

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

CRA 568 OF 2003

Taslima Bibi

Vs.

The State of West Bengal

For the Appellant	:	Mr. Abdul Hamid, Adv. Mr. J. K. Chaurasia, Adv.
For the State	:	Mr. Saswata Gopal Mukherji, Ld. PP. Ms. Z.N. Khan, Adv. Md.Kutubuddin, Adv.
Heard on	:	15.07.2022, 23.08.2022, 21.11.2022 & 22.11.2022
Judgment on	:	23.12.2022.

CHITTA RANJAN DASH, J.:-

1. Appellant has been convicted under Section 302 IPC and sentenced to suffer imprisonment for life and to pay fine of Rs. 1,000/- in default to suffer simple imprisonment for 3 (three) months more by order dated 22.09.2003 passed in S.T. No. 16 (7)/03 by Additional Sessions Judge, Fast Track Court, Diamond Harbour, South 24 Parganas. Hence the appeal.

2. Sahajul Paik (deceased) had married Taslima Bibi (present appellant) and Taslima Bibi was his second wife. Though Sahajul Paik, deceased was staying most of the night in his own house, he used to come to the house of Taslima Bibi (present appellant) to pass some nights. On 07.03.2003 (Friday) Sahajul Paik had come to the house of Taslima Bibi (present appellant) and in the next day morning his dead body was found in the bed room of Taslima Bibi.

Nephew of the deceased, examined as PW-1, lodged the FIR, scribed by PW-2. On receipt of the FIR on 08.03.2003, investigation was taken up by the Investigating Officer (PW-13). In course of investigation, witnesses were examined, incriminating seizures were made, dead body of the deceased was challaned for post-mortem and on completion of investigation charge-sheet was filed against Taslima Bibi (appellant) and her brother, Hossain Ali Laskar (since acquitted) for offence under Section 302, 34 IPC.

3. Prosecution has examined 13 witnesses to bring to home the charge against the accused persons. PW-1 who is the son of the elder brother of the deceased is the informant. PW-2 is the scribe of the FIR. PW-3 is the sister of the appellant and she resides in another place. PW-4 is the wife of Hossain Ali Laskar (since

acquitted). PW-5 is the witness to inquest over the dead body of the deceased, seizure of bloodstained earth from the spot and bloodstained lungis of the deceased. PW-6, 7 and 8 are co-villagers of the appellant who have testified about the fact that Sahajul Paik (deceased) was married to the present appellant and the dead body of the deceased was found in the house of the present appellant. PW-7 has specifically testified that the deceased used to come to the house of the present appellant. PW-9 is the first wife of the deceased. PW-11 is a co-villager of the deceased. He is testified to have heard that Sahajul Paik used to pass some nights in the house of the present appellant and Sahajul Paik was murdered in the house of the present appellant. PW-10 is the constable who took the dead body for post-mortem. PW-12 is the police officer who received the FIR and drew formal FIR. PW-13 is the I.O.

The defence plea one of complete denial and false implication.

4. It is admitted fact that the case is based entirely on circumstantial evidence. Learned Trial Court has returned the finding of guilt against the present appellant on the basis of the following circumstances:-

(i) Sahajul Paik was the husband of Taslima Bibi and Taslima Bibi was his second wife.

(ii) That Sahajul Paik used to come to Taslima's house.

(iii) On the fateful night Sahajul had come to Taslima's house.

(iv) On the next day morning dead body of Sahajul was found with injury on his throat in the house of Taslima.

(v) Taslima did not inform anyone regarding the murder and she left that place and could be arrested at 2:10 p.m. on 08.03.2003.

(vi) Nothing in the spot room was touched and the only door and window were also intact.

(vii) Till her examination under Section 313 Cr.P.C. nothing was suggested by the defence to any of the witness that any outsider entered into the room of Taslima and caught hold of her mouth.

5. While re-appreciating the evidence, we are conscious of “Panchasheel” of appreciation of circumstantial evidence enunciated by Hon’ble the Supreme Court in the case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC 116.***

6. From perusal of the evidence on record, it is found that PW-1, the informant, had only testified that his uncle used to stay in the house of Taslima on some nights and he was murdered in the house of Taslima Bibi. PW-3 the younger sister of the present appellant has admitted the fact that Sahajul Paik and Taslima Bibi were husband and wife and her sister Taslima was Sahajul’s second wife. She has further testified that Sahajul Paik was murdered in the house of Taslima. This witness has been declared hostile by the prosecution and nothing comes out from her testimony to make the appellant culpable. PW-4 is the wife of co-accused Hossain Ali Laskar (since acquitted). She has testified that Taslima is the second wife of Sahajul. Sahajul used to come to the house of Taslima Bibi on some nights and on the fateful night also he had come to Taslima’s house and she saw the

dead body with bleeding injury on the floor of Taslima's room. PW-4 has further testified that Taslima and her mother were residing together in the spot house and Taslima has only one room. In her cross-examination PW-4 has testified that when the first marriage of Taslima did not work, she came to live in her father's house. Her husband (Hossain Ali Laskar) protested and the matter was taken to Panchayat. The Panchayat gave some land to Taslima where she constructed one hut and used to reside there in that hut which is one and half minute from her (PW-4) house. She has further testified that her husband used to rebuke Taslima as many outsiders used to visit her house. PW-9, widow of the deceased has testified that her husband used to reside in the house of Taslima often and her husband was murdered in the house of Taslima.

7. Learned Trial Court has very much relied on the statement of the appellant recorded under Section 313 Cr.P.C., especially her statement to question no.3 and question no.9. Question No.3 and the answer to that run as follows:-

“Q.3. *The evidence of some of the public witnesses, the I.O. and the FIR shows that in the morning of 8.3.03 the dead body of Sahajul was found in your room on the floor with bleeding injury. How do you like to explain this circumstance?*

Ans.3. *Two or three persons gagged me with some cloth. I could not recognise them. On the next morning, I came to the police station. I did not murder my husband. I do not know who murdered him.”*

Question No. 9 and the answer to that run as follows:

“Q.9. *PW-4 Manwara Bibi, wife of the co-accused Hossain Ali Laskar deposed that on that fateful night Sahajul Paik, your husband came to your house. What do you like to say regarding this?*

Ans.9. *Yes, true.”*

8. From the evidence adduced by the prosecution the circumstance nos. I, II, III and IV are found to be admitted facts and the prosecution witnesses have proved that. But from that circumstances alone no inference of guilt of the appellant can be inferred because it is nobody's case that Taslima is not the second wife of the deceased, he did not use to come to her house and in the fateful night he had not come and his dead body was not found in the house of Taslima. The other circumstances, viz., circumstance nos. V, VI and VII outlined *supra* are clinching.

9. On the next morning of the occurrence not only the present appellant but her mother and her brother (since acquitted) were also missing from their house. Charge sheet was filed by the I.O. showing Hossain Ali Laskar as absconder. It was Taslima who was arrested first. In her statement recorded under Section 313 Cr.P.C. vide question no.3 she has stated that some unknown persons in the night came and gagged her mouth with some cloth; she could not recognise them; on the next day morning she went to the police station.

10. There is no discussion in the impugned judgment as to where the mother of the appellant no.1 went. From the evidence of PW-4 it is clear that the mother and daughter were staying in one room and other outsiders were coming to the house of Taslima. So there were chances that either the mother of the appellant or any

other person who had any relationship with Taslima might have killed Sahajul. There was also chance of Hossain Ali Laskar (since acquitted) murdering the deceased as he was displeased with the appellant because many outsiders were coming to her. The circumstance that appellant was absent in the house in the following morning and she did not inform anybody regarding the murder cannot be held to be a circumstance to have been proved against the appellant especially in view of her answer to question no.3 in her statement recorded under Section 313 Cr.P.C., she has specifically stated that in the night some people came and gagged her mouth in cloth and she could not recognise them. She is denied to have committed the murder.

11. The next circumstance is that the door and window of the spot house were intact. The evidence of I.O. is the only evidence on this aspect. According to PW-4, the spot house is a mud hut. It, therefore, must not have been fitted with robust door that in case of interference there shall be mark of violence on that. It is common knowledge that the weak door fitted in a mud thatched house can be manipulated from outside without leaving any mark of violence or manipulation on that door. Further when it is the evidence of PW-4 that many people were visiting the appellant in her house, somebody might have come and the appellant might have opened the door for him or them, who might have been found to be unknown to her and who ultimately gagged her mouth and took her from there as stated by her in her statement under Section 313 Cr.P.C. So far as the last circumstance i.e. circumstance no. 7 is concerned that cannot be taken into consideration inasmuch as an accused person can keep mum throughout the trial and he or she can take defence at any stage of the proceeding.

12. From our discussion *supra* we are clear in our mind that the circumstances relied on by learned Trial Court in absence of any evidence of implication of appellant no.1 by any of the witness is shaky and cannot be held to be completing the chain unerringly pointing to the guilt of the appellant no.1.

13. Accordingly, we set aside the judgment of conviction and order of sentence dated 22.09.2003 passed in Sessions Trial No. 16(7)/03 by the Additional Sessions Judge, Fast Track Court, Diamond Harbour, South 24 Parganas and allow the appeal.

14. The appellant be set at liberty forthwith if her detention is not required in any other case.

15. Pronounced in open Court on this day i.e. 23rd day of December, 2022.

16. The L.C.R. along with a copy of this judgement be sent down to the Trial Court forthwith.

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

I agree.

(Partha Sarathi Sen, J.)

(Chitta Ranjan Dash, J.)