

(2005) 09 CAL CK 0052

Calcutta High Court

Case No: C.R.A. No. 387 of 2001

Samir Chatterjee

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: Sept. 16, 2005

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302

Citation: (2006) 1 CALLT 443 : (2006) 1 CLT 443

Hon'ble Judges: Debiprasad Sengupta, J; Arun Kumar Bhattacharya, J

Bench: Division Bench

Advocate: Swapan Mullick, for the Appellant; Samir Chatterjee and Joy Sengupta, for the Respondent

Final Decision: Dismissed

Judgement

Debiprasad Sengupta, J.

This appeal is directed against the Judgment and order of conviction and sentence dated 9.2.2001 and 12.2.2001 passed by the learned Additional Sessions Judge, 2nd Court. Howrah in Sessions Trial No. XXIV (1) of 2000 thereby convicting the accused appellant u/s 302 and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs. 2,000/-, in default to suffer R.I. for a further period of six months.

2. The prosecution case, in short, is that on 29.7.96 at about 23.00 hours a case was registered with Liluah Police Station on the basis of an information lodged by Santosh Kr. Bhowmick (P.W. 1). In the First Information Report it was alleged that accused Samir Chatterjee and his wife approached P.W. 1 for a tenanted room and accordingly a room with tin shed and split bamboo fencing was let out by P.W. 1 to the accused person at a rental of Rs. 150/- per month. It was further stated in the FIR that for the last few days, a quarrel was going on between the husband and the

wife. On the date of incident at about 8.10 P.M. another tenant namely Smt. Gita Singh (P.W.2) informed P.W. 1 that she found the accused running away and she also asked P.W. 1 as to what was the reason for such running away of the accused person. Immediately thereafter, P.W. 1 alongwith his wife and P.W. 2 Gita Singh rushed to the room of accused Samir and found that the wife of the accused was lying on the floor with bleeding injuries and she was found dead. A blood stained katari was also lying by the side of the deadbody. The informant (P.W.I) alongwith other tenants searched for accused Samir Chatterjee but he could not be found. It was also stated in the FIR that a quarrel was going on between the accused and his wife for the last few days over the issue of illicit relation of victim Dipali with another person.

3. On completion of investigation, charge-sheet was submitted u/s 302 1PC and charge was framed u/s 302 IPC, by the learned Trial Judge.

4. To prove its case, the prosecution examined as many as 13 witnesses and none was examined on behalf of the defence. The defence case as it appears from the trend of cross-examination and examination of the accused person u/s 313 Cr. P.C. was that the Landlord (P.W.I) was aggrieved as the accused demanded rent receipt. The further defence was that one Arjun of the same locality had illicit connection with the wife of the accused, who also fled away with Arjun. When the wife of the accused returned, said Arjun threatened her by saying not to disclose the fact to anybody, otherwise her husband and son will be killed. The accused reported the matter to the Landlord but the Landlord asked him to vacate the house. The accused had no dispute with his wife and he used to go out at 8.00/9.00 A.M. and used to return home at 10.30/11.00 P.M.

5. P.W. 1 Santosh Kr. Bhowmick. the informant of the case was the Landlord of the accused and he stated in his evidence that 2/3 months, prior to the date of incident, the accused was inducted as a tenant by him. On 29.7.96 at about. 8.00/8.10 P.M. P.W.2 Gita Singh informed him that she found the accused running away and on being asked by her, the accused fled away without giving any reply. Thereafter P.W. 1 along with his wife and said Gita Singh went to the tenanted room of the accused and found the wife of the accused lying on the floor with bleeding injuries and she died when ambulance was called. P.W.I further stated that a blood stained katari was seized from the room by the police under seizure list, which was signed by him. He sent information over telephone to the police and on arrival of the police, his statement was recorded and FIR was registered on the basis of such statement. P.W. 2 Smt. Gita Singh stated in her evidence that on the date of incident she found the accused Samir running away and she reported the matter to her Landlord, Santosh Kr. Bhowmick. She also stated to the police officer that she along with Santosh Babu (P.W.I) and his wife went to the house of Samir and found his wife lying on the floor with bleeding injuries. P.W. 3 Ratan Pal was declared hostile by the prosecution. P.W. 4 Gopal Das was a witness to the inquest. P.W. 5 was the Autopsy Surgeon, who

found the following injuries on the deadbody of the victim.

- i. Rigor mortis negative, built average, eyes half closed, mouth -teeth visible and injury-sharp cutting incised injury in the skull over frontal bone 2" x 1/2" x bone deep.
- ii. Incised injury over right lateral angle of the eye of 1" x 1/2" x muscle deep.
- iii. Injury over right parietal bone 3" x 1/2" x muscle deep.
- iv. Injury over occipital bone 4" x 1/2" x muscle deep and 2" x 1/2" x muscle deep and 3" x 1/2" x muscle deep and 5" x 3" x muscle deep.
- v. Injury left hand over wrist joint 1" x 1/2" x muscle deep,
- vi. Injury on right wrist joint 3" x 2" x bone deep,
- vii. Fracture of corpal and radius alna in right hand with haematoma.
- viii. Injury over right index finger one inch x half inch x muscle deep,
- ix. Haematoma in the skull,
- x. Fracture frontal bone,
- xi. Inter ranial haemorrhage.

6. According to P.W. 5, death of the victim was due to shock and haemorrhage on account of multiple injuries including head injury, which were ante mortem and homicidal in nature. P.W.5 further opined that the above noted injuries might be caused by a sharp-cutting weapon like katari, bonthi etc. P.W. 6 was the owner of grocery shop. He knew the accused, who was living as a tenant in the house of P.W.I with his wife and children. He deposed that on 29.7.96 at about 7.00 P.M. accused Samir went to his shop along with his wife and children. Accused Samir asked his children to sit in his shop and he along with his wife went to his room for bringing a bag. Accused Samir and his wife thereafter did not return. After about half an hour, this witness heard a hue and cry and he came to know that a murder was committed. Immediately thereafter a lady came to his shop and told the children of the accused that their father had killed their mother. P.W. 7 was declared hostile but he stated to the police officer that he went to the place of occurrence and found Dipali Chatterjee lying on the floor with multiple injuries on her body. P.W. 8, the A.S.I, of police was a formal witness, who recorded the FIR. P.W. 9 was the Investigating Officer of the case and he stated that he got a telephonic information from P.W. 1 and such information was recorded in the G.D. being G.D. Entry No. 1394 of 29.7.96, which was marked as Exhibit - 6. At the place of occurrence, he recorded the statement of P.W. 1 Santosh Kr. Bhowmick, which was sent to the police station for recording FIR. He held inquest over the deadbody of the victim and seized the weapon of assault, namely "katari" and also blood stained earth. P.W, 10 was the S.I. of police, who sent the alamats to FSL and collected the P.M. Report. He

handed over the G.D. to the Officer-in-Charge of the P.S. as he was transferred. P.W. 11 and P.W. 12 were two constables and both of them were formal witnesses. P.W. 13 was S.I. of police, who completed the investigation and submitted charge-sheet against the accused Samir Chatterjee.

7. The learned Advocate appearing for the appellant argued that the evidence of P.W.2 Gita Singh should not be believed as it was not at all possible for her to see the accused running in the darkness at about 8.00 P.M. But we are unable to accept such contention. P.W.2 never stated in her evidence that it was total darkness when she saw the accused running away. She specifically denied the suggestion that there was no light in the place where accused Samir was residing and in the garden also. The learned Advocate next argued that there was no motive behind committing such offence. But such argument also cannot be accepted by us, we find in the evidence of P.W. 1 that he heard about the illicit relation of one Arjun with the wife of the accused. In his examination u/s 313 Cr. PC, the accused also stated that his wife fled away with Arjun and when he reported the incident to his landlord (P.W.I) he was asked to vacate the premises. So, the motive is very much clear. When the accused came to know about the illicit relation between his wife and Arjun, he decided to kill his wife. On the date of incident, as it appears from the evidence of P.W. 6, the accused at about 7.00 P.M. went to the grocery shop of P.W.6 along with his wife and two children, asked his children to wait in the shop of P.W.6 and came back to his room with his wife. The accused thereafter never returned to the shop of P.W.6. Within half an hour P.W.6 heard about the incident of murder. This, in our considered view, was done in a pre-planned murder. The accused did not want to keep any eyewitness to the incident of murder and keeping his two children waiting in the shop of P.W.6 he committed murder of his wife.

8. The learned Advocate appearing for the State/respondent argued that there was no reason to disbelieve the evidence of P.Ws. 1, 2 and 6. There was nothing in the evidence on record to show that the said P.Ws. had any enmity with the accused person. As it appeared from the evidence of P.W.6, the victim was last seen in the company of the accused and as such he was under obligation to give a plausible explanation for cause of death in his examination u/s 313 Cr. PC. The learned Advocate of the State further submitted that P.W. 5, the Autopsy Surgeon also opined that such injuries might be caused by a "katari". According to the learned Advocate of the State the impugned Judgment and order of conviction and sentence do not suffer from any illegality and the present appeal having no merit should be dismissed.

9. From the evidence on record, it appears that P.Ws. 1, 2 and 6 are the most vital witnesses in the present case. P.W. 1 the landlord first received information from P.W. 2, Smt. Gita Singh, who found the accused running away and who stated that on being asked by her, the accused fled away without giving any reply. Having received such information from P.W. 2, P.W.I along with his wife and said Gita Singh

went to the tenanted room of the accused and found the deadbody of the victim with bleeding injuries. The blood stained katari was also found by the side of the deadbody. It appears from the evidence of P.W.6, the owner of the grocery shop that immediately before the commission of the offence, the accused came to his grocery shop along with his wife and children and kept his children waiting in the grocery shop and left for his room with his wife. The accused thereafter did not return to the said grocery shop. About half an hour after P.W.6 heard about the incident of murder of the victim by the accused. It is clear from the evidence of P.W.6 that the accused and his wife were last seen together and the accused kept his children waiting in the said grocery shop and left with his wife for his room where he committed murder of his wife. It is clear that the accused did not want his children to be the witnesses of commission of the offence for which he kept his children waiting in the grocery shop of P.W. 6.

10. Immediately after the incident, the accused absconded and he was arrested on the following day. It is true that mere abscondence cannot form the basis conviction. But when there are other evidence to connect the accused with the crime, abscondence itself is an useful piece of corroborative evidence and it may lend weight to other evidence. We do not find any reason to disbelieve the evidence of P.W.2 who saw the accused running away immediately after the incident. On being asked by P.W.2 the accused refused to give any reply and fled away. Immediately thereafter she reported the incident to her landlord (P.W.I).

11. After scrutinising the entire evidence on record, we do not find any reason to disbelieve the evidence of P.Ws. 1, 2 and 6 and from their cross-examination nothing infirm was elicited to cast even a slightest doubt on their veracity. There was no reason as to why the said witnesses would falsely implicate the accused person. There was no suggestion even of any motive for such false implication. The totality of the evidence of witnesses, specially the evidence of P.Ws. 1, 2 and 6 coupled with the medical evidence, makes it clear and sufficient to hold that the accused appellant committed murder of his wife in the manner and at the place as alleged by the prosecution.

12. After scrutinising the evidence on record we agree with the finding arrived at by the learned Trial Judge. The impugned Judgment and order of conviction and sentence does not suffer from any illegality. Accordingly we affirm the same. The appeal accordingly fails and the same is dismissed.

The accused appellant Samir Chatterjee, who is now in jail custody, will serve out the remaining period of his sentence.

A copy of this Judgment along with L.C.R. may be sent down to the Court below immediately.

Arun Kumar Bhattacharya, J.

13. I agree.