

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate side**

PRESENT:

**HON'BLE JUSTICE CHITTA RANJAN DASH
AND
HON'BLE JUSTICE PARTHA SARATHI SEN**

C.R.A. 417 OF 2004

Srimanta Mandi

Vs.

The State of West Bengal

For the Appellant : Mr. Partha Sarathi Bhattacharyya, Adv.

For the State : Ms. Faria Hossain, Adv.

Ms. Sujata Das, Adv.

Heard on : 29.07.2022, 07.09.2022

Judgment on : 22.11.2022.

PARTHA SARATHI SEN, J.:-

1. The present appeal arises out of the Judgment dated 19.06.2003 as passed by learned Sessions Judge, Purulia in S.T. No. 5 of 2003 (arising out of Sessions Case No. 63 of 2003 and G.R. Case No. 156 of 2001) whereby and whereunder the present appellant was found guilty under Section 302 of the Indian Penal Code and thus sentenced to suffer imprisonment for life and to pay a fine of Rs.5000/- (rupees five thousand) i.d. to suffer additional rigorous imprisonment for one year. The convict felt aggrieved and thus preferred the instant appeal.

2. In order to dispose of the instant appeal fairly and effectively, the facts leading to S.T. No. 5 of 2003 is required to be dealt with in a nutshell.

3. On 22.05.2001, one Rabilal Kisku, son of Shri Hapan Kisku of village Kelahi, Kalidaha lodged a written complaint with O.C., Kashipur Police Station to the effect that on 21.05.2001 at about 5 P.M., he along with his all the family members left for cultivation and at that time his daughter Purnima Kisku, aged about 22 years was alone in her home. It has been alleged in the said written complaint that taking advantage of such situation one Srimanta Mandi (the appellant herein) committed rape upon his said daughter and thereafter murdered her by cutting her throat. It has been alleged further that when his wife came back to his home, she noticed that the said accused was fleeing away and after entering into her house, she also noticed that her said daughter i.e. Purnima Kisku was lying in dead condition and besides her dead body one cap and one napkin (gamcha) were lying.

4. On the basis of the said written complaint Kashipur P.S. Case No. 43 of 2001 dated 22.05.20001 under Sections 450/376/302 Indian Penal Code was started. Investigation was taken up and on completion of the same charge sheet was submitted under Sections 450/302 Indian Penal Code. Learned ACJM, Purulia found that the said case is exclusively triable by a Court of Sessions and accordingly by his order dated 08.04.2003, he committed the said case record to the learned Sessions Judge, Purulia for trial and disposal.

5. Lower Court Record reveals that on 23.04.2003, the learned Trial Court considered the charges against the accused and on perusal of the entire materials as placed before him, framed charge under Section 302 of the Indian Penal Code and since the accused (the appellant herein) pleads his innocence, the trial proceeded.

6. Lower Court Record reveals further that in order to bring the charges, the prosecution has examined 11 (eleven) witnesses in all and various documents have been exhibited both on the side of the prosecution and defence.

7. For the sake of convenience the prosecution witnesses can be categorised in the following manner:-

Private Witnesses	Police Official	Medical Practitioners
PW-1 – Informant/father of the victim. PW-2 – Mother of the victim.	PW-11 – Recording Officer as well as Investigating Officer.	PW-6 – Autopsy surgeon. PW-7 – Medical Officer of Purulia Sadar Hospital. PW-8 – Radiologist of

PW-3 – Co-villager.		Purulia District Sadar Hospital.
PW-4 – Brother of the victim.		PW-9 – Medical Officer (Surgeon) of Purulia District Sadar Hospital.
PW-5 - Scribe		PW-10 – Medical Officer-cum-pathologist attached to the B.C. Roy Polio Clinic and Hospital, Kolkata.

8. In considered view of us there is no necessity to discuss the oral evidence of all the prosecution witnesses since those are not much relevant for effective adjudication of this appeal and thus in this judgement the evidence of those prosecution witnesses will be discussed which are relevant and have a strong bearing with the case in hand.

9. As discussed above P.W.-1 being the informant as well as the father of the victim in course of his examination-in-chief practically echoed the version of his written complaint (Exhibit-1). In course of his examination-in-chief he stated that his daughter Purnima Kisku was unmarried at the time of her murder and such incident of murder took place on 21.05.2001 at 5 P.M. He stated that since the distance between his residence and the local Police Station is six miles, he could not lodge written complaint with the said Police Station on the very fateful day and thus he reported the matter on the next day morning. It is his further version that

on the relevant day and hour, he along with his all family members except his victim daughter Purnima Kisku went to paddy field for the purpose of cultivation and on the said day when his wife returned from paddy field, she found the convict Srimanta Mandi was coming out from his house and thereafter he ran away. He further stated that after getting information when he reached his house he found his said daughter was no more and at that time her wearing apparel was lifted up.

10. In considered view of us, the cross-examination of P.W.-1 is not much relevant and accordingly, the same is not discussed in detail.

11. P.W.-2 according to the prosecution is the mother of the victim who in her examination-in-chief stated that her victim daughter Purnima Kisku at the time of her death was aged about 22 years and the accused Srimanta Mandi (the appellant herein) used to come to her house in their absence. She stated that there was no negotiation of marriage between the accused and Purnima Kisku. She further stated that on the relevant day her said daughter was alone in her house and at that time the other family members including her went to the paddy field for cultivation. It is her further version that on the relevant day and hour when she reached at the door of her house, the accused ran away after pushing her and at that time the accused did not give any reply to P.W.-2 as to why he was running away. It is the further version of P.W.-2 that on entering into her room she noticed that there was injury on her said daughter's neck and that she was ravished. She stated that by the side of the dead body of her said daughter she found one napkin (gamcha) and a cap of the accused as well as one bloodstained batali (a sharp edged weapon). The cross-examination of P.W.-2 is however very much relevant.

P.W.-2 stated in her cross-examination that when she came back to her home on the relevant day from the paddy field, dark was nearly approaching and when she stepped into the court yard, the accused Srimanta Mandi ran away from her bed room by giving a push to her. She reiterated that after entering into her room she found that her said daughter was dead and her wearing apparel was lifted up. She denied all the suggestions as given to her by the learned Advocate for the accused.

12. PW-3 in course of his examination-in-chief stated that after hearing hue and cry he came to the house of the P.W.1 and after entering into his room he found that the victim Purnima Kisku was lying in dead condition having cut injury on her throat and at that time her wearing apparel was lifted up. In course of cross-examination he stated that when he went to the house of P.W.-1, it was almost dark.

13. P.W.-4 being the brother of the victim lady stated that on the relevant day the accused murdered her sister at their home when no other of his family members was present. He saw the dead body of Purnima Kisku on the relevant date. In course of his examination-in-chief he identified the cap of the accused as well as the napkin (gamcha). In cross-examination P.W.-4 stated that on the relevant day and hour he went to the paddy field. He stated further that similar type of cap and napkin (gamcha) were available in the market. He further stated that on the basis of the identification of the cap and napkin (gamcha) and after hearing the entire incident from his mother he understood that the accused had committed murder of his sister.

14. P.W.-5 in course of his examination-in-chief stated that the written complaint was written by him as per instruction of P.W.-1 and that he was present at the time of the inquest of the dead body of the victim. The cross-examination of the P.W.-5 in considered view of us is not much relevant and accordingly the same is not discussed.

15. P.W.-6 being the autopsy surgeon in course of his examination-in-chief duly proved the autopsy report (Exhibit 4). He stated that in course of post-mortem examination he found one penetrated wound at the arterial part of neck and the measurement of such wound is 1 inch x $\frac{1}{2}$ inch deep to trachea. He further noticed that the trachea was injured and presence of foetus and placenta in the uterus of the victim which he sent for forensic examination. According to him the death of the victim occurred due to severe shock and haemorrhage and as a result of the abovementioned injury which is anti-mortem and homicidal in nature. In course of his cross-examination, he stated that the injury caused depends upon the dimension of batali (the alleged weapon of offence). He further stated that he noticed that the depth of the injury was up to trachea although he did not measure it numerically. He stated further that at the time of post-mortem examination he found no injury on the private parts of the victim. However, he noticed that the deceased was pregnant.

16. Lower Court record reveals that four other medical practitioners, namely, P.W.-7 to P.W.10 were examined by the learned Trial Court. However, their evidence has got no bearing with the charges framed as against the accused by the learned Trial Court and thus we find no necessity to discuss such evidence.

17. P.W.-11 being the Officer-in-charge of Kashipur Police Station received the written complaint from P.W.-1 and thereafter he himself took the charge of investigation. In course of his examination-in-chief he stated that he visited the P.O., prepared the sketch map, made inquest over the dead body of the victim, examined the available witnesses, collected the post-mortem report and prepared the seizure list and on completion of investigation he submitted charge sheet against the accused. In course of his cross-examination P.W.11 stated that while examining P.W.-2 under Section 161 Cr.P.C. the said P.W.-2 did state to him on the relevant day and hour the accused pushed her down and fled away. He stated further that P.W.-2 did not state to him that the wearing apparel of the victim was lifted up then. He denied that he conducted a perfunctory investigation.

18. In course of his argument, Mr. Bhattacharyya, learned Advocate for the appellant as appointed by this Court draws attention of this Court to the certified copy of the impugned judgement. It is contended by him that while passing the impugned judgement learned Trial Court has miserably failed to appreciate that the present case is based on circumstantial evidence and that the chain of circumstances as required to be proved in such type of cases are absolute incomplete and therefore learned Trial Court misdirected himself in coming to a conclusion that the present appellant has committed offence under Section 302 of the Indian Penal Code. It is contended further that while passing the impugned judgement learned Trial Court misdirected himself in placing too much reliance upon the evidence of the P.W.-2 and at the same time failed to appreciate that P.W.-2 is not the ocular witness of the alleged murder of the victim. Mr.

Bhattacharyya, learned Advocate thus submits that it is a fit case for allowing the instant appeal by setting aside the impugned judgement as passed by the learned Trial Court.

19. Ms. Faria Hossain, learned Advocate for the State in course of her argument opposed the contention as raised by Mr. Bhattacharyya, learned Advocate. It is argued by her that learned Trial Court committed no error of fact or error of law in placing his reliance upon the unchallenged testimony of P.W.-2. It is contended that learned Trial Court while passing the impugned judgement found that P.W.-2 could not be shaken in course of her cross-examination and therefore learned Trial Court committed no mistake in convicting the present appellant under Section 302 of the Indian Penal Code. It is argued that it is a fit case for dismissal of the instant appeal.

20. We have perused the entire materials as placed before this Court. We have also given our due consideration over the submissions of the learned Advocates of both the sides. On perusal of the evidence of the prosecution witnesses there is no doubt in our mind that death of the victim lady was homicidal in nature since the evidence of P.W.-6 i.e. the autopsy surgeon as discussed above is very much clear to that effect. In course of his cross-examination nothing could be established on the part of the defence that the death of the victim is either natural or accidental.

21. There is no iota of doubt in our mind that the instant case is based on circumstantial evidence and accordingly we propose to peruse the five golden principles relating to circumstantial evidence as time to time enunciated by the

Hon'ble Supreme Court of India as well as by the different High Courts of our country.

22. In the reported decision of **'Sarad Birbhichand Sarda Vs. State of Maharashtra'** reported in AIR 1984 Supreme Court 1622. The Hon'ble Supreme Court of India while dealing with a case of circumstantial evidence expressed the following view:-

"(i) The circumstances from which the conclusion of guilt is to be drawn should be fully established;

(ii) The facts so established should be consistent only the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) The circumstances should be at a conclusive nature and tendency;

(iv) They should every possible hypothesis except the one to be proved;

(v) There must be chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

The same view was taken in the reported decisions of **'State of Rajasthan Vs. Rajaram'** reported in (2003) 8 SCC 180 and **'State of Haryana Vs. Jagbir Singh'** reported in (2003) 11 SCC 261.

23. Keeping in mind the above five principles relating to circumstantial evidence we now propose to look to the evidence of P.W.-2 once more. On careful scrutiny of the evidence of P.W.-2, it appears to us that it is the version of the P.W.-2 that on the fateful day and hour she noticed that the accused was coming out from her house and on being asked by her, the accused did not answer to her query and on the contrary he pushed her and fled away. It is her further version that thereafter she entered into her room and found cut injury on the throat of her daughter Purnima Kisku. Apart from this, no other positive evidence came out from the mouth of the P.W.-2 to rope the appellant with the charge of murder. It appears to us that the learned Trial Court while passing the impugned judgment expressed the view that this piece of evidence clearly and categorically indicates towards the guilt of the accused for which he was charged. In considered view of us the view taken by the learned Trial court while appreciating the evidence of P.W.-2 is not at all correct since the aforesaid conduct of the accused i.e. running away from the house of the victim on the relevant day and hour after giving a push to P.W.-2 does not categorically indicate that none but him has committed the crime of murder of the said victim lady. Admittedly in course of investigation the alleged weapon of offence, one cap and one napkin (gamcha) were seized from the P.O. but before the Trial Court the prosecution has miserably failed to prove that those cap and napkin (gamcha) belong to the accused. No endeavour was made by the prosecution to send the bloodstained alleged weapon of offence for forensic examination as well as no finger print report was obtained with regard to the available finger prints as found in the said alleged weapon of offence.

24. As rightly pointed out by Mr. Bhattacharyya, learned Advocate that before the learned Trial Court no endeavour was made by the prosecution even to prove a motive of the present appellant to commit such crime. In this regard we propose to look to a reported judgement **‘Ganesh Lal Vs. State of Maharashtra’ reported in 1992 (3) SCC 106**. The relevant portion of the aforesaid reported decision is reproduced hereunder:-

“Even in case of a circumstantial evidence absence of motive which may be one of the strong link to complete the chain would not necessarily become fatal to the prosecution where other circumstances are such as to complete the chain connecting the accused with the crime.”

The same view was taken in the case of **‘Vivek Kalra Vs. State of Rajasthan’ reported in (2013) 2 CCRLR (SC) 826**.

25. In view of the discussion made hereinabove we have got no hesitation to hold that before the learned Trial Court the prosecution has not only failed to establish the motive of the present appellant to commit the aforementioned crime but also they have completely failed to establish the complete chain of link connecting the present appellant with the crime.

26. In view of such, the instant appeal succeeds. The impugned judgment and order of conviction dated 19.06.2003 and 20.06.2003 as passed by Learned Sessions Judge Purulia in Sessions Trial No. 5 of 2003 arising out of Session Case No. 63 of 2003 is hereby set aside. The present appellant Srimanta Mandi is thus

found not guilty of the charge under Section 302 of the Indian Penal Code and he is thus acquitted from S.T. Case No. 5 of 2003 arising out of Sessions Case No. 63 of 2003. The present appellant Srimanta Mandi is also discharged from his bail bond and be set at liberty at once, if not, detained in connection with any other case.

27. Let a copy of this judgment along with the LCR be sent down at once.

28. Let a free certified copy of this judgement be forwarded to the Secretary, District Legal Services Authority, Purulia for onward transmission of the same to the correctional home authority where the present appellant is detained now.

29. Urgent Photostat certified copy of this Judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)