

Anjali Mandal Vs State of West Bengal

Court: Calcutta High Court

Date of Decision: Jan. 27, 2011

Acts Referred: Penal Code, 1860 (IPC) â€” Section 201, 302, 364

Citation: (2011) 4 CHN 475

Hon'ble Judges: Ashim Kumar Banerjee, J

Bench: Single Bench

Advocate: Sandip Ghosal, Avijit Mukherjee, Joydeep Dutta, for the Appellant; Siladitya Sanyal, Amit Ranjan Ray for the O. P. Nos. 2 and 4 and Debabrata Roy for the State, for the Respondent

Final Decision: Dismissed

Judgement

Ashim Kumar Banerjee, J.

Nimai Mondal and Kanai Ghosh were friends. On January 12, 2000 at about 7 p.m. Kanai called Nimai. They

went together to the house of Kanai, however, Nimai did not return. On January 13, 2000 when PW- 1, the wife of Nimai enquired about her

husband Kanai told that Nimai had left his house on the previous night at about 9:30 p.m. On January 14, 2000, Anjali lodged a complaint with the

police stating that her husband had gone missing since January 12, 2000. She, also in her complaint, stated that Kanai had called her husband. He

left with Kanai on that day and since then he was missing. It was also stated that Kanai took loan from Nimai on account of his son's education.

According to Anjali, Kanai possibly killed her husband, so that, he would not have to repay the loan. On January 15, 2000, the police came with

the sniffer dog (Roma). Roma entered the house of Kanai and then went to the nearby well where from the dead body of Nimai was recovered.

The police arrested Kanai and charged him u/s 364/302/201 of the Indian Penal Code. Kanai pleaded his innocence and faced trial opposite party

Nos. 2, 3 and 4 were also made accused along with Kanai. The opposite party Nos. 2, 3 and 4 prayed for their discharge that was disallowed by

the learned Magistrate. The prosecution examined seventeen witnesses while defence examined none. Learned Additional Sessions Judge, Fast

Track Court by his judgment an order dated September 6, 2005 acquitted all the accused and discharged them from the charges. Hence, the

application for revision by Anjali.

2. Mr. Ghosal, learned Counsel appearing for the petitioner in his usual fairness restricted his arguments on the opposite party No. 1 and did not

seriously press his application for the other accused.

3. According to Mr. Ghosal, Kanai and Nimai were friends. They were last seen together in the company of each other. Hence, Kanai was

obliged to explain how he had parted with company. Mr. Ghosal further, contended that the motive was also clear as would appear from the

evidence that was led by the prosecution. Mr. Ghosal also contended that the post-mortem doctor was not examined. Hence, the report could not

be admitted in evidence. In absence of post-mortem report the death could not be proved. Hence, the case should be remanded.

To support his contention Mr. Ghosal relied on two decisions:-

i) 2003, Supreme Court Cases, Page- 382 (Sahadevan alias Sagadevan vs. State Represented by Inspector of Police, Chennai)

ii) 2005 (II) Calcutta Criminal Law Reporter, 367 (Nirmala Devi vs. Ranjit Singh & Anr.)

Mr. Shiladitya Sanyal learned Counsel, opposing the application on behalf of the accused, contended as follows:-

i) Since no argument was advanced in respect of respondent No. 2, 3 and 4 the application should be deemed to have not been pressed as against

them.

ii) Anjali herself admitted that Kanai and Nimai were close friends. Hence, there could be no motive for which Kanai could be implicated.

iii) Issue of loan raised by Anjali, did not find corroboration from any other witness.

iv) The amount of loan was not spelt out. The source was also not disclosed.

v) In absence of proof of previous enmity the mens rea, and/or motive was not proved. Hence, the theory of "last seen together" could not be the

sole basis of conviction.

To support his contention Mr. Sanyal relied on the following decisions:-

i) 2009 1 SCC 184 (Keshav vs. State of Maharashtra)

ii) 2007 2 SCC (Cri) 162 (State of Goa vs. Sanjay Thakran & Anr.)

iii) 2008 1 SCC 627 (K.T. Palanisamy vs. State of Tamil Nadu.)

4. Before I consider the case in hand, let me first discuss the cases cited at the bar to find out the principle of law on the subject.

5. The decision in the case of Sahadevan (supra) was cited by Mr. Ghosal to support his contention that the learned Judge should have applied the

theory of "last seen together". The Apex Court was of the view that if the prosecution could prove that the victim was last seen in the company of

the accused and was never seen thereafter the accused must explain how he had parted with the company. The Apex Court in a later decision in

the case of Sanjoy Thakran (supra) relied on the guidelines framed by it in its earlier precedents including the case of Sarad Bridhichand Sarda. In

paragraph 13 of the said decision various factors were prescribed by the Apex Court to be considered in a criminal trial when there was no ocular

evidence of crime.

6. The Apex Court in the case of K.T. Palanisamy (supra) observed that all links must be completed to form the basis of conviction when a

conviction was to be based upon circumstantial evidence.

7. On a combined greeting of the said three decisions we are of the view that it would be unsafe to sign a judgment of conviction solely on the basis

of the theory of "last seen together", particularly when there was long gap between the time when the accused was last seen alive and the time

when his dead body was recovered, i.e., after three days as pointed out by Mr. Debabrata Roy learned Counsel appearing for the State.

8. The evidence of PW-1, 2 and 10 are relevant. PW-1, Anjali stated that Nimai went out of his house with Kanai at 7 p.m. after assuring that he

would come back by 9 p.m. When Nimai did not come back, Anjali sent Badal and Karthik to the house of Kanai when the inmates told them that

Kanai had accompanied Nimai up to a certain distance at 9 p.m. Both of them were Primary School Teachers and were friends. Both the families

were having cordial relation between them. Kanai, took Rs. 30,000/- for treatment of his son and 55,000/- on the occasion of her daughter's

wedding. Significantly enough, the amounts were not spelt out in the complaint. To that extent, there was certainly an improvement.

9. PW-2 Sanatan was a brother of Nimai. He corroborated Anjali to the extent that Badal and Karthik had enquired about Nimai on the next day

when Kanai had told them that Nimai had left his house at 9 p.m. and he had accompanied him to some distance.

10. PW-10, Baidyanath saw Kanai and Nimai talking together on the road at about 7:30 p.m.

11. The victim had been found in the company of the accused three days before his dead body was recovered from the well. It is true that the

sniffer dog, Roma's conduct would raise pointer to Kanai. However, there is no scientific mode which would clearly and conclusively help the

Court to come to a definite conclusion relying on such conduct. Anjali herself admitted that both were good friends. No witness suggested that they

had previous enmity. Such evidence would rather support the innocence of the accused. As already observed before, plea of loan, did not find

corroboration from any other witness.

12. In my view, the learned Judge was right in rejecting the case of the prosecution.

13. The application fails and is hereby dismissed.

14. Urgent xerox certified copy will be given to the parties, if applied for.