

(2008) 05 CAL CK 0042

Calcutta High Court

Case No: C.R.A. No. 26 of 2003

Abdul Kader Sk. @ Chittu

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: May 14, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 164
- Penal Code, 1860 (IPC) - Section 201, 302

Citation: (2008) 4 CHN 380

Hon'ble Judges: Kishore Kumar Prasad, J; Girish Chandra Gupta, J

Bench: Division Bench

Advocate: Ranjit Ghosal and Shireen Sultana, for the Appellant; A. Goswami, Id. P.P., Subir Ganguly and Kalyan Maitra, for the Respondent

Final Decision: Dismissed

Judgement

Girish Chandra Gupta, J.

This appeal is directed against a judgment dated 29th June, 2002, passed by the learned Additional District and Sessions Judge, First Track Court-II, Alipore, South 24-Parganas, in Sessions Trial No. 16(3) 2002 arising out of Sessions Case No. 52 (9) 2000 convicting the appellant under Sections 302 and 201 of the Indian Penal Code, and an order dated 1st July, 2002 by which the convict was sentenced to rigorous imprisonment for life as also to pay a fine of Rs. 5,000/-, in default to suffer further rigorous imprisonment for one year for the offence punishable u/s 302 of the IPC. He was further sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs. 2,500/-, in default to suffer further rigorous imprisonment for six months for the offence punishable u/s 201 of the Indian Penal Code. Both the sentences were directed to run concurrently.

2. The facts and circumstances of the case briefly stated are as follows:

On 29th July, 2000, at about 1.30/2 p.m. the appellant, Abdul Kader Sk. @ Chittu, killed the victim, Sandhya Haider, and escaped from the place of occurrence. The witnesses and the villagers rushed to his house but he was not found. Upon search being conducted at his house by the witnesses, a blood-stained lungi was recovered from an earthen pot. The mother of the accused including the aforesaid bloodstained lungi was produced in the nearby police station. A written complaint was also lodged. The accused Chittu absconded for some time and was ultimately arrested on 6th August, 2000, from Khidderpore bus stand on the basis of information collected by the police from its sources. On 10th August, 2000, on the basis of information furnished by the accused Chittu, the offending weapon was recovered and seized from his house. The records reveal that on 11th August, 2000, the accused was forwarded to the learned SDJM for recording his confession which the accused wanted to make. From the order dated 11th August, 2000, passed by the learned SDJM it appears that the accused was bent upon making a confession. The learned SDJM asked the accused to further reflect on the matter and adjourned the proceedings until 14th August, 2000. On 14th August, 2000 the accused was produced from the jail custody before the learned SDJM. At that stage the accused declined to make any confession. The accused, in the circumstances was, remanded to the jail custody.

3. The evidence adduced by the prosecution may now be noticed.

4. P.W.4, Latika Samanta, a sister-in-law of the deceased Sandhya Haider deposed inter alia as follows:

Occurrence took place on 13th Shrabon on Saturday before one and half year. I along with Sandhya were working in a field in our village. At about 12 O'clock I went to bring food from my house. When I was coming back with food, I saw Chittu going away. He had one katari in his hand. Chittu had blood-stain on his body. I went ahead and saw Sandhya was lying dead with cut injury and blood on her body. She was lying on the field. I shouted for help. My brother Gobinda, my son Bomkesh and other villagers came. We went to the house of Chittu. There we enquired about Chittu from his mother. His mother did not tell anything. We searched the house of Chittu. One lungi of Chittu was recovered from a clay pot "Hundi". Thereafter we went to police station. Thereafter at the police station I narrated the incident to Anup Haider. He wrote the same on a paper. It was then read over to me. Thereafter I signed on it. This is my signature. Ext. 1/2. Chittu is present in Court (identified). This is the yellow lungi which Chittu wore on that day. (Mat Ext. I is tendered and identified). This is the katari which was recovered from the house of Chittu. (katari having wooden butt is marked Ext. Mat. II).

5. P.W. 4, Latika Samanta, remained firm during her cross-examination. No infirmity in her evidence was brought to our notice by Mr. Ranjit Ghosal, the learned Counsel, appearing for the appellant, except that, in the written complaint the de facto-complainant, the P.W. 4, narrated that the accused was armed with a sickle

whereas in her deposition in Court she talked about a katari. We have checked up with the original written complaint which is in vernacular. The written complaint does, in fact, refer to a katari and not to a sickle. The translated version of the written complaint included in the paper book has erroneously referred to a sickle which was not the case of the P.W. 4.

6. Another discrepancy pointed out by Mr. Ghosal was that in her evidence the de facto-complainant deposed that the body of the deceased was found lying in the field whereas in the written complaint she deposed that the body was found in the canal.

7. Mr. Goswami, the learned Public Prosecutor, drew our attention to the sketch map marked Exhibit 8 which goes to show that the canal is adjacent to the field. He, therefore, submitted that this is a bona fide mistake appearing to have been made by the witness which does not render her evidence suspect. Exhibit 8 does, in fact, go to show that the field is contiguous to the canal. The P.W.4 during her cross-examination was not confronted with her earlier statement, that the dead body was found lying in the field, contained in the written complaint.

8. This goes to show that the defence also proceeded on the basis that this was a mistake and was likely to be explained. Therefore, the possibility of a mistake, due to lapse of time, made by the witness cannot be ruled out. Only on this basis, the evidence of the witness does not become suspect nor can be discarded.

9. The P.W. 2, Anup Kumar Haldar, scribed the written complaint. He has proved his handwriting. He further deposed that on the basis of the statements made by the P.W. 4, Latika Samanta, he had scribed the written complaint. As a scribe he also put his signature which was identified and proved by him. He further deposed that he had accompanied the other witnesses to the house of the accused and upon searches being made, a bloodstained lungi of the accused was recovered from the house of the appellant which was lying concealed in an earthen pot.

10. Mr. Ghosal, learned Counsel, appearing for the appellant, submitted that P.W. 13 the IO, in his cross-examination admitted that the P.W.2 in his examination u/s 161 of the Cr.PC, did not tell him that he had known from Latika Samanta, P.W.4, that she had witnessed the accused, Chittu, fleeing away from the place of occurrence.

11. We have not taken into consideration the evidence of the P.W.2 except for the fact that he scribed the written complaint.

12. P.W. 1, Goutam Haldar, deposed inter alia as follows:

We searched his house. There we found one yellow lungi having blood stain in a clay pot (Hundi). Along with that lungi and mother of Chittu, we went to police station.

13. No significant submission as regards this part of the evidence of the P.W. 1 was made by Mr. Ghosal.

14. P.W.3, Bomkesh Samanta, corroborated the evidence of the witnesses discussed above as regards recovery of a blood-stained lungi, lying concealed in an earthen pot, from the house of the accused, Chittu.

15. P.W.5, Ranjit Haldar, has also corroborated this part of the evidence.

16. The seizure list dated 29th July, 2000, marked Exhibit 5 by which the blood-stained lungi allegedly worn by the accused Chittu was seized, was criticised by Mr. Ghosal, learned Counsel, for the appellant, by submitting that the seizure list does not go to show that the lungi was blood-stained nor was the lungi sent to Forensic Science Laboratory. Mr. Ghosal submitted that this is a serious lacuna in the case of the prosecution.

17. Mr. Goswami, the learned Public Prosecutor, drew our attention to the forwarding Memo dated 7th August, 2000, which refers to a blood-stained lungi seized and recovered by the police. Mr. Goswami submitted that the omission to record the fact that the lungi seized was bloodstained is a mistake on the part of the investigating agency and/or is a lapse on their part which cannot adversely affect the case of the prosecution particularly when host of witnesses of unimpeachable character deposed that bloodstained lungi was recovered from the house of the accused and the same along with the mother of the accused were instantaneously produced before the police.

18. Another criticism advanced by Mr. Ghosal, learned Counsel, for the appellant, as regards Exhibit 5, is that the same appears to contain the left thumb impression of the accused, Chittu. He added that the accused, Chittu, according to the evidence of the P.W. 13, was arrested on 6th August, 2000. On 29th July, 2000, he was at large. The left thumb impression of the accused, Chittu, appearing in Exhibit 5 makes the entire case of the prosecution suspect.

19. Mr. Goswami, the learned Public Prosecutor, submitted that the so called left thumb impression of the accused has not been identified by any of the witnesses nor was any question with regard thereto put to the Investigating Officer or to any other witness examined in this case. In any event, according to him, this is an act of over-exuberance on the part of the Investigating Officer. The Investigating Officer may have obtained the left thumb impression of the accused after he was arrested on 6th August, 2000.

20. In our view, the submission of Mr. Goswami, the learned P.P., has some substance and goes to explain the inconsistency pointed out by Mr. Ghosal, the learned Counsel, for the appellant.

21. P.W. 13, Moni Mohan Chandra, the Investigating Officer, deposed inter alia as follows:

I tried to arrest accused Chittu Seikh @ Abdul Kader on 31.7.2000, 1.8.2000 and on 4.8.2000. Lastly on 6.8.2000 I arrested accd. from Khidderpur bus stand.

On 7.8.2000 I examined the accused. He disclosed that he can lead police for recovery of weapon, i.e., katari used in crime. Accordingly, I took the accused in police custody and during custody he led us to his house and found that the "katari" (objected to). I seized the katari under seizure list prepared and signed by me. I took LTI of the accd. on seizure list. This is the seizure list dt. 10.8.2000 marked Ext.6 in place of X/b. This is the katari seized (Ext. Mat II tendered and identified by the witness).

22. No significant cross-examination in this regard was made on behalf of the defence.

23. P.W.8, Ananta Kantal, corroborated the evidence of the P.W. 13 as regards seizure of the offending weapon. His evidence in this regard is as follows:

Police went to the house of Chittu. I along with others went there Chittu took out one Katari from his house. Police took the katari and asked me to sign on a paper. I have signed on it. This is the seizure list marked Exhibit X/(b) for identification. This is my signature. X(b)/1.

Accused also put LTI on the document.

24. Mr. Ghosal, the learned Counsel, appearing for the appellant, submitted that P.W. 8, even in its examination-in-chief, deposed that he was not in a position to say whether the Material Exhibit II was the same katari which was recovered from the house of the accused by the police and seized under the seizure list being Exhibit 6. Mr. Ghosal added that the katari seized and recovered from the house of the accused was not labelled. Therefore, there is no assurance that the katari produced by the prosecution is the same which was allegedly recovered from the house of the accused.

25. Mr. Goswami, the learned Public Prosecutor, submitted that P.W. 9, Chiranjit Halder, deposed that the Material Exhibit II was the katari which was seized and recovered from the house of the accused. Mr. Goswami further submitted that there is no doubt that the katari used in the crime was recovered from the house of the accused on the basis of information supplied by him, while he was in custody, which goes to show the guilty knowledge of the accused. Presence or absence of a label on the katari is at the highest a lapse on the part of the investigating agency. Mr. Goswami, the learned Public Prosecutor, further submitted that there was a label prepared and signed by the witnesses. He drew our attention to the following part of the deposition of P.W. 13, namely, Moni Mohan Chandra, which reads as follows:

This is the label on seizure prepared and signed by me. Marked Exhibit 7 in place of X/a.

26. P.W. 10, namely. Dr. Anjan Som, the autopsy surgeon, deposed to have found multiple injuries on the body of the deceased. According to him, death was due to shock and hemorrhage of multiple injuries along with asphyxia of throttling

(ante-mortem) which was homicidal in nature.

27. No submission whatsoever as regards the evidence of the autopsy surgeon was made by Mr. Ghoshal. Mr. Ghoshal concluded by saying that apart from the weaknesses, in the case of the prosecution, pointed out by him, the prosecution has also failed to prove any motive for the alleged crime by the appellant. He submitted that the appeal should therefore be allowed.

28. Mr. Goswami, the learned Public Prosecutor, submitted that the prosecution is not bound to prove any motive of the crime. The prosecution, according to him, has been able to prove the case beyond any reasonable doubt, and this Court should refrain from interfering with the judgment and order passed by the learned Trial Court.

29. Considering the facts and circumstances of this case and the evidence adduced and the submission advanced by the learned Counsel, appearing for the parties, we are of the view that the following circumstances have been proved by the prosecution:

- a) the accused was seen escaping from the place of occurrence with a katari in his hand and his body and the wearing apparels were blood smeared;
- b) the accused absconded from the village;
- c) blood-stained lungi of the accused was recovered from his house;
- d) pursuant to the statement made by the accused, while he was in custody, the offending weapon was recovered by the police from his residence;
- e) P.W.10 the autopsy surgeon deposed that the injuries found on the body of the deceased could have been inflicted by a dao or katari.
- f) The order dated 11th August, 2000, reads, inter alia, as follows:

The accused Sk. Abdul Kader alias Chittu is duly cautioned as per law. In spite of that the accused wants to confess his guilt. I disclosed to him my identity and stated that I am not a police officer and he is not bound to make any confession. If he makes any confessional statement, it may be used against him and that he may be convicted for the said offence, and if he does not make any confession, he would not be sent to police custody. Only that he must not make any statement under threat, coercion or inducement by any police officer or by any person etc. He is given time to reflect. He is remanded to judicial custody. The Deputy Jailor, Diamond Harbour Sub-Jail, is hereby directed to keep this accused under segregation and to produce this accused before this Court on 14.8.2000 at 12 noon for recording his confessional statement u/s 164 of the Code of Criminal Procedure.

- (g) On 14th August, 2000, when he was produced before the learned SDJM, the accused declined to make any confessional statement.

(h) The accused has not offered any explanation as to how the bloodstained lungi and the katari, recovered and seized from his house, found its way in his house.

30. Based on the circumstances proved by the prosecution, we are inclined to think that the view taken by the learned Trial Judge cannot be said to be an unreasonable view, in the facts and circumstances of the case.

31. For the reasons aforesaid, we are not inclined to interfere with the judgment and order passed by the learned Trial Court. The appeal is, thus, dismissed.

32. The conviction and sentences passed by the learned Trial Court are hereby affirmed. The appellant is in jail, therefore, he is directed to serve out the remaining part of his sentences as awarded by the learned Trial Judge.

33. The Lower Court Records of this case and a copy of this judgment be sent down to the concerned learned Trial Court immediately for information and necessary action.

34. Send a copy of this judgment to the Superintendent, Correctional Home, where the appellant is now under detention for information and necessary action.

35. Let urgent xerox certified copy of this judgment, if applied for, be delivered to the learned Counsel, for the parties on compliance of all formalities.

Kishore Kumar Prasad, J.

36. I agree.