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**(2002) 10 CAL CK 0025**

**Calcutta High Court**

**Case No:** C.R.A. No. 52 of 1999

Sambhunath Bar

APPELLANT

Vs

State of West Bengal

RESPONDENT

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**Date of Decision:** Oct. 7, 2002

**Acts Referred:**

- Evidence Act, 1872 - Section 3
- Penal Code, 1860 (IPC) - Section 302, 34, 498

**Citation:** (2003) 2 CALLT 389

**Hon'ble Judges:** Pradip Kumar Biswas, J; Nure Alam Chowdhury, J

**Bench:** Division Bench

**Advocate:** Dilip Kumar Dutta and Arup Chandra Chatterjee, for the Appellant; R.N. Chakroborty and S.K. Mullick, for the Respondent

**Final Decision:** Allowed

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**Judgement**

P.K. Biswas, J.

Through this appeal, the appellant Sambhunath Bar challenges the judgment and order dated 13th January, 1999 passed by Shri S. Banerjee, learned Additional Sessions Judge, 12th Court, Alipore in Sessions Trial No. 33(4)/1996 whereby the convict-appellant has been convicted u/s 302/34 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay a fine of Rs. 1000/- in default to suffer S.I. for 5 months.

2. Briefly stated, the prosecution case as mainly emerged from the recital contained in the FIR lodged by Sri Jiban Krishna Mal, defacto-complainant is as under:

That on 28th Jaistha, 1397 B.S., the eldest daughter of this defacto complainant, Jiban Krishna Mal, was given in marriage with Sri Sambhunath Bar (youngest son of Sannyashi Bar) after negotiation.

3. Unfortunately, within a period of 5/6 days from the date of the aforesaid marriage, Sri Sambhunath Bar, his father Sri Sannayashi Bar, mother Smt. Jamuna Bar and his elder brother Sri Biswanath Bar began to inflict mental and physical torture and pressure upon Smt. Jharna Bar and on 31.8.91, two persons including one Benu Mallick came to the house of the de facto complainant and had given an information that his daughter had been bitten by snake and was lying in precarious condition.

4. On receipt of such information, the de facto complainant Sri Jiban Krishna Mal then and there had gone to the house of his daughter Smt. Jharna Bar at Dosra Bhagawanpore and found the dead body of Jharna on a rickshaw van which was then covered by a mattress for the purpose of bringing the dead body to the Police Station.

5. From enquiry at the locale, the complainant came to know that on the relevant date of 31.8.91 at about 4 a.m. Jharna was brutally assaulted and subjected to inhuman torture by her husband Sambhunath Bar, her father-in-law Sannyashi Bar mother-in-law Jamuna Bar and elder brother-in-law, Biswanath Bar and lastly she was throttled to death and then in order to establish it that Jharna has committed suicide, they had poured poison in her mouth.

6. On receipt of the aforesaid written complaint, the then Officer-in-Charge of the Joynagar Police Station started Joynagar P.S. Case No. 148 dated 31.8.91 u/s 498A and u/s 302/34 of IPC against the present convict-appellant and others.

7. Initially, the investigation was started by then O.C., Joynagar P.S., Sri Sanjeet Bhattacharjee and subsequently on 14.11.91 the said case was made over to Detective Department, Alipore for further investigation and police after completion of investigation submitted charge-sheet against the present appellant and four others for commission of offence punishable u/s 498A/302 of the Indian Penal Code.

8. The learned trial Judge upon hearing both sides, framed charge under Sections 302/34 and 498A/34 of the Indian Penal Code against the present appellant and four others.

9. The prosecution in order to bring home the charge as aforesaid has examined in all 25 witnesses and they are PW 1 (Jiban Krishna Mal), defacto complainant, father of the deceased victim, PW 2 (Smt. Chinubala Mal), mother of the deceased, PW 3 (Fatik Mal), uncle of the deceased, PW 4 (Badal Chandra Mal), uncle of the deceased, PW 5 (Bishnupada Mal), cousin of the father of the deceased, PW 6 (Madan Mohan Mal), uncle of the deceased, PW 7 (Benu Mallick), who communicated the information of death of Jharna to her father's house, PW 8 (Tulsi Charan Mondal), PW 9 (Mannu Mohan Makal), PW 10 (Jhantu Singh), PW 11 ( Murari Goswami), P 12 (Laltu Chakroborty), PW 13 (Sri Subrata Mitra, Judicial Magistrate, who recorded the statement of Murari Goswami u/s 164 CrPC), PW 14 (Dr. P.B. Das, who was then posted as A.C.M.O.(H), Medico Legal, South 24-Parganas, and the autopsy surgeon

who held post mortem), PW 15, Bablu Motilal, scribe of the FIR, PW 16 (Mr. D.D. Pal, the then S.I. of Joynagar P.S., who initiated U.D. Case No. 45 dated 31.8.91), PW 17 (Ramendra Debnath, the then ASI of Police of Joynagar P.S., who started the Joynagar P.S. Case No. 148 dated 31.8.91 upon receipt of the written complaint), PW 18 (Prosanta Dhara, fish seller of Bhawanipore market), PW 19 (Biplab Roy, fish seller of Jagubabu Market), PW 20 (Shiba Prosad Goswami, who was tendered for cross-examination by the prosecution), PW 21 (Nemai Chand Sardar, who was declared hostile), PW 22 (Baburam Sardar, who was also tendered for cross-examination by the prosecution), PW 23 (Sanjit Bhattacharjee, the then Officer-in-Charge, Joynagar P.S., who conducted the part investigation of this case), PW 24 (Ranjit Kumar Pal, SI attached to DD. Alipore, who on receipt of CD from SI H.K. Dey submitted charge-sheet in this case), PW 25 (H.K. Dey, SI, CID, West Bengal, another Investigating Officer of this case).

10. The defence case as made out through cross-examination is one of innocence and from the defence side no witness was, however, examined to prove their contention.

11. The learned Additional Sessions Judge after recording the evidence of the aforesaid witnesses and after hearing both sides came to the conclusion that prosecution has failed to bring home the charge u/s 498A/34 of IPC against all the accused persons including the present convict-appellant, but at the same time, he found this convict-appellant guilty of committing offences punishable under Sections 302/34 of IPC and accordingly convicted him thereunder and also sentenced him as above.

12. Being aggrieved by the finding of guilt recorded by trial Judge against the convict-appellant, Sambhunath Bar and the sentence awarded, the present criminal appeal has been filed by the aforesaid convict-appellant alleging that the aforesaid judgment and order of conviction and sentence of imprisonment for life is a glaring example of non-application of judicial mind and the learned trial Judge has although held that there was no direct evidence to prove the guilt of the convict-appellant, yet, he failed to appreciate that there was also no cogent circumstantial evidence for inflicting punishment upon the aforesaid convict-appellant and the learned trial Judge has fell into error in convicting the convict-appellant on the same set of evidence upon which he acquitted the other accused persons involved in the case.

13. We have heard the learned senior counsel, Sri Dilip Kr. Dutta, appearing for the convict-appellant and also the learned counsel, Sri R.N. Chakroborty, appearing for the State of West Bengal. Both of them have taken us through the evidence of the prosecution witnesses so also through the impugned judgment of conviction and sentence of the learned Additional Sessions Judge, Alipore.

14. Sri Dilip Dutta, learned senior counsel, appearing on behalf of the convict-appellant taking us through the evidence on record has contended before

us that admittedly there is no direct evidence with regard to the involvement of this accused/appellant in committing the crime u/s 302/34 IPC or in other words in committing the murder of Jharna Bar, but he was very much candid in his submission that upon the evidence on record, specially from the report of the Autopsy Surgeon (PW 14, Dr. P.B. Das) supported by other evidence it is clear that death of Jharna was homicidal in nature. But even then the question remains that in the given set of facts who was responsible for causing death of the victim?

15. Sri Dutta drawing our attention to the judgment of the learned trial Judge has contended before us that although the trial Judge in course of his discussion has taken into consideration the fact that there was specific allegation of the de facto complainant (Jeevan Krishna Mal) and his wife (Smt. Chinubala Mal) that their daughter Jharna, since deceased had suspicion on her father-in-law (Sannyashi Bar) as a person of questionable character, yet, without being backed by any evidence he has come to a general conclusion that in such context, she (victim) on each night used to keep the door of her room closed with door bolt and as such there are reasons to presume that on the relevant night of incident i.e. on 31.8.91 in the room of Jharna no other person except she and her husband (Sambhu) was present and the couple as usual remained in the room with the door closed with door bolt.

16. Sri Dutta has also pointed out before us that the trial Judge in his Judgment had drawn some presumption upon surmises and conjectures and has held further that "on consideration of the general norms of life I think that a person is expected to return back to his home on each and every night and to stay there and as such if any person alleges that on any particular night (on which some untoward and unnatural incident had taken place in his house which led to a police case) he was not present in his home then the burden of proof that he was not present in his house on that night shifts upon him" and ultimately, the learned trial Judge had taken serious exception against this convict-appellant for non-explaining the position since he did not state anything in course of his examination u/s 313 of CrPC as to where he had been on that relevant night and as such taking into consideration the above two circumstances, he has come to the conclusion that on the relevant night this accused and his wife Jharna were present in the room and death was caused due to random assault with hard and blunt substance and by throttling and ultimately the trial Judge has found this convict-appellant guilty of an offence u/s 302/34 of IPC.

17. Sri Dutta has seriously criticised the aforesaid findings of the learned trial Judge before us and in this context it has been submitted by him that it is quite settled principles of law that the circumstantial evidence in this context, means communications of facts creating a network from which there is no escape for the accused because the facts taken as a whole do not admit any inference except the guilt of the accused and in a case based on circumstantial evidence, the Court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional

circumstances, however, strong they may be to take the place of proof.

18. Placing reliance on such settled position of law, it has been contended by Sri Dutta before us that although in the evidence, it has come out that this convict-appellant was in the habit of coming home at late hours of night in drunken condition and was in the habit of causing assault on his wife physically, yet, there is no specific evidence adduced from the side of the prosecution to say that on the fateful night Sambhu (convict/appellant) also returned to the house late at night and started assaulting his wife Jharna at random.

19. Sri Dutta has further submitted that it has come out in the evidence of prosecution that the father-in-law of the victim Jharna was a man of bad character and the said father-in-law often used to advise Jharna to keep open the door at night, but Jharna never responded to the proposal of her father-in-law and in the backdrop of such evidence, when there was no positive and cogent circumstantial evidence to complete the chain of circumstances, pointing out to the guilt against this convict-appellant in committing the murder of his wife, no reliance can be placed on the scattered evidence and incomplete chain of circumstances in inflicting punishment upon this convict-appellant for committing an offence u/s 302 of IPC and therefore on such materials no conviction can be inflicted upon him u/s 302 of IPC.

20. From the side of the State/Respondent, however, it has been contended by placing reliance on the evidence of prosecution witnesses that it has come out in the evidence that Sambhu was in the habit of returning home at night in drunken condition and used to cause assault upon his wife, the said evidence coupled with the evidence as adduced by PW 11 (Murari Goswami) to the effect that on the date of incident, he also heard a cry coming from the direction of the house of the accused, it could be fixed that it was Sambhu and none else who caused this murder of his wife.

21. But, we are afraid that we cannot agree with such submissions because of the fact that where there is a case of circumstantial evidence, such evidence must be cogently and firmly established and such circumstances should form a chain pointing towards the guilt of the accused and the same should be so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and if any link in the chain is missing, the guilt of the accused must be held to be not established.

22. Viewing the evidence on record in the aforesaid light and examining the same with meticulous care, we are of the clear opinion that in the instant case, no such complete cogent chain has been established from the evidence on record, as has been adduced from the side of the prosecution to hold that the circumstances appearing in this case have formed a chain pointing towards the guilt of the accused and it was so complete that there is no escape from the conclusion that within all

human probability the crime was committed by the accused and none else.

23. Sifting the evidence on record, we hold clearly that excepting the evidence of general nature by PW 11 (Murari Goswami), no other cogent evidence has been adduced from the side of the prosecution to hold that on that night Sambhu came to the house and caused serious assault upon his wife which ultimately took her life and there is also no cogent chain of circumstances which ultimately could lead to the conclusion that it was Sambhu alone and none else who has committed the murder of his wife.

24. So, being in agreement with this views expressed by the learned senior counsel, Sri Dilip Dutta, we also hold that the learned trial Judge without being backed by any cogent evidence and without establishment of any chain of circumstances, unmistakably pointing to the guilt of the accused in committing murder of his wife, has based his conclusion on surmises and conjectures and as such his findings with regard to the guilt of the accused appellant are not at all tenable and as such it should be set aside and the accused/appellant should be given benefit of doubt on the given evidence and circumstances, available on record.

25. Now, having gone through the entire evidence recorded by the learned trial Judge and in view of the findings recorded above, we are of the clear opinion that in the instant case, prosecution has not been able to prove the guilt of the convict-appellant, Sambhu Bar u/s 302/34 of IPC beyond all reasonable shadow of doubt so as to convict him thereunder and this convict/appellant is, therefore, entitled to be acquitted from this case upon benefit of doubt.

26. Now in view of what has been stated above, we hold that the conviction and sentence imposed upon this convict-appellant by the trial Judge are not at all tenable and as such it should be set aside and the convict-appellant should be given benefit of doubt from this case.

The convict/appellant should be acquitted therefore from this case. The appeal, thus succeeds accordingly. The conviction and sentence imposed upon this convict-appellant are, therefore, set aside. The convict-appellant be set at liberty at once if not wanted in any other case.

N.A. Chowdhury, J.

27. I agree.