Safikul Islam Vs State of West Bengal

Court: Calcutta High Court

Date of Decision: Feb. 26, 2014

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 161, 313
Penal Code, 1860 (IPC) â€" Section 302

Citation: (2014) 3 CALLT 298 : (2014) 5 CHN 585

Hon'ble Judges: N. Patherya, J; Asim Kumar Roy, J

Bench: Division Bench

Advocate: Partha Sarathi Bhattacharyya, Advocate for the Appellant; Manjit Singh, PP. and Kakali Chatterjee, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Nadira Patherya, J.
This appeal has been filed against the judgment and order of conviction dated 29th May, 2001 and sentence dated

30th May, 2001 passed by the Additional Sessions Judge, Jangipur, Murshidabad in Sessions Trial No. 4 of March, 2001 arising out of sessions

Case No. 19/2001 u/s 302 IPC whereby the appellant was directed to suffer R.I. for life and to pay a fine of Rs. 1,000/- i.d. to suffer R.I. for

three months more. The case of the prosecution is that on 5th July, 2000 Marina Bibi alias Kabi Bibi wife of the appellant was found missing from

her paternal house. On search by the inmates of the house she was found dead in the mango garden in a pool of blood. A written complaint was

filed by Abu Sk. and P.S. Case No. 80/2000 dated 6.7.2000 was initiated against unknown person. At the time of investigation the complicity of

the appellant transpired and on completion of investigation charge sheet was submitted before the Sub-Divisional Judicial Magistrate, Jangipur u/s

302 IPC against the appellant. Thereafter the case was committed to the Court of Sessions Judge, Murshidabad and later transferred to the

Additional Sessions Judge, Jangipur for disposal. The case was registered as Sessions Serial Case No. 19/2001. Charge u/s 302 IPC was framed

against the appellant. The same was read over and explained to the appellant who pleaded ""not guilty"" and claimed to be tried.

2. On behalf of the prosecution 11 witnesses were examined and none was examined by the defence. The appellant was examined u/s 313 CrPC.

Certain documents were also taken on record as exhibits. On consideration of the documents so also the evidence the Court below passed the

order of conviction and sentence. Hence this appeal.

3. Counsel for the appellant submits that the date of incident is 5th July, 2000 and the FIR was filed on 9th July, 2000. The appellant was

apprehended on 8th July, 2000. In the FIR filed the accused has not been named and although PW 1 in his evidence has stated that the accused

confessed the fact of murder, the said is not to be believed as in the FIR PW 1 did not disclose the name of the appellant. The chakku and T-shirt

though recovered the recovery has not been established. The investigation was initiated on the basis of GD entry followed by a telephonic

message. This was prior to the written complaint filed. Admittedly there is no eye witness and it is on circumstantial evidence that an order of

conviction and sentence has been passed.

4. By placing reliance on the theory of last seen together the appellant has been convicted and sentenced. That the victim was called by the

appellant has not been mentioned by the inmates or by the villagers. There is no corroborated evidence also in this regard. The appellant was

approached on 9th July, 2000 and taken into judicial custody.

5. The case of the prosecution is based on seizure of chakku and T-shirt. The said seizures were not at the instance of the appellant. The I.O. (PW

10) has specifically stated that the appellant between 4.45 pm and 9.45 pm was in thana, therefore it is unbelievable that the seizure could have

been made between 21.35 pm and 21.45 pm of the same day. The FIR maker did not name anyone. He has not suspected any person to be

involved in the murder of the victim. Since 9 pm of 5th July, 2000 the victim was found missing and it was only after midnight that the dead body

was found. The inquest report is also silent with regard to suspect. The GD entry has not been produced, therefore the information given is not

known. The evidence of PW 2 and PW 3 is developed and exaggerated and 313 examination of the appellant ought to be considered. PW 3 who

in his evidence stated that the appellant called the victim is an interested and related witness and his evidence ought not to be considered. It was

not put to the doctor that the seized knife caused the injury. In fact the knife was not even shown to the doctor.

6. It was only on the basis of the statement of the mother recorded u/s 161 that PW 10 (I.O) arrested the appellant. The I.O. in his evidence has

mentioned of struggle on the basis of the victim''s clothes which were not in order. But the chain of events which needs to be linked is missing.

Therefore the theory of last seen together will be of no relevance. At the salish Abu Sk. (FIR maker) stated that he knew that the appellant had

called the victim but he did not state it in the FIR which was filed after the salish. According to the evidence of PW 10 (I.O) the knife was

recovered from a wet land and there is no mention that the knife was lifted from her dead body.

7. The T-shirt produced for identification was also not identified by PW 10 (I.O), therefore the prosecution was not able to prove the case.

Although PW 10 (I.O) has stated that on his return he made a GD entry the said GD entry has not also been produced, therefore the order of

conviction and sentence be set aside.

8. Counsel for the State in opposing the said appeal submits that the GD entry was made before 3 am. Investigation was started pursuant to the

phone call at 1.05 am when the police personnel reached the place of occurrence.

9. It has been contended by the appellant that the recovery of chakku and T-shirt are unbelievable and the knife was not also produced before the

doctor to lead to the conclusion that it was used to murder the victim. As there is no eye witness the case is based on circumstantial evidence.

10. It is an admitted position that the FIR was filed by PW 1 and not only from the FIR but also from the evidence of PW 1 (FIR maker) and PW

2 (mother) it is evident that the victim had returned to her paternal home 15 days back and was residing there away from the appellant. On the

date of incident the appellant called the victim by gesture. This is borne out from the evidence of PW 2 (mother) and PW 3 (neighbour). Thereafter

since 9 pm on the date of incident till midnight the victim was missing and it is the specific evidence of PW 2 (mother) and PW 3 (neighbour) that

the appellant returned after one hour to his in-laws house and informed that the victim had gone to answer nature''s call, when questioned about the

whereabouts of the victim. That the body was found at about midnight is borne out from the evidence of PW 1, PW 2 and PW 3. A salish was

held will be evident from the evidence of PW 1, PW 2 and PW 4. PW 7 (Doctor) found wounds in front of the victim''s neck and the stomach was

full of rice. Investigation was also made and according to the evidence of PW 4 and PW 5 the knife and the T-shirt were recovered from the place

of incident. The evidence of PW 11 also points to the appellant committing the offence and as held in Shiv Charan Vs. State of U.P., and C.

Muniappan and Others Vs. State of Tamil Nadu, non-production and non-identification of the knife or seized articles will not be fatal to the case of

the prosecution.

11. Defective investigation cannot be a ground for acquittal of the appellant as held in C. Muniappan and Others Vs. State of Tamil Nadu, Motive

is of great importance in circumstantial evidence but the same is known to the accused alone and cannot be fathomed in many cases. For the said

proposition reliance is placed on Amitava Banerjee @ Amit @ Bappa Banerjee Vs. State of West Bengal, Therefore the order of conviction and

sentence be upheld.

12. In reply counsel for the appellant submits that the FIR was filed after the salish and the FIR maker came to know that the appellant had called

the victim but the same was not stated in the FIR.

13. Having considered the submissions of the parties what emerges is that there is no eye-witness and the case is based on circumstantial evidence

which is as follows:

1. The victim was staying at her parental home. This is borne out from the evidence of PW 2 (Mother), PW 3 (neighbour) and PW 1 (FIR maker).

2. The victim was binding bidi (PW 2 and PW 3).

3. The appellant called the victim. PW 3 (neighbour) has stated that the call was by gesture. The evidence of PW 2 and PW 3 in this regard has

not been demolished in cross-examination . PW 3 (neighbour) in cross-examination has further stated that the said fact was told to the I.O (PW

10).

4. The appellant returned after one hour to the victim''s paternal home and when asked the whereabouts of the victim said she had gone to answer

nature''s call.

5. When the victim did not come a search was started and her body found.

14. The Dr. (PW 7) has said that the stomach of the victim was full of rice and it takes 4 hours for the digested food to pass from the stomach to

the intestine. PW 2 (mother) has stated that they would have dinner at 10 pm. Barely 2 hours had passed since the meal when the body was found.

The Dr. (PW 7) has also said the injury was caused by a heavy sharp cutting knife. There is no direct evidence against the appellant but the events

are linked. There is no missing link. In fact the last seen together theory comes into play and when asked by PW 2 (mother) and PW 3 (neighbour)

the whereabouts of the victim, the appellant replied that she had gone to answer nature''s call. This has not been demolished in cross-examination.

If the appellant was not with the victim all he would say is that he did not know. For defective investigation as held in C. Muniappan and Others

Vs. State of Tamil Nadu, the appellant cannot be acquitted as the evidence will have to be examined which in this case points to the guilt of the

appellant. Motive though of importance in a case based on circumstantial evidence, but to prove motive is very difficult. In the instant case that the

victim had been staying at the parental home for the last 15 days cannot be disputed as will appear from the evidence of PW 1 (FIR maker) and

PW 2 (mother). For all the said reasons the order of conviction and sentence calls for no interference and the appeal fails and is dismissed.

Asim Kumar Ray, J.

I agree.