid point of lower jaw.

3. Bruises over chest 4"x2" and 3"x2" on right and left side and on dissection I found hematoma underneath along with fracture of dislocation of right clavicle. Both the lungs were congested. Stomach full with undigested matter. Uterus about 20 weeks male dead foetus.

Cause of death- in my opinion the death was due to throttling which was ante mortem and homicidal in nature.

Nail bed is the lower side of the nail attaching the skin.

The injuries found on the chest of the victim might be caused if the victim is strangulated by the assailant by putting his or her knee on the chest of this victim. The injuries on the neck as found externally could be caused if fingers of both the hands are used or employed in the act of throttling the victim.

The hyoid bone was fractured because of putting of pressure on the neck for strangulation or throttling to death of the victim and the pressure must have been very high. The pressure that is the severe pressure with fingers on the neck of the victim was to cause the death of the victim invariably and instantaneously. Rigor mortis starts after death and it may exist for 48 hours depending upon climatic condition.

19. In the cross-examination, it was suggested that the injuries found on the neck and chest could be caused by some other means like a person may sustain such injury on the chest by fall on a hard substance from high place to which the doctor's answer was- may be possible. It was also suggested in respect of the injuries found on the neck that it can be caused by paws of an animal to which the doctor explained that in case attacked by animal on the neck of the victim with paws there would be nail marks of the paws. On the other hand, it has come in the cross-examination of Dr. Sanyal that he did notice marks of injuries on jaw stated by

him and the injuries on the chest might be due to the resistance offered by the victim. He has also denied the suggestion that the femur was found to be fractured. To sum up, the doctor's evidence could not be shaken and his finding as to cause of death was due to throttling which was ante-mortem and homicidal nature remained unchallenged. Therefore, we have no hesitation to arrive at a conclusion that the victim died homicidal death due to throttling.

20. Now let us examine whether the prosecution proved that the Appellant accused has committed murder of his wife.

21. Prosecution has examined Harendra Chandra Debnath, P.W.1, Sri Durga Shankar Roy, P.W.2, Tarai Chandra Pandit, P.W.3, Motilal Debnath, P.W.4 who are co-villagers and conversant with the affairs of the family as well as the incident. It has come in their evidence that they know the family members well and that on the day of the incident they had gone to the place and found that Bedana was lying dead in her bed room. In their presence an inquest was held over the dead body of Bedana by the police. Harendra Debnath, P.W.1 is the witness before whom the inquest report was prepared. Though he has not supported the prosecution case wholeheartedly, he stated that the dead body was inside the dwelling room of the Appellant-accused Ramesh which is bedroom and it was lying on the bed and the deceased appeared to be sleeping. He is the person who has lodged the first information report at the police station, but did not support the prosecution, that the Appellant-accused Ramesh Debnath had made extra judicial confession to him when he enquired from him the cause of death of his wife but accepted that he along with P.W.s 2, 3 and 4 had gone to the police station with the police in their vehicle along with the Appellant accused. So far as other witnesses are concerned namely Shri Durgashar Roy, P.W.2, Shri Taresh Chandra Pandit, PW3 and Shri Motilal Debnath, PW4, they have deposed about the fact that 15 days before the death of Bedana a "salish" was held at their village to settle the dispute between Ramesh and Bedana. Bedana was not willing to stay with her husband as he as well as her mother-in-law were beating her and was not being given proper food. In the "salish", Ramesh was asked not to ill-treat his wife Bedana and Bedana assured that she would take proper care of her matrimonial home and started residing with her in laws. They had all seen the dead body of Bedana in the bedroom of Ramesh and noticed two marks of finger on the two sides on the front of the throat and are also witnesses to the inquest report.

22. According to them, Harendra, P.W.1 told them that on enquiry from Ramesh Debnath he has stated that he killed his wife. Therefore, when they asked Ramesh Debnath directly he said that it was true. P.W.5, Paresh Debnath is the father of the deceased who has given evidence to the effect that initially his daughter was living in peace in her matrimonial home for a year but thereafter she was subjected to cruelty. His daughter Bedana used to complain against the Appellant-accused and his mother for torturing her and that she was not provided with food properly by her in-laws and was not supplied with soap and oil and was beaten up by her

husband. He also stated that Bedana told him that while she was sick and suffering from fever she was forced to work in the house and out of fear she had to take shelter in the house of Jagabandhu and she was unwilling to stay at the house of her father-in-law and thereafter on the intervention of villagers a "salish" was held and Bedana was pacified by the arbitrators and Appellant-accused Ramesh Debnath was directed not to ill-treat Bedana, and warned that he would be punished if he continues such type of ill-treatment with Bedana again. On this settlement, Ramesh took Bedana back to her matrimonial home.

23. Even this witness had deposed to the effect that P.W.1 Harendra Debnath told him that Appellant-accused Ramesh confessed before him that he has killed his wife Bedana. Therefore, on the day he along with P.W.s 1, 2, 3 and 4 went to Alipurduar Police Station taking Appellant-accused Ramesh Debnath with them and Harendra Chandra Debnath, P.W.1 gave ejahar at the Police Station and Ramesh Debnath was taken into police custody.

24. Therefore, the evidence of these witnesses clearly go to show that the Appellant-accused Ramesh treated his wife Bedana with cruelty and she was beaten up and not provided with food. This goes to show that the relation between husband and wife was strained and Bedana was victim of torture and harassment by her husband who used to beat her frequently.

25. The first person who was called by the Appellant-accused Ramesh after his wife was dead, is a Homoeopath doctor, Harish Chandra Roy (P.W.10) in the village. He has stated that he practices homoeopathy medicine in his village. On the day of the incident between 1.30 a.m. to 2.00 a.m. Suresh, brother of the Appellant-accused came to his house with one person. Suresh told him that his "body" had suddenly fainted and his father requested him to visit his house. So as insisted by him he went to their house and found many persons present there and that they were telling the girl was dead. He entered into the eastern bhita room of Bedana and found wife of Ramesh lying. He found her to be dead. This witness was declared hostile as he did not support the prosecution case that the Appellant-accused has told him how his wife died and that he has suppressed the truth because he has got cordial relation with the Appellant-accused. If we consider the evidence of Harish Chandra Roy, P.W.10 it is clear that Bedana died in the middle of the night when the homoeopathic doctor had visited the house of Appellant-accused Ramesh between 1.30 a.m. to 2.00 a.m.

26. Prosecution also examined Smt. Usha Rani Debnath who had stayed over in the house of the Appellant-accused after her return from "kirtan" and woke up on hearing shouting and found wife of Ramesh was lying dead in the eastern of bhita room.

27. Similarly, one Renubala Debnath, P.W.13 was also present in the house having gone to "kirtan".

28. The evidence of these witnesses who were present in the house of Ramesh on the night of the incident to the effect that Appellant-accused, Ramesh and Bedana were in the bed room and in the middle of the night they were woken up and noticed that Bedana was lying dead in her bed room, clearly goes to show that the prosecution has established that at the time of her death Bedana was sleeping in the bed room along with her husband.

29. Therefore, it was within the exclusive knowledge of Appellant-accused Ramesh as to how his wife suffered homicidal death, to be specific murdered, in the bedroom and he having failed to explain the manner and cause of her death is an additional link in the chain of circumstances which clearly establishes the guilt of the Appellant/accused. Therefore, on going through the prosecution case we have no hesitation to hold that the prosecution has established that the Appellant-accused, Ramesh was present in the bedroom along with his wife at the time she was murdered which goes to show that the Appellant-accused had 12 opportunity to commit crime and the fact that he had strained relation with his wife and false explanation of the Appellant-accused clearly goes to show that the chain of circumstances is complete as there is no possibility of any other person having entered in the house of the Appellant-accused so as to murder his wife.

30. Therefore, we find that the trial Court has not committed any error in arriving at a conclusion that the Appellant-accused is guilty of having committed murder of his wife.

The appeal is, therefore, dismissed.

Ashim Kumar Roy, J.-

I agree.