

(2005) 12 CAL CK 0037

Calcutta High Court

Case No: C.R.A. No. 217 of 1994

Meghnath alias Meghchand
Mondal, Rasibala Mondal and
Jaladhar Mondal

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision: Dec. 2, 2005

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 201, 302, 304(B), 34, 498A

Citation: (2006) 1 CALLT 282 : (2006) 1 CHN 679 : 111 CWN 975 : (2006) 1 DMC 826

Hon'ble Judges: Pranab Kumar Deb, J; Alok Kumar Basu, J

Bench: Division Bench

Advocate: Milon Mukherjee and Bratati Dutta, for the Appellant; Kazi Safiullah and Sushil Kr. Mahato, for the Respondent

Final Decision: Dismissed

Judgement

Alok Kumar Basu, J.

This appeal has been directed against the Judgment and order passed by the learned Additional Sessions Judge, Bankura in connection with Sessions Trial No. I(II)/1990 corresponding to Sessions Case No. 3(5)/1989.

2. Meghnath Mondal, his wife Rasibala and his son Jaladhar faced trial before the learned Additional Sessions Judge under Sections 498A/302/201 of the IPC and alternatively u/s 304(B) of the IPC on the allegation of subjecting Rina Mondal, wife of Jaladhar Mondal to cruelty and causing death of said Rina Mondal within seven years of her marriage.

3. It was the prosecution case, as revealed from the first information report of one Prakash Ghosh, that Rina was married to appellant Jaladhar and since marriage Jaladhar and his parents namely Meghnath and Rasibala were not pleased with the

payment of dowry and for that reason, Rina was subjected to continuous harassment and torture.

4. Prakash Ghosh, on receiving information on 25.3.1988 about the death of Rina by catching fire at her matrimonial home, came to the village of the appellants and after getting information from the local people and after witnessing the dead body, he became suspicious and accordingly, he lodged a written complaint with the local P.S. alleging foul play of the appellants behind the tragic death of Rina.

5. The local P.S., on receipt of the written complaint of Prakash Ghosh, started a specific case and thereafter getting the post mortem report from the doctor confirming homicidal death of Rina, charge sheet was submitted against the appellants.

6. During trial, prosecution side examined 12 witnesses in all to substantiate the charges framed against the appellants and those witnesses were PW 1 Sridam Mondal, full brother of appellant Meghnath, PW 2 Rabi Mondal, a neighbour of the appellants, PW 3 Gurupada Misra, another neighbour of the appellants, PW 4 Prakash Ghosh, the cousin brother of Rina and the FIR maker PW 6 Sovaram Ghosh, father of Rina, PW 7 doctor J.N. Dey who conducted post mortem examination over the dead body of Rina and who gave his specific opinion that Rina died out of strangulation and thereafter her body was put under fire, PW 8 Parulbala Ghosh mother of Rina, PW 11 Ranjit Chakraborty another neighbour of the appellant and PW 12 the investigating officer.

7. It appears from the trend of the cross-examination of the prosecution witnesses as well as from the examination of the appellants under Section 313 of the Cr PC that they denied the prosecution charges and their specific plea was that Rina died out of accidental fire and there was no foul play behind the death of Rina as alleged by the prosecution.

8. The learned Trial Court, after considering the prosecution evidence and after considering the submission of both prosecution and defence, found no evidence to hold the appellants guilty either u/s 498(A) or u/s 304(B) of the IPC. The learned Trial Court, however, with reference to the post mortem report and the statement of doctor PW7, came to the conclusion that Rina did not catch fire accidentally, but, the appellants jointly throttled Rina to death and thereafter to destroy all the evidence relating to the homicidal death of Rina, the appellants set fire in the house. The learned Judge, apart from the medical evidence coming through the post mortem report as well from the statement of the doctor placed his reliance on the circumstantial evidence gathered from the statement of different witnesses and thus, the learned Judge concluded from evidence that since the appellants set fire in the house to destroy the evidence of murder, they were also guilty for the offence u/s 201 of the IPC.

9. Mr. Milon Mukherjee with Mrs. Bratati Dutta appeared for the appellants to challenge the order of conviction and sentence. Mr. Mukherjee submits that from the prosecution evidence there was nothing on record to support the allegation that Rina was subjected to cruelty at her matrimonial home and even the learned Trial Court, acquitted the appellants of the charge u/s 498A of the IPC. Mr. Mukherjee submits that the learned Judge also found no evidence to substantiate the alternative charge framed u/s 304B of the IPC against any of the appellants.

10. Mr. Mukherjee contends that when the charge u/s 498A or 304B could not be proved against the appellants and when no appeal was preferred in this regard challenging the findings of the learned Judge, it is very difficult to hold that there was any motive of the appellants to commit the alleged murder of Rina by strangulation and to put fire to the house to destroy the evidence of alleged murder.

11. Mr. Mukherjee submits that the neighbours who were examined by the prosecution did not support the prosecution case that appellants caused the death of Rina by strangulation and it will appear from the statement of all the neighbours who were examined by prosecution that the house caught fire accidentally and Rina died by that accidental fire and there was no foul play of the appellants as alleged.

12. Mr. Mukherjee contends that the main basis behind the conviction order of the appellants under Sections 302/201/34 of the IPC was that of the post mortem report and the statement of the doctor as PW7.

13. Mr. Mukherjee has argued at length challenging the findings of the post mortem report and supplemented his oral argument by filing a written note.

14. It appears from the oral submissions as well as from the written note of Mr. Mukherjee that having regard to the definition of throttling as appearing in the Webster : New International Dictionary, third edition and having regard to the observations made in HAW Cox : Medical Jurisprudence and Toxicology along with Taylor's Principles and Practice of Medical Jurisprudence, Thirteenth Edition, even when a body was burnt, to prove a case of throttling, on dissection marks of finger print would be very much evident on the wind pipe and other places apart from abrasions or bruises. Mr. Mukherjee contends that in this particular case there was no such mark of finger print which would go to show that victim died out of an accidental fire and it could not be a case of throttling as alleged. Mr. Mukherjee contends that it is also admitted position in medical jurisprudence that sometime there may be fracture of bones due to intense heat generated by fire and naturally, from the observation of the doctor that there was fracture of bones, no firm conclusion can be drawn without corroborative evidence that victim was strangled to death and thereafter her body was put under fire.

15. Mr. Mukherjee contends that expert opinion through a doctor is at best a corroborative piece of evidence and it cannot be utilized to sustain a charge of

homicide unless there is sufficient evidence from ocular evidence and surrounding circumstances to lend support to the alleged prosecution. Mr. Mukherjee contends that when it is available from evidence of the neighbouring witnesses that as the thatched roof of the house where the victim was residing caught fire and that thatched roof fell down all on a sudden and the victim was pressed under that burning thatched roof, in all probability the victim got the injuries on her person which were detected by the doctor and from the observation of the doctor without any supporting evidence, the learned Judge was not justified in coming to the conclusion that victim was throttled to death and the burning injuries were all post mortem in nature.

16. Thus, Mr. Mukherjee concludes that when there is no oral evidence to support the case of murder when there is no circumstantial evidence to lend support to the prosecution allegation, relying on the uncorroborated evidence of the post mortem doctor, the learned Trial Court was not justified in convicting the appellants under Sections 302/201/34 of the IPC. Mr. Mukherjee further submits that since there was no apparent motive behind the offence of murder and when there is no evidence to support the allegation of torture on dowry payment, the prosecution case itself was false and fabricated.

17. Mr. Safiullah along with Mr. Sushil Kr. Mahato appearing for the State has strongly refuted submissions of Mr. Mukherjee. Mr. Safiullah submits that information regarding death of Rina was not intimated to the relatives of Rina at her father's house and only getting such information from neighbour's cousin brother of Rina PW 4 came to the place of occurrence and from the position of the dead body he became suspicious that it was not an accidental death and this persuaded him to lodge the FIR.

18. Mr. Safiullah contends that unfortunately the witnesses examined by the investigating officer did not support the prosecution case, as most of them were either relation of the appellants or neighbours of the appellants. Mr. Safiullah contends that even if there was no direct evidence to support the prosecution case, if we carefully consider the circumstantial evidence, there is no scope to challenge the reasoned order of conviction recorded by the Trial Court.

19. Mr. Safiullah submits that PW 1 who was the full brother of appellant Meghnath and who has his house under the same roof with appellants stated about catching of fire of the portion of the house belonging to the appellants and according to him the fire was so devastating that the entire portion of the house belonging to the appellants was totally destroyed, but, surprisingly enough, that his portion remained unaffected by the fire. Mr. Safiullah contends that nowhere it is available from evidence that Meghnath, his wife or his son Jaladhar were residing in separate house at the relevant time and surprisingly enough that living in the same house which was destroyed by fire, none of them received any burn injury at least there is nothing in evidence to indicate such injury.

20. Mr. Safiullah contends that according to the prosecution case and not disputed or challenged by the appellants that the fire broke out at 9 P.M. in the night and when the appellants had the special knowledge regarding the cause of fire, it was expected that at least during their examination u/s 313 of the CrPC they would state how the house caught fire, but, there is nothing in the statement of any of the appellants to explain why the house caught fire and this very important fact remained unexplained throughout the trial.

21. Mr. Safiullah contends that if we look at the evidence of the witnesses we shall notice that all the witnesses came at the place of occurrence when the house was almost destroyed and coming at the place of occurrence, they found the present appellant and there was no attempt on the part of the appellant to save Rina and this is an important feature which undoubtedly goes a long way to support the prosecution case that the entire case was preplanned.

22. Mr. Safiullah contends that at the time of inquest the investigating officer noticed that back portion of the victim had no burn injury and there was blood coming out from the left side of the face and this observation of the inquest report has been corroborated by PW 4 who became suspicious from the said feature of the dead body.

23. Mr. Safiullah contends that the doctor after careful examination of the dead body and on dissection of the same found some important features which were extravasated clotted liquid blood infiltrating through the tissues over the upper part of front of chest, extravasated clotted liquid blood was seen infiltrating the tissues of both angles of lower jaw, fracture of cornen of hyoid bone of both sides, fracture of first rib on right side, fracture of first and second ribs on left side and, that apart, extravasated clotted and liquid blood was found through the tissues in or around the fractures.

24. The doctor getting those injuries and noticing those features on the dead body after dissection came to the finding that the death was not accidental, but, it was due to throttling and the injuries were antimortem and homicidal in nature and the burn injuries were of post mortem in nature.

25. Mr. Safiullah contends that during cross-examination of the doctor the doctor firmly opined that by fall of the thatched roof, the fracture of ribs could not be caused.

26. Thus, Mr. Safiullah contends that the learned Judge not only relied on the post mortem report and statement of the doctor to come to the conclusion that Rina died a homicidal death, but, from the surrounding circumstances leading to the death of Rina along with the post mortem report, there was no option but to hold conclusively that Rina died a homicidal death due to strangulation and only after such homicidal death, the appellants set fire in the house to destroy the evidence of murder.

27. Having regard to the submissions of Mr. Mukherjee along with his written note and after considering the submissions of Mr. Safiullah, we are of the view that so far oral evidence on record is concerned, there is no direct evidence to support the prosecution case that Rina was killed by the appellants by strangulation.

28. From the nature of evidence adduced by the prosecution we get that the time of occurrence was 9 P.M. in the night and the place of occurrence was inside the house of the appellants in a village. The only reliable evidence from the prosecution side could have been any other inmate of the house or any of the adjoining house owners.

29. From the record we find that all the inmates of the house were involved in the case of alleged murder of Rina and only available nearest neighbour was PW 1 the full brother of Meghnath.

30. From the statement of PW 1 we get some idea about the position of the house of the appellants. We get from evidence of PW 1 that under a common roof one portion of the house belonged to the appellants and the other portion belonged to PW1. We further get from evidence of PW 1 and other neighbours examined as witnesses to the prosecution that the portion of the house belonging to the appellants only was gutted in the fire totally and it is very pertinent to note that although under the same roof but the portion belonging to the PW 1 was not affected by that devastating fire.

31. Again, from the statement of PW 1 and other witnesses of the prosecution we get that although the entire house of the appellants were destroyed in fire save and except the unfortunate victim, no member of the house of the appellants was injured in the fire and no sincere attempt on the part of the appellants to extinguish the fire or to save the unfortunate woman.

32. It is true that for want of sufficient evidence the learned Judge did not find the appellants guilty of the offence u/s 498A, but, it is equally true that victim Rina died at her matrimonial home within a short period from her marriage and at the time of her death she was carrying as it is evident from the statement of PW 4 her cousin brother who lodged the written complaint.

33. Thus, from the statement of witnesses and from the prevailing circumstances as apparent from the statement of witnesses, we get a picture that without any rhyme or reason the house of the appellant caught fire and without any explanation other members of the house including the appellants got untouched but the victim had to die.

34. Now, from the inquest report for the first time it was brought to the notice of the informant that back portion of the victim was not touched by fire and blood was coming out from the face of the victim.

35. The doctor while holding post mortem examination noticed certain features which would happen only in case of strangulation and, that apart, on dissection of the half burnt body of the victim, fracture of ribs and fracture of thyroid bones and the presence of extravasated clotted and liquid blood in and around the fracture noticed by the doctor led him to conclude that the victim first died of strangulation then the body was put under fire.

36. Mr. Mukherjee has sought to convince us that since there was no indication of any finger mark or any mark of bruise or abrasion in or around the neck, the doctor was not justified in drawing a conclusion regarding the death due to strangulation.

37. We have carefully examined the note of Mr. Mukherjee and also the statement of the doctor. We cannot forget that the upper portion of the victim's body was almost charred due to third degree burn and in such a situation, it was not possible or expected that there would be any apparent mark or indication to prove the manual throttling.

38. Thus, having regard to the totality of the circumstantial evidence which we have indicated above together with the post mortem report and opinion of the doctor PW7, we cannot agree with Mr. Mukherjee that Rina caught fire accidentally. We are convinced from prosecution evidence available from record together with the post mortem report that Rina died homicidal death out of strangulation and when there was no case that any outsider could have caused such death, the appellants being the inmates of the house and having regard to the time and surroundings of the event, the appellants alone could be held guilty for such homicidal death of Rina.

39. From the evidence on record we are also convinced that after homicidal death of Rina only to cause disappearance of the evidence of murder the portion of the house belonging to the appellants was set to fire for which burn injuries appeared on portion of the body of the victim and naturally, the learned Judge rightly convicted the appellants both under Sections 302/34 and 201/34 of the IPC.

40. Thus, after considering the submission of both Mr. Mukherjee and Mr. Safiullah and having regard to the fact and evidence available with the record, we do not find any merit in this appeal and the same is accordingly dismissed.

41. We, therefore, confirm both the conviction order and the sentence recorded against the appellants.

42. It has been submitted by Mrs. Dutta that appellant Meghnath and his wife appellant Rasibala Mondal after being released on bail expired, although, there is nothing on record to confirm the death of those appellants, we would direct the Trial Court to get confirmation of their death and to act accordingly.

In the result, we dismiss this appeal confirming the order of conviction and sentence.

Send a copy of this Judgment to the appellant Jaladhar Mondal for his information through the Superintendent of Correctional Home where he has been detained.

Send a copy of this Judgment along with LCR to the Court below with a direction to get confirmation report regarding the death of the appellant Meghnath Mondal and his wife Rasibala Mondal through local P.S. If the above named appellants are dead, no further action is required to be taken against them pursuant to this Judgment and order, otherwise, the learned Trial Court shall take steps in accordance with law.

Pranab Kumar Deb, J.

43. I agree.