

IN THE HIGH COURT AT CALCUTTA

Criminal Application

Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 252 of 2020

Raj Kumar Baral @ Raj Kumar Boral @ Raju Baral

Versus

The State of West Bengal

For the appellant : Mr. Sumanta Ganguly, Adv.

For the State : Mr. Sanjoy Bardhan, Adv.
: Ms. Debjani Dasgupta, Adv.
: Ms. Mousumi Sarkar, adv.
: Ms. Baisakhi Chatterjee

Heard on : 29th November, 2022

Judgment on : 13th December, 2022

Md. Shabbar Rashidi, J.:

1. The appeal is directed against the judgment of conviction dated 15.05.2017 and order of sentence dated 17.05.2017 passed by learned Additional and Sessions Judge, Chandannagar in connection with sessions trial no. 42 of 2015 arising out of sessions case no. 42 of 2015 convicting the appellant under sections 302/201 of the Indian Penal Code.
2. The sister of the de facto complainant was married to the appellant about 12-13 years ago as per Hindu Customs and Rites. They had two sons out of the aforesaid wedlock. However, the victim sister of the de facto complainant was subjected to physical and mental torture and used to be driven out from her matrimonial home by her husband that is the appellant. The victim continued with her marital life in consideration of the two children. On 07.10.2014, the de facto complainant came to know that the dead body of his aforesaid sister was lying in a pond in her matrimonial village. Hearing this,

the de facto complainant, his father and others went to the matrimonial village of his elder sister and found the dead body of his elder sister floating in the Pathaner pond owned by one Madan Mohan Das in a swollen. The father of the de facto complainant informed the matter to the police. Upon receipt of report in this regard, it was learnt that the elder sister of de facto complainant was killed by strangulation. Thereafter, the de facto complainant lodged a written complaint with Tarakeswar Police Station on 06.12.2014 indicating, inter alia, that his sister was murdered by her husband and others and thereby they threw away the dead body in the pond with a view to causing disappearance of the evidence.

- 3.** On the basis of such written complaint, Tarakeswar Police Station case no. 265 dated 06.12.2014 under section 498A/302/34 of the Indian Penal Code was started against the appellant. The police took up the investigation and on completion of investigation submitted charge-sheet under the aforesaid sections of the Indian Penal Code.

4. Accordingly, upon compliance of the provision of under section 201 of the Code of Criminal Procedure and in consideration of materials charged under section 498A/302/201 Indian Penal Code were framed against the appellant on 19.08.2015 to which the appellant pleaded not guilty and claimed to be tried.
5. To substantiate the charges so framed against the appellant, prosecution examined as many as eleven witnesses at the trial. The prosecution also tendered documentary evidences.
6. The de facto complainant himself deposed as **PW-1**. He has stated that his elder sister was married to the appellant Rajkumar Boral and she had two sons out of the aforesaid wedlock. PW1 used to visit her father's house and according to her, she was not keeping well at her matrimonial house. Her husband used to consume liquor and Ganja and on protest, the appellant used to assault her. PW1 has further stated that his sister is no more alive. He was informed by one Sanatan Bera of Sodepur village that his sister was dead. Being so

informed, PW1 along with his father, the said Sanatan Bera, another villagers went to Talpur village and found the dead body of his sister floating in Pathaner Doba. PW1 lodged the written complaint. He also stated that initially his father made a complaint. It was stated by PW1 that his sister came to his house in the morning of Bijay Dashami and returned in the afternoon to her matrimonial house. After post-mortem examination, PW1 came to know that his sister was murdered by strangulation. According to PW1, the victim is said to have danced in the immersion procession where her husband had threaten that it was her last dance. The written complaint was scribed by one Biswajit Panja of the village of PW1 and he signed the written complaint after it was read over and explained to him. He proved the written complaint (Exhibit 1) and the signatures of himself and Bisajit Panja thereon. PW1 also proved his signature on the inquest report (Exhibit 2/1). In his cross-examination, PW1 stated that his sister herself arranged her marriage with the appellant which was held

at Nalikul and none of his family members were present in the marriage ceremony. Her sister was given in marriage by one Vinod Patel. He has also stated that he lodged a written complaint after two months of the recovery of the dead body of his sister and he made no complaint to any other authority as his father had already made a written complaint. In reply to a question by learned Court, PW1 stated that the immersion procession had been passed by the side of Pathaner Doba where the dead body was recovered. It was at a distance of three-four minutes walk from the matrimonial house of the deceased and there were no houses in between.

7. The father of the victim deposed as **PW-2**. He has stated that the victim was his daughter and was married to the appellant. He used to visit her matrimonial house after her marriage. He has also stated that the victim was not happy at her matrimonial house as her husband used to consume country liquor and 'Bhang' and at times, being assaulted by the appellant, she used to flee to the house of PW 2 and her maternal uncle. The victim

had two sons out of her wedlock with the appellant. PW 2 also stated that his daughter was no more. He got the news of her death from one Sanatan Bera, one of whose relatives lived near the house of the appellant. He has also stated that he received the news two days after the death. Getting the news, PW 2 along with his two brothers, Susil and Ranajit and a neighbor, Arup Bag went to the matrimonial village of his daughter and found her dead body floating in the pond named 'Pathaner Doba' situated behind the house of the appellant at a distance of one minute walk from his son-in-law's house.

8. PW 2 further stated that police came there and recovered the dead body from the pond. Thereafter, inquest was conducted. He proved his signature on the inquest report (Exhibit 2/2). PW 2 then, went to Tarakeshwar Police Station and lodged a complaint scribed by Arup Bag. He proved his signature on the complaint (Exhibit 3/1). Later on, his son lodged a written complaint. PW 2, however, could not say how his daughter died. In his cross examination, PW2 stated that

one Vinod Patel, who is not his blood relation, arranged the marriage of his daughter. He admitted that he never informed any authority that the appellant used to assault his daughter after being intoxicated. He also stated that he reached the spot before police and lodged a complaint after noticing the dead body.

9. One of the neighbors of the appellant was examined as **PW 3**. He identified the appellant in court and stated that he was married 10/12 years thence. This witness is hearsay witness so far as the incident is concerned. He however, testified that the pond (Pathaner Doba) was at a distance of 1 ½ /2 minutes walk from the house of the appellant.

10. One member of local Gram Panchayat deposed as **PW 4** and identified the appellant. This witness is also a hearsay witness having heard about the recovery of dead body. He however, identified the seized nylon rope and conch shell (Mat. Ext. I & II) and proved his signature on the seizure list (Exhibit 4/1). In his cross examination,

PW 4 stated that he along with another witness signed on the seizure list at his house.

11. PW 5 is another co-villager of the appellant. He also did not see anything. He heard about the death of the victim from local people. He also stated to have signed on a seizure list at the house of Panchayat member and proved his signature thereon (Exhibit 4/2) and identified the seized articles.

12. Another neighbor of the appellant deposed as **PW 6**. He stated that he knew the appellant and his wife. They were married 12/13 years ago and had two children out of the wedlock. He further stated that wife of the appellant died 2 ½ years ago (from 24.01.17), however, he did never find any problem between them. This witness, though, testified that the floating dead body of the victim was recovered from a pond but, he could not say how she died.

13. The elder son of the victim has been examined as **PW 7**. He has stated that his mother died in a pond near his house. He did not see the dead body of his mother nor

did he know how she died. In answer to a question put by the learned court, he stated that he along with his brother and his parents went to sleep together in the previous night.

14. Another neighbor of the appellant deposed as **PW 8**.

He did not support the case of the prosecution. He stated that wife of the appellant died 2/3 years ago and her dead body was found in the pond (Pathaner Pukur). However, he could not say how she died.

15. The police officer who conducted inquest on the dead body of the victim deposed as **PW 9**. He has stated that on 07.10.2014, he conducted inquest over the dead body of the wife of appellant Rajkumar Boral in connection with Tarakeshwar Police Station U. D. Case No. 76 dated 07.10.2014 and proved the inquest report (Exhibit 2). He also sent the dead body to Serampore Walsh Hospital for post mortem under a challan prepared by him (Exhibit 5).

16. The autopsy surgeon has been examined as **PW 10**.

He has stated that on 07.10.2014, he conducted post

mortem examination on the dead body of one Mousumi Boral wife of Raj Kumar Boral in connection with Tarakeshwar Police Station U. D. Case No. 76 dated 07.10.2014. on examination he found:

1. Riogor Mortis was absent, Maggot was present. Decomposition was started. Eyes bulging. Pupil fixed and dilated.

Neck finding a) a continuous ligature mark transversely placed around the neck completely encircling the neck without any gap. On dissection – it was hardened, furrowed, injury to strap muscles and extravasations of blood.

On dissection: Brain, lungs, liver, kidney all were congested.

Tongue protruded and bitten by teeth. Fracture of hyoid bone. Injury to cricoids cartilage. Rib fractured right side of chest- second and third ribs.

Time of death- more than 48 hours of autopsy. Cause of death asphyxia due to strangulation ante mortem and homicidal in nature.

PW 10 noted that the post mortem examination was started by him around 3.00 pm on 07.10.2014. He proved the post mortem report (Exhibit 6).

- 17.** The Investigating Officer of the case deposed as **PW 11.** He has stated that on 06.12.2014 he was entrusted with the investigation of Tarakeswar Police Station Case No. 265 dated 06.12.2014 under section 498A/302/201/34 of the Indian Penal Code. He proved the formal First Information Report (Exhibit 7) and endorsement of receipt of the written complaint from one Surajit Bera (Exhibit 1/1). In course of investigation, he examined the available witnesses including the informant and recorded their statements under section 161 of the Code of Criminal Procedure. He also examined the file of Tarakeswar Police Station U. D. Case No. 76 dated

07.10.2014 and seized articles in connection with the said case. He further visited the place of occurrence and prepared rough sketch map with index thereof (Exhibit 8 & 8/1). He also collected the post mortem report and viscera, arrested the accused/appellant. PW 11 also recovered nylon rope and bangles of the victim as per the statement of the appellant. He has proved such statement (Exhibit 9). He also sent the viscera for chemical examination and collected the photographs recorded during recovery of the offending nylon rope and bangles (Exhibit 10 series). On completion of the investigation, PW 11 submitted charge sheet against the appellant Raj Kumar Boral under section 498A/302/201 of the Indian Penal Code. He also tendered the photographs of dead body in connection with the U. D. case (Mat. Ext. III series) and the nylon rope and bangles (Mat. Ext. I & II).

- 18.** In his cross-examination, PW 11 admitted that no family member of appellant was cited as a witness in the seizure list as there was none available at the relevant

time. He also stated that investigation revealed that the accused/appellant was living with his wife and two children.

19. The appellant/accused was examined under the provisions of section 313 of the Code of Criminal Procedure and in such examination, the appellant admitted that his wife returned from immersion procession in the night and from the following morning she was missing. He also admitted that on the night preceding the death of his victim wife, the appellant, his wife and two sons went to sleep together. In his examination under section 313 of the Criminal Procedure Code, the appellant also admitted the recovery of afloat, dead body of his wife from 'Pathaner Doba'.

20. It is on the basis of such evidence, the appellant was held guilty and convicted for the offences punishable under section 302/201 of the Indian Penal Code, 1860. He was however, not convicted for the offence punishable under section 498A of the said Code. Accordingly, the appellant Raj Kumar Boral was sentenced to life

imprisonment and to pay a fine of Rs. 3000/- in default to suffer simple imprisonment for 3 months for the offence punishable under section 302 of the Indian Penal Code. The appellant was further sentenced to undergo Rigorous Imprisonment for 3 years and to pay a fine of Rs. 1000/- in default of payment of fine to suffer simple imprisonment of one month for the offence punishable under section 201 of the Indian Penal Code.

21. The appellant seeks to assail such judgment of conviction and order of sentence.

22. From the purport of the evidence led by prosecution it transpires that the brother and father of the victim (PW 1 & 2) received information to the effect that the dead body of the victim was floating in a pond at her matrimonial village. Going there, they found the dead body. Police was informed and an inquest was conducted over the dead body. Later, on the same day, post mortem examination was conducted. The autopsy surgeon deposed as PW 10. He found several injuries including fracture of hyoid bone and ribs. He opined the cause of

death to be asphyxia due to strangulation which was ante mortem and homicidal in nature. Therefore, on the basis of above evidence, it can safely be held that the victim Mousumi Boral wife of the appellant Raj Kumar Boral died an unnatural homicidal death caused by strangulation.

23. It has been contended on behalf of the appellant that the case is totally based on circumstantial evidence. The prosecution attempted to establish that the victim used to be subjected to torture by the appellant physically and mentally as a prelude to the commission of the crime but the same has not been supported by the evidence led by the prosecution at the trial. It is argued that the learned trial court proceeded on belief that Bijaya Dashami in the year 2014 fell on 03.10.2014 whereas, it actually fell on 04.10.2014. It has been contended that PW 11 has stated in his deposition that according his investigation, that the victim visited her father's house on 05.10.14. The post mortem report conducted on 07.10 14 time of death has been opined as

‘more than 48 hours of autopsy’. The appellant has pointed out that PW 4 has stated that the incident took place on Bijaya Dashami and the victim participated in the immersion procession which fell on 4th of October that year. PW 7 the minor son of the victim had stated that he along with his parents and brother went to sleep together in the night preceding the incident. It is the contention that taking into account the aforesaid evidences together, the incident i.e. the death of the victim must have taken place in the night of the 4th October, 2014 or early hours of 5th October. Therefore, the case made out by the prosecution regarding death of the victim in the night of October 05, 2014, does not seem to be believable.

24. Learned Advocate for the state has submitted that the evidence adduced on behalf of the prosecution has proved the death of the victim by strangulation and findings in the impugned judgment, are well founded.

25. Having gone through the evidence as well as the impugned judgment, it transpires that upon elaborate

discussion regarding the presence of maggots and the time taken by the drowned dead body, the learned trial court concluded that the medical evidence was not inconsistent with the prosecution case. Moreover, PW 11 made the statement to the effect that the victim visited her father's house on October 05, 2014 in his cross examination. Such statement was made by him without being referred to any document or the case diary. The brother and father of the victim (PWs 1 & 2) and her son (PW 7) who would have known such visit of the victim in natural course have not supported the statement of PW 11. Investigation of the case was complete in January, 2015 and evidence of PW 11 was recorded on March 29, 2017. The statement made after such a long time without reference to any document or case diary cannot be said to be reliable.

- 26.** However, the impugned judgment and order shows that the appellant has not been convicted for the offence punishable under section 498 A of the Indian Penal Code. An evidence of torture and ill treatment might have

helped the prosecution to establish the circumstances leading to the commission of the offences like 392/201 of the Penal Code. But, no proof of such conduct by the appellant, cannot be considered sufficient to absolve the appellant from the other offences.

27. Another point that has been elicited by the appellant, that there was a delay of over two months in lodgment of the First Information Report. The floating dead body of the victim was recovered on 07.10.2014 from a pond, whereas, the First Information Report was lodged on 06.12.2014. According to the appellant, such an inordinate and unexplained delay in lodging the First Information Report is fatal which tells upon the veracity of the prosecution story. Such contention on behalf of the appellant does not get much justification from the evidence adduced by the prosecution.

28. It is fact, dead body of the victim was recovered on 07.10.2014 from a pond, and the First Information Report was lodged on 06.12.2014. However, the First Information Report (Exhibit 1) lodged by PW 1 contains a

statement to the effect that father of PW 1, Achin Bera lodged a written complaint with Tarakeswar Police Station on the very date of recovery of the dead body in order to ascertain the cause of death and the second complaint was lodged on 06.12.2014 upon receipt/perusal of the post mortem report of the victim. The maker of such complaint, PW 2 has stated in his deposition, that when the dead body of his daughter was lifted from the pond, he visited Tarakeswar police station and made a complaint. PW 2 was confronted with the copy of said complaint and he, identified his signature thereon (Exhibit 3/1). It appears that it is this first complaint submitted by PW 2, on the basis of which Tarakeswar police station U. D. Case no. 76, dated 07.10.2014 was started under which the inquest was conducted on the dead body. Therefore, the contention of the appellant that the First Information Report was lodged after 2 months of the recovery of dead body does not stand. The alleged delay in lodging the complaint, stands sufficiently explained.

29. The appellant has also pointed out that PW 2 Achin Bera, inspite of lodging a complaint on 07.10.2014 did not implicate the appellant or did not even disclose the ill treatment and torture meted out by the appellant upon the victim. It has also been argued that since there is no evidence of hostility between the husband and wife, the appellant cannot be held liable for the murder of his wife in absence of direct evidence to that effect.

30. It is contended on behalf of the prosecution/State that there is sufficient evidence on record which completes the chain of events leading to the circumstances pointing to the guilt of the appellant and appellant only. The dead body of the victim was recovered from a pond at her matrimonial village. At first, it was pretended to be a case of drowning and after the post mortem examination it turned out be homicidal with specific case of strangulation resulting from fracture of hyoid bone and ribs. There is convincing evidence, rather admission on the part of appellant that the victim was staying with the appellant and their children under the

same roof. The testimony of PW 7 emboldens the theory of the last seen together. There is prosecution evidence that the victim returned after participating in the immersion procession in the night and since the following morning, she went missing which was admitted by the appellant in his examination under section 313 of the Code of Criminal Procedure.

31. We find enough force in the contention of the State that in consideration of the chain of circumstances emanating from the evidence as well as examination of the appellant under section 313 of the Code of Criminal Procedure, the appellant was under obligation to explain the circumstances leading to the death of his wife. In support of his contention, learned Advocate for the State relied upon the case of **Bhim Sing & Anr. V. State of Uttarakhand reported in (2015) 4 SCC 281**. It was laid down in the said case that,

“10. The High Court in the present matter convicted Appellants 1 and 2, on the basis of

circumstantial evidence in the impugned judgment. It has been established in leading judicial precedents that where the prosecution case is based on circumstantial evidence, only the circumstantial evidence of the highest order can satisfy the test of proof in a criminal prosecution. To base a conviction on circumstantial evidence put forth by the prosecution should establish a complete and unbroken chain of events so that only one inference could be drawn out from the same and if more than one inference could be drawn, then the accused should be entitled to the benefit of doubt.”

- 32.** It was further held by the Hon’ble Supreme Court in the aforesaid decision that,

“22. In the present case, the guilt or innocence of the accused has to be adduced from the circumstantial evidence. The law regarding circumstantial evidence is more or

less well settled. This Court in a plethora of judgments has held that when the conviction is based on circumstantial evidence solely, then there should not be any snap in the chain of circumstances. If there is a snap in the chain, the accused is entitled to benefit of doubt. Gurpreet Singh v. State of Haryana [(2002) 8 SCC 18: 2003 SCC (Cri) 186] is one of such cases. On the question of any reasonable hypothesis, this Court has held that if some of the circumstances in the chain can be explained by any other reasonable hypothesis, then the accused is entitled to the benefit of doubt. But in assessing the evidence, imaginary possibilities have no place. The Court considers ordinary human probabilities.

23. On circumstantial evidence, this Court has laid down the following principles in Sharad Birdhichand Sarda v. State of Maharashtra [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 : 1984 SCC (Cri) 487] : (SCC pp. 120-21)

“(1) the circumstances from which the conclusion of guilt is to be drawn must or

should be and not merely 'may be' fully established,

(2) the facts so established should be consistent only with 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,

(3) the circumstances should be of conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a 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."

33. Learned Advocate for the State also cited the decision in the case of **Praful Sudhakar Parab v. State of Maharashtra (2016) 12 SCC 783** wherein it was observed by the Hon'ble Supreme Court that,

31. We endorse the above findings of the High Court. The present is not a case of solitary evidence of last seen together but sufficient evidence was led to complete the chain of events and link the accused to the crime. The High Court after elaborately considering all the evidence on record has rightly dismissed the appeal filed by the accused. We do not find any merit in this appeal. The appeal is dismissed.”

34. On the other hand, learned Advocate for the appellant has relied upon the judgment in the case of **Subramaniam v State of TN (2009) 14 SCC 415** wherein it was held by the Hon’ble Supreme Court that,

“23. So far as the circumstance that they had been living together is concerned, indisputably, the entirety of the situation should be taken into consideration. Ordinarily when the husband and wife remained within

the four walls of a house and a death by homicide takes place it will be for the husband to explain the circumstances in which she might have died. However, we cannot lose sight of the fact that although the same may be considered to be a strong circumstance but that by alone in the absence of any evidence of violence on the deceased cannot be held to be conclusive. It may be difficult to arrive at a conclusion that the husband and the husband alone was responsible therefore.”

- 35.** In the instant case, however, we have scrutinized the evidence led on behalf of the prosecution. We have come to a conclusion that the victim was living together with the appellant under the same roof with her children. She has been last reported that she came back to her matrimonial house after participating in the immersion procession in the village, in the previous night and went

missing from the next morning. Such fact has been admitted by the appellant in his examination under section 313 of the Code of Criminal Procedure. It was also admitted that the victim went to be bed that night with the appellant and their children. There appears to be no missing link in the chain of circumstances.

36. Was not the appellant under obligation to explain the circumstances leading to the death of his wife who spent the previous night under the same roof and in the same room in terms of the provisions of section 106 of the Indian Evidence Act? Surely, he was under such obligation, in the light of the considered views laid down by the Hon'ble Supreme Court in the cases of **Bhim Sing & Anr (Supra)**, **Praful Sudhakar Parab (Supra)** and **Subramaniam (Supra)**. We are constrained to conclude that the defense has not been able to discharge the obligation enjoined upon him.

37. Not only that, the post occurrence conduct of the appellant also goes against the proposition of his

innocence. PW 1 & 2, being informed about the death of the victim came to the matrimonial village of the victim and her dead body was recovered with the help of police. The evidence on record suggests that considerable time, probably two or more days had elapsed since the death of the victim. It has also come out from the evidence that the victim returned in the night after participating in the immersion procession in the village and went to bed together with the appellant and their children. She went missing since the following morning.

38. No explanation has been offered by the appellant as how the victim went missing and what steps were taken by him after his wife suddenly went missing from the house which he ought to have taken as a man of ordinary prudence in the circumstances. Such conduct on the part of appellant surely gives rise to a proposition suggesting his culpability in the incident.

39. The police complaint was first lodged on the day of recovery of the dead body i.e. on 07.10.2014 and that too

without any statement implicating the appellant in the incident. The appellant was arrested on 07.12.2014. There is nothing in the evidence as to the steps taken on the part of the appellant to trace out his missing wife which he ought to have taken in the natural course during this intervening period of two months.

40. The appellant has also questioned the recovery of seized nylon rope and bangles belonging to the victim on the ground that the seizure was made in presence of a witness whose house was situated one Kilometre away from the house of the appellant or the place from the articles were recovered as shown by the appellant. The evidence on record goes to show that the witnesses signed on the seizure list at the house of PW 4 whereas seizure was made from the house of the appellant after over two months of the incident.

41. We are not placing much reliance upon the seizure of nylon rope and bangles as it were recovered much after the incident.

42. However, the chain of circumstances, post occurrence conduct on the part of the appellant and failure of the appellant to offer plausible explanation regarding the circumstances leading to the death of his wife, does suggest only one proposition which points to the guilt of the appellant and appellant only to the exclusion of all others.

43. Therefore, in the light of aforegone discussions, we are of the view that the judgment of conviction and order of sentences passed on 15.05.2017 and 17.05.2017 passed by learned Additional Sessions Judge, Chandernagore, in Sessions Trial No. 42 of 2015 is well founded and deserves to be affirmed. No interfere is warranted.

44. Accordingly, the instant Appeal being **Criminal Appeal No. 252 of 2020** stands dismissed.

45. Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellant in

terms of Section 428 of the Code of Criminal Procedure.

46. Connected applications, if any, shall stand disposed of.

47. Copy of the judgment along with Trial Court Records be sent down to the appropriate court at once for necessary compliance.

48. Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying all necessary legal formalities.

[MD. SHABBAR RASHIDI, J.]

49. I agree.

[DEBANGSU BASAK, J.]