

Santal alias Tarapada Kapri Vs The State

Court: Calcutta High Court

Date of Decision: Feb. 11, 1997

Acts Referred: Penal Code, 1860 (IPC) " Section 201, 302, 34

Citation: (1998) 1 ILR (Cal) 529

Hon'ble Judges: Nure Alam Chowdhury, J; Debi Prosad Sarkar-II, J

Bench: Division Bench

Advocate: Tarun Kumar Banerjee and Rudranil De, for the Appellant; Sasanka Ghosh, for the Respondent

Judgement

Debi Prosad Sarkar-II, J.

This criminal appeal is directed against the judgment and order of conviction passed by the learned Additional

Sessions Judge, 1st court of Bankura in Sessions Trial No. 1 of January, 1991 arising out of Sessions Case No. 7 of May, 1990 having reference

to the Patrasayar P.S. Case No. 51 dated October 1, 1989 under Sections 302/34 and 201/34 Indian Penal Code.

2. The facts leading to the appeal are in short as follows:

3. That on January 10, 1989 a quarrel ensued between the deceased and the accused convict-Appellants over the death of one buffalo. It may be

noted that the deceased and the Appellants were brothers and by profession milk-men. One of the Appellants, during such quarrel, demanded

one-third price of that buffalo from the deceased, the deceased refused to pay and the Appellants then assaulted him severely at about 7 in the

morning of the day. The Appellant, Tarapada, directed the other Appellant, Brindaban, to seize the buffalo of the deceased from the field and to

sell it out and accordingly, both the Appellants proceeded towards the grazing field inside the jungle. The deceased also followed them with an

intention to resist. The P.W. 10, the widow of the deceased, apprehending some trouble tried to prevent her husband from going to the forest. But

she could not be successful. P.W. 10 also followed her husband but she could not catch hold of him, rather tried to take rest under a tree.

According to her, about 25 minutes later, she found the Appellants to carry the body of her husband. He was threatened to be murdered by the

Appellants and she then rushed to the village and informed the villagers and accompanied by the villagers she came back to the forest side and

found the dead-body of her husband hanging from a nearby tree with a rope. The rope was cuttoff and the body was brought down and ultimately

in course of the same day information was lodged with the police and the police case was started. After investigation, charge-sheet was submitted

and the matter was committed to the court of sessions. It was tried by the Additional District Judge, Bankura, who after completion of the trial,

was pleased to find both the Appellants guilty to the charges under Sections 302/34 and 201/34 Indian Penal Code and sentenced them to suffer

life imprisonment for the first offence and for one year for the second offence with direction that both the sentences should run concurrently.

4. On being aggrieved by such order of conviction and sentences, the present appeal was preferred, inter alia, on the ground that the learned trial

judge failed to appreciate the evidence in the proper light and praying for setting aside the impugned judgment and order.

5. The learned Advocate appearing for the Appellants as well as the learned Advocate for the State, both have made their respective submissions

in support of and against the impugned judgment and order. It is clear from the impugned judgment as well as from the submission of the learned

Advocates for both sides, that there is no direct evidence in this case on which Court could rely on. But the trial court based its decision on the

circumstantial evidence.

6. It is necessary to be mentioned that P. Ws. 2, 3, 7 and 8 turned hostile and they were cross-examined by the prosecution. Whatever it may be,

the evidence of these witnesses hardly could support the prosecution case. The only evidence we find is that of P.W. 10 i.e. the widow of the

deceased and the medical evidence and the evidence of the police officer who took part in the investigation. It is submitted by the learned

Advocate for the Appellants that P.W. 3, Pagal Mal, who was declared hostile by the prosecution stated in his cross-examination by the defence

that he noticed saliva and froth coming from the cheek of the deceased, whose body was lying under a tree on earth. The learned Advocate has

given emphasis on this particular evidence to show that it was not a case of post mortem hanging, rather it was a case of suicide by hanging,

otherwise marks of saliva and froth would not be there.

7. In this regard it is necessary to be mentioned, that the police officer who held the inquest over the dead-body did not mention the mark of saliva

and froth in his evidence at the time of holding inquest. It is submitted by the learned Advocate for the Appellants, that the inquest report is not in

the record. Absence of inquest report from the record, I think, can hardly benefit the Appellants in any way; because, the probative value of

inquest report is confined to unnatural death. It cannot be substituted for Post Mortem report or injury report. Whatever it may be, disclosure from

the facts on record, that P.W. 3 who made that isolated statement, also turned hostile and as such his statement to that extent cannot be relied

upon on accepted for the purpose of discarding the prosecution case on that particular ground.

8. The medical evidence i.e. the evidence of the Autopsy Surgeon, discloses that the death was caused by strangulation homicidal and ante-

mortem in nature. This medical evidence as to the cause of the death supports the evidence of facts as stated by the P.W. 10, the wife of the

deceased.

9. We have already referred to her evidence that she followed her husband into the forest; but could not trace him out and she had to take rest

under a tree. After 25 minutes she found these two Appellants to carry the dead-body of her husband. This particular evidence of fact has not

been challenged in cross-examination. Therefore, this evidence stands unassailed. P.W. 10 also stated in her evidence that when she rushed to the

village to inform the villagers and came back to the spot accompanied by some of the villagers, she found her husband's body hanging from a tree.

In this connection it is very much relevant to note the evidence of the I.O. that the height of that tree was only 9 feet. However, the dead-body was

brought down by cutting down the rope from the tree. It is pointed out by the learned Advocate for the Appellants, that P.W. 10 stated first that

the dead-body was brought down by Tarapada, one of the Appellants and in cross examination, she stated that the dead body was brought down

by Brindaban. There is some inconsistency but the inconsistency is so minor and insignificant that it could hardly strike the credit of the prosecution

case. The evidence of P.W. 10, in fact, stands unassailed and corroborated by the evidence of P.W. 9, the Autopsy Surgeon. That apart, the

evidence of P.W. 10 that she saw the Appellants to carry the dead-body of her husband from inside the forest, renders the case of suicide

improbable. Because, when she saw the body of her husband carried by the appellants, he was either dead or senseless, and it is not possible

either for a dead person or a senseless person to commit suicide.

10. In this connection we should also refer to the incident which took place in the morning. It is the evidence of the P.W. 10 that over the issue of

death of a buffalo, there was quarrel amongst the brothers and those two brothers i.e. the Appellants, assaulted her husband at that time severely.

The fact of such assault is also supported by the medical evidence; there were as many as 11 abrasion on different parts of the body including the

vital parts. After the first episode, second episode of murder took place.

11. Therefore, considering the facts on record, specially the evidence of P.W. 10 along with the medical evidence i.e. the evidence of P.W. 9, we

find the unbroken chain of circumstances which leads us to the irresistible conclusion that the Appellants are the authors of the alleged offence.

12. In the above circumstances, we do not feel it necessary to interfere with the findings of the learned trial court in this regard. Accordingly, the

criminal appeal be and the same is hereby dismissed on contest. The impugned judgment and order passed by the trial court are hereby affirmed.

13. The Appellant, Brindaban, it is submitted by his Advocate is on bail, so, the Appellant, Brindaban, is directed to surrender before the learned

Chief Judicial Magistrate, Bankura, immediately in order to undergo the sentence; in default, the learned Chief Judicial Magistrate, Bankura, is

directed to take necessary legal steps for taking the convict-Appellants, Brindaban, into custody.

Nure Alam Chowdhury, J.

14. I agree.