

(2005) 09 CAL CK 0062

Calcutta High Court

Case No: C.R.A. No. 173 of 2001

Sahajaman Mia and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Sept. 1, 2005**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 164
- Penal Code, 1860 (IPC) - Section 201, 302, 304, 34

Citation: (2006) 1 CHN 209**Hon'ble Judges:** Pranab Kumar Deb, J; Alok Kumar Basu, J**Bench:** Division Bench**Advocate:** Subir Banerjee, Jayanta Banerjee and Ruxmini Basu Ray, for the Appellant; L.M. Dutta and Prabir Majumdar, for the Respondent

Judgement

Alok Kumar Basu, J.

Four persons in all faced Sessions Trial No. 4 of 2000 corresponding to Sessions Case No. 95 of 1999 before the learned Additional Sessions Judge, 2nd Court, Dakshin Dinajpur at Balurghat.

2. Of the four persons, Sahajaman Mia faced the charge both under Sections 302 and 201 of the IPC while Hafijuddin Mia and Mariam Bibi and Afajuddin faced the trial u/s 201/34 of the IPC.

3. The learned Additional Sessions Judge on conclusion of his trial found from the evidence that Sahajaman Mia, the husband of the victim lady was guilty of murder and that apart he was also guilty u/s 201 of the IPC. The learned Judge, however, exonerated Afajuddin Mia from the charge u/s 201/34 of the IPC but found both Hafijuddin Mia and Mariam Bibi guilty of the offence u/s 201/34 of the IPC. The learned Judge on such conclusion convicted Sahajaman Mia and other two appellants and recorded the order of sentence against all of them.

4. Now the appellants have come up through this appeal to challenge their respective order of conviction and sentence and it is important to state that Sahajaman Mia is still in jail but Hafijuddin Mia and Mariam Bibi were enlarged on bail after admission of the appeal.

5. The prosecution case was very unfortunate and at the same time thought-provoking as it is apparent from the FIR of P.W. 1, the uncle of the unfortunate housewife, Majeda. It was disclosed in the FIR of P.W. 1, Abdul Kader Mia that Majeda was married with Sahajaman some 8 years ago and at the time of marriage the parents of Majeda gave sufficient money and gifts to the husband. On 13th June, 1992 Abdul Kader Mia came to learn that Majeda all on a sudden breathed her last in the house of her husband during night.

6. On hearing the information of sudden death of Majeda, Abdul Kader Mia along with his relatives and other villagers came to the village of the appellants and there getting the information of the death of Majeda, they ultimately permitted the appellants for burial of the deadbody.

7. Subsequently, on 18th June, 1992 one Giasuddin Mia, a co-villager of the appellants, came to Abdul Kader Mia and gave an information that soon after death and burial of Majeda, her husband, Sahajaman, confessed before him and other co-villagers that it was he who throttled Majeda in the night of 13th June, 1992 causing her death.

8. Abdul Kader Mia at once came to the village of the appellants and there also Sahajaman, in presence of Abdul Kader Mia and other people of the locality, repeated the same confession involving himself about the death of Majeda. This confession of Sahajaman led Abdul Kader Mia to file a written compliant against Sahajaman, his parents and his brother and which resulted in institution of the present case against the appellants.

9. The Investigating Officer, thereafter, arranged for holding post-mortem examination over the deadbody which was already highly decomposed and the doctor, P.W. 17, conducted the post-mortem examination and gave his specific opinion that Majeda died out of throttling and in his opinion the death of Majeda was for throttling which was ante-mortem and homicidal in nature. The I.O. without killing any further time examined the available witnesses and thereafter on completion of his investigation, he submitted the chargesheet against all the appellants u/s 302/201 of the IPC.

10. The prosecution side examined as many as 18 witnesses during trial before the learned Additional Sessions Judge and these witnesses included the P.W.1, Abdul Kader Mia, who was the uncle of Majeda and who lodged the FIR and also disclosed about the extra-judicial confession made by the appellant No-1, Sahajaman Mia before him P.W. 2 Giasuddin Mia who broke the ice lifting the veil about the mysteries of the murder of Majeda P.W. 4. who disclosed that the time of inquest

Rafela Bibi deposed before the Executive Magistrate that she noticed swelling mark on the throat of Majeda when she took Majeda for final bathing before burial, P.W. 6 another witness who disclosed about the extra-judicial confession of Sahajaman before him and other people of the village. P.W. 9 Rafela Bibi who although gave a statement recorded by the Id. Magistrate u/s 164, Cr. PC but subsequently retracted from her statement, P.W. 13, the Id. Judicial Magistrate who recorded the 164, Cr. PC. statement of Rafela Bibi and other witnesses supporting the prosecution case P.W. 16 the Id. Executive Magistrate who was present at the time of exhumation of the deadbody and who prepared the inquest report of the deadbody of Majeda P.W. 17 the doctor to conducted the post-mortem examination and who gave final opinion regarding the actual cause of death of Majeda and P.W. 18 the Investigating Officer.

11. The Id. Additional Sessions Judge after perusal of prosecution evidence and considering the submissions of both the prosecution and the defence made before him during the trial came to the finding that Majeda died in her matrimonial home and in presence of the appellant Sahajaman Mia and there was no third party present at the time of her death. The Id. Judge found from evidence that there was no challenge that Majeda was a legally married wife of Sahajaman and Majeda till her death was under the custody of Sahajaman in his room. The learned Judge relied heavily on the statement of P.W. 1, P.W. 2 and P.W. 6 to hold that the appellant No. 1 Sahajaman actually gave an extra-judicial confession wherefrom it came on surface that Majeda did not die a natural death but she was put to death by throttling by her husband the appellant Sahajaman.

12. The learned Judge also relied heavily on the medical opinions recorded by P.W. 17 and after discussing all the points raised by the defence during cross-examination, the learned Judge concluded that the post-mortem doctor rejected all the suggestions of the defence and came to the clear finding that when the hyoid bone of the deceased was found fractured, the only conclusion can be drawn that it was a simple case of throttling and the doctor further opined that considering the stage of decomposition suffered by the corpse, it was not physically possible to notice any mark of ligature or nail mark which would be generally apparent on the fresh deadbody to hold conclusively about the act of throttling.

13. Thus, the Id. Judge having regard to the peculiar facts and circumstances under which Majeda breathed her last in her matrimonial home in presence of the appellant, Sahajaman Mia alone, found no difficulty to conclude that Sahajaman was guilty of murder of Majeda.

14. The Id. Judge on perusal of the evidence also found support with the prosecution case regarding the charge framed against Sahajaman and his parents u/s 201 of the IPC.

15. Appearing in support of the present appeal Mr. Banerjee has first of all taken us through the entire evidence on record. Mr. Banerjee has also taken us through Modi's Medical Jurisprudence and Toxicology (22nd Edition) to bring home his point about the defence argument that there was no element of truth in the medical opinion.

16. Mr. Banerjee contends that it is well-established principle of law that to act on extra-judicial confession the Court must be satisfied about the true words uttered by the deponent and also about the fact and situation under which such extra-judicial confession was made. Mr. Banerjee contends that if we carefully examine the statement of P.W. 1, P.W. 2, P.W. 3 and P.W. 6 as a whole, we shall notice that none of the deponents uttered what was the nature of extra-judicial confession made by Sahajaman, rather, from the statement of P.W. 2 one will get the idea that Sahajaman without having any mens rea or mala fide intention jokingly placed his hand on the throat of Majeda and this utterance by no stretch of imagination can be taken as an extra-judicial confession to rope a person u/s 302 of the IPC.

17. Mr. Banerjee has seriously argued regarding the prosecution evidence of P.W. 9 where the said witness did not support the prosecution allegation that she found swelling mark on the throat of Majeda. Mr. Banerjee contends with reference to Modi's Medical Jurisprudence and Toxicology (22nd Edition) that it was the expert's opinion that even in case of decomposed body the mark of ligature would have been easily noticed by an expert eye and when the doctor, the P.W. 17, admitted in his evidence that there was no mark of apparent ligature on the throat of the deceased and if we consider the evidence of P.W. 9, Rafela Bibi in this context, the only conclusion would go in favour of the appellant that the appellant did not cause the death of Majeda by throttling as alleged.

18. Mr. Banerjee is very much sceptical of the medical opinion regarding fracture of hyoid bone of the victim and his attempt has been to convince us with reference to Modi's book that the fracture of the hyoid bone can take place even during transit of the deadbody or even during exhumation of the deadbody where use of spade and bamboo has made.

19. Mr. Banerjee contends that here is a case where there was no allegation of prior torture and assault on the housewife, there is no allegation of any dowry and naturally there is no apparent reason why the husband would put his dearest one to death by throttling and this peculiar feature of the prosecution case has not been explained and further the evidence of the prosecution side could not convincingly make it clear that Sahajaman throttled Majeda and afterward he gave the extra-judicial confession. Mr. Banerjee, therefore, concludes that prosecution evidence does not inspire confidence in the mind of any ordinary man to sustain the order of conviction as recorded by the learned Additional Sessions Judge.

20. As regards the charge u/s 201/34 of the IPC, Mr. Banerjee submits that from the entire prosecution evidence there is no allegation against any of the appellant that they removed any evidence with the positive intention of screening themselves from legal punishment and that being the position, the learned Judge was not justified in recording his order of conviction u/s 201/34 of the IPC against any of the appellants. Mr. Banerjee, therefore, prays for an outright order of acquittal against all his clients.

21. Mr., Dutta, appearing for the State-respondent and in support of the impugned order of conviction and sentence has strongly refuted all the point of Mr. Banerjee with reference to fact and evidence on record.

22. Mr. Dutta submits that apart from the direct evidence through prosecution witnesses to prove extra-judicial confession, the prosecution side has been successful to establish a chain of circumstances where from the only conclusion can be drawn pointing out the guilt of the appellant No. 1 for the homicidal death of Majeda.

23. Mr. Dutta contends that the P.W. 1, P.W. 2 and P.W. 6 in one voice stated about the extra-judicial confession of Sahajaman and that was made not after much delay but subsequent to the burial of the deadbody of the victim and that apart the medical evidence was specific and clear that Majeda died of throttling.

24. Mr. Dutta contends that if we consider the fact that Majeda died while remaining under the guardianship of Sahajaman and when there was no evidence to suggest that any outsider had any access to Majeda and if we consider the situation in which she died such a tragic death, the only conclusion would come that the appellant is to explain the circumstances and when explaining the circumstances the appellant No. 1 himself came forward that he committed the mischief, the chain of circumstances appears to be fully complete without any single omission and that apart the direct evidence leaves no scope to hold otherwise than the guilt of the appellant No. 1 for the murder of Majeda.

25. We have perused the entire evidence on record carefully and we have considered the submissions of both Mr. Banerjee and Mr. Dutta in the background of prosecution evidence.

26. Before dealing with the factual aspect of the case and the connected evidence, we would like to discuss medical evidence of this case which assumes much importance to decide the question whether the appellant No. 1 can be held to be guilty of the murder of Majeda.

27. It is pertinent to mention that post-mortem of Mojeda was not conducted in a usual manner because the case itself has got a chequered career. Majeda was put in the grave yard in the morning of 14th June, 1992 and only after recording of the FIR on 20th June, 1992 attempt was made to exhume the deadbody from the grave yard

and only thereafter with permission of the appropriate authority, the corpse was brought out of the grave and arrangement was made for holding P.M. examination.

28. We find that immediately after bringing out of the corpse, the same was not forwarded for post-mortem examination and it took further two days for actual post-mortem examination and when the corpse was placed for post-mortem, according to the opinion of the doctor, it was highly decomposed to find out any apparent physical indication to prove the act of violence by anybody on the body.

29. What the doctor did was clinical dissection of the deadbody and while making such clinical dissection, the doctor clearly found the hyoid bone of the victim broken on the middle portion.

30. To any ordinary man having any first-hand idea about the human anatomy, it would be clear that the hyoid bone when found broken from the middle portion, it cannot be broken in such a fashion unless undue physical pressure has put on the surface of the throat, because, it is known to any person having a primary knowledge of human anatomy that among all the bones of human body hyoid bone appears to be softer one.

31. Composition of human bone is such a peculiar composition that breaking of the hyoid bone is not possible in the ordinary course either by bringing out the deadbody or dispatching the same even through a primitive form of transport.

32. Attempt was made while cross-examining the doctor to suggest that the hyoid bone might have been fractured either while bringing out the body from the grave yard or while transporting the same through a cycle-van as is generally done in the remote villages of the State.

33. The doctor who happened to be an expert of anatomy gave specific opinion that hyoid bone, the way it was broken in the present case, would not have been broken by either way as suggested by the defence and his specific opinion was that the hyoid bone was broken only due to throttling.

34. After giving our anxious consideration to the submissions made by Mr. Banerjee on the medical opinion with the aid of Modi's Medical Jurisprudence and Toxicology (22nd Edition), we are really sorry that we cannot subscribe to the views expressed by Mr. Banerjee, but, we are in total agreement with the medical evidence that Majeda died out of throttling and that was done by physical force.

35. Now, we come to the circumstances under which Majeda died and the circumstances under which her body was exhumed after burial. P. W. 1 and other relatives of Majeda and so also the villagers accepted it as a natural destiny when they heard the news of Majeda's death. At that point of time neither the relatives nor the villagers had any suspicion that Majeda may have died a homicidal death. But, the entire scenario went a radical change when Giasuddin, a co-villager, rushed to the village of P.W.1 and disclosed that soon after burial of Majeda, Sahajaman

confessed before him that he killed Majeda by throttling. Sahajaman also disclosed the same thing to P.W.6 and other co-villagers and when P.W.1, the uncle of Majeda, came to the village, then in presence of his parents and other co-villagers Sahajaman repeated the same confession.

36. We have carefully noticed the statement of P.W. 1., P.W. 2 and P.W.6 and having regard to their cross-examination we find nothing to question the credibility of their statement as regards the extra-judicial confession made by Sahajaman.

37. Thus, when the medical evidence was very clinching against Sahajaman, when we have no reason to doubt the statement of the witnesses supporting the extra-judicial confession and when from the facts and surroundings, we get a complete picture that except Sahajaman nobody was present in the room of Majeda and that Majeda died suddenly without getting any medical aid and that when there was no evidence to suggest that Majeda suffered any illness, all the surrounding facts and evidence taken together lead us to the irresistible conclusion that it was Sahajaman who killed Majeda by throttling.

38. Thus after considering the points of both Mr. Banerjee and Mr. Dutta in the backdrop of prosecution evidence, we find no substance in the argument of Mr. Banerjee and this leads us to the conclusion that the learned Additional Sessions Judge neither committed any mistake in fact nor in law in recording his order of conviction against Sahajaman Mia u/s 302 of the IPC.

39. Mr. Banerjee made an attempt to convince us whether the offence of Sahajaman can be brought down to one u/s 304 of the IPC. We have also pondered over this issue carefully, but from the medical evidence we got that by throttling Majeda was killed and Sahajaman did commit no mistake in choosing the target of attack knowing fully well that such attack would only lead to death of a person and thus from the act of Sahajaman we get both the element of intention and knowledge which squarely prompt us to hold that the offence cannot be scaled down to Section 304 of the IPC.

40. Thus, in view of our above discussions we confirm the order of conviction recorded against Sahajaman Mia, but, so far as the prosecution case against Sahajaman and other two appellants is concerned u/s 201 of the IPC, we really did not get any support from the record to sustain such order of conviction and for this reason we cannot support the conviction of the learned Additional District Judge as regards Sahajaman and other two appellants u/s 201/34 of the IPC.

41. In the result, we allow the present appeal in part while upholding the conviction and sentence of Sahajaman Mia u/s 302 of the IPC, we set aside the conviction and sentence of Sahajaman Mia and other two appellants u/s 201/34 of the IPC.

42. We find that the other two appellants are released on bail and accordingly, they stand discharged from their respective bail bonds with immediate effect.

43. Send a copy of this judgment and order along with the L.C.R. to the learned Court below immediately for information.

Pranab Kumar Deb, J.

44. I agree.