

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

CRA 270 of 2021

With

CRAN 2 of 2022

Sankar Barma

Vs.

The State of West Bengal

For the Appellant : Mr. Subhasish Pachhal, Adv.

For the State : Mr. Madhusudan Sur, Ld. APP
Mr. Dipankar Paramanick, Adv.

Hearing Concluded on : March 30, 2023
Judgement on : April 12, 2023

DEBANGSU BASAK, J.:-

1. Appellant has assailed the judgement of conviction dated February 15, 2020 and the order of sentence dated February 17, 2020 passed by the learned Additional District and Sessions Judge, 4th Court, Asansol in Sessions Trial No. 39 of 2012 arising out of Sessions Case No. 53 of 2012.

2. By the impugned judgement of conviction, the learned judge has found the appellant to be guilty under Section 302/379 of the Indian Penal Code, 1860. The learned Trial Judge had acquitted the appellant of the charges under

Section 376 and 411 of the Indian Penal Code, 1860. By the impugned order of sentence, learned Trial Judge has sentenced the appellant to undergo imprisonment for life and to pay a fine of Rs. 5,000 and in default to suffer further imprisonment of two months punishable under Section 302 of the Indian Penal Code, 1860 and to undergo six months imprisonment for committing the offence under section 379 of the Indian Penal Code, 1860.

3. The case of the prosecution at the trial had been that the appellant on April 7, 2012 in the mid night, nearby a pond at Korapara, Ranisayer under Raniganj Police Station, District- Burdwan, committed rape on the victim and thereby committed an offence punishable under Section 376 of the Indian Penal Code, 1860. The appellant had also murdered the victim and thereby committed an offence under Section 302 of the Indian Penal Code, 1860. The appellant had stolen one silver chain and money purse taken out of the possession of the victim intending to take such articles dishonestly without her consent thereby committed an offence punishable under Section 379 of the Indian Penal Code, 1860. The appellant had also on the same day, time and place dishonestly received and retained property belonging to the

victim which were recovered from the possession of the appellant on April 20, 2012. The appellant had retained such stolen property belonging to the victim knowing the same to be stolen properties and thereby committed an offence punishable under Section 411 of the Indian Penal Code, 1860.

4. A Sub-inspector of Police had lodged a written complaint with regard to the information that he had received relating to a female dead body. On the basis of such written complaint, a formal First Information Report being Raniganj Police Station FIR No. 111/12 dated April 8, 2012 under Section 376/302 of the Indian Penal Code, 1860 had been registered. Police had investigated the same. On conclusion of the investigations, police had filed a charge sheet bearing No. 94/12 dated June 20, 2012 under Section 376/302/34/379/411 of the Indian Penal Code, 1860 against the two accused including the appellant.

5. Charges against the two accused, including the appellant, had been framed on September 14, 2012 under Sections 376/302/379/411 of the Indian Penal Code, 1860. The appellant and the co-accused had pleaded not guilty and claimed to be tried.

6. At the trial, the prosecution had examined 26 witnesses and relied upon various documentary and material exhibits to bring home the charges against the accused including the appellant.

7. Learned advocate appearing for the appellant has submitted that, the Trial Court framed 4 charges against the appellant. He has drawn the attention of the Court to the charges framed. He has contended that, a charge of rape under Section 376 of the Indian Penal Code, 1860 was also framed as against the appellant and that of murder under Section 302 thereof. The learned Trial Judge had found the appellant to be not guilty of the offence under Section 376 of the Indian Penal Code, 1860. According to him, since the charge of rape and murder were related to each other, with the charge of rape not being established beyond reasonable doubt, the charge of murder cannot be said to have been proved beyond reasonable doubt by the prosecution against the appellant. According to him, failure of the prosecution to prove the charge of rape has negatively affected the claim of the prosecution of murder as against the appellant.

8. Learned advocate appearing for the appellant has submitted that, the prosecution did not examine any

eyewitness to the incident. The prosecution had relied upon circumstantial evidence to bring home the charges. According to him, the chain of circumstances has not been established by the prosecution beyond reasonable doubt so as to allow an inference of guilt as against the appellant.

9. Learned advocate appearing for the appellant has submitted that, the prosecution has failed to examine material witnesses. He has referred to the evidence of PW 20. He has contended that, persons accompanying PW 20 were not examined by the prosecution. Therefore, the evidence of PW 20 is suspect without the same having not been corroborated by the persons accompanying PW 20.

10. Learned advocate appearing for the appellant has contended that, none of the relatives of the victim had identified the dead body of the victim. Therefore, according to him, the body identified as that of the victim remains doubtful.

11. Learned advocate appearing for the appellant has submitted that, the prosecution had failed to establish any motive for the murder. According to him, there was no relationship between the appellant and the victim so as to provoke the appellant to murder the victim.

12. Learned advocate appearing for the State has contended that the prosecution was able to prove the charges against the appellant beyond reasonable doubt. In support of such contention, he has relied on the deposition of various prosecution witnesses.

13. Learned advocate appearing for the State has drawn the attention of the Court to Exhibit 3 being the post mortem report of the victim. He has submitted that, the death of the victim was caused by strangulation, antemortem and homicidal in nature. Therefore, murder of the victim had been established by the prosecution. He has referred to the deposition of the post mortem doctor being PW 8 in this regard.

14. Learned advocate appearing for the State has submitted that, the appellant and the co-accused were last seen together with the victim. He has referred to the oral testimony of PW 13 who was on temporary night guard duty as the police personnel at the locality. PW 13 had seen the two accused on duty on the material point of time. The victim had been discovered dead subsequent thereto. None of the two accused including the appellant had explained the death of the victim.

15. Learned advocate appearing for the State has submitted that, the impugned judgement of conviction and the order of sentence should be upheld.

16. The person who found the dead body of the victim and informed the police over telephone had deposed as PW 1. He had stated that, he could not recollect the date of occurrence. One day in the morning when he had gone outside his house, he found the dead body lying at the back side of his village. He had informed the police by telephone. Police had come to the village; Police had prepared a document and obtained his signature on that document. He had identified his signature on that document which was tendered in evidence and marked as Exhibit 1. He had signed on the inquest report.

17. Another person who had found the dead body of the victim deposed as PW 2. He had stated that the date of occurrence was April 8, 2012. On that day, women folk of the village had gone to answer nature's call and they found the body was lying in the field. He had gone to the spot and found a dead body to be lying there. They had informed the police. Police had come to the spot. He had identified his signature on the inquest report which was marked as Exhibit 1/1.

18. Another person who had witnessed the seizure list prepared by the police on April 8, 2012 had deposed as PW 3. He had identified his signature on such seizure list. Such seizure list had been marked as Exhibit 2.

19. PW 4 and 5 did not add any value to the case of either the prosecution or the defence by their oral testimony.

20. PW 6 had denied knowing the victim, the whereabouts of the victim and denied being examined by the police and knowing the accused persons. She had been declared hostile by the prosecution. On cross-examination by the prosecution subsequent to her being declared as hostile, she had denied suggestions put by the prosecution. Similarly, PW 7 had denied knowledge of anything and was declared hostile by the prosecution. On cross-examination by the prosecution, she had denied the suggestions put to her.

21. The doctor who had performed the post mortem on the dead body of the victim had deposed as PW 8. He had stated that, he performed post mortem on the dead body of the victim on April 8, 2012. The dead body had been identified by the Raniganj Police Station by a letter dated April 10, 2012. He had described the injuries he had found on the dead body

of the victim. He had opined that the death was Asphexya as a result of strangulation, ante mortem and homicidal in nature.

22. The witness who had been present at the time of seizure on April 20, 2012 has deposed as PW 9. He had identified his signature which was marked as Exhibit 4. Another witness to Exhibit 4 had deposed as PW 10. His signature had been tendered in evidence and marked as Exhibit 5. He had been declared hostile by the prosecution. On cross-examination by the prosecution, he had denied the suggestions put to him.

23. PW 11 had been declared hostile by the prosecution. On cross-examination after such declaration, he had denied the suggestion put to him.

24. Another witness to the inquest of the dead body of the victim had deposed as PW 12. He had also witnessed the seizures made by the police on April 8, 2012. He had identified his signature on the inquest report and the seizure list dated April 8, 2012. The seized articles had been tendered in evidence and marked as Material Exhibit I.

25. A person who was engaged in police patrolling duty as temporary night guard had deposed as PW 13. He had stated that, the appellant was another night guard. He and the

appellant had been doing their duty jointly. They used to go on patrolling duty. He had stated that, on the fateful day he started patrolling duty at 10:30 P.M along with the appellant. They had gone to Ranishayer. At that time, they had seen some sex workers who were moving there. When he had switched on his torch they ran away. From Ranishayer they had returned to Chanda at about 12 mid night. At Chanda the appellant had told him that the appellant would have to go further patrolling duty at Ranishayer with the other co-accused. He had identified both the accused in Court.

26. PW 13 had stated that he used to do some work at the hotel of the appellant. On that night as the appellant did not return, he handed over the key of that hotel to the nearby shop at 4 A.M on the next early morning and returned to his house. On that next day that is on April 8, the appellant had told him that a woman was murdered to which he said he was somewhat afraid but the appellant had told him that the woman was murdered outside Ranishayer. After that he did not make any conversation with the appellant.

27. PW 13 had recorded his statement before the Magistrate under Section 164 of the Criminal Procedure Code which he identified in Court and was marked as Exhibit 6.

28. The Sub-inspector of Police who took the appellant and the co-accused for recovery of articles, on April 20, 2012 had deposed as PW 14. He had stated that, various articles were seized on the appellant telling them on April 20, 2012. Such seizure list had been marked as Exhibit 4/3. He had described how recoveries had been made at different locations. Seizure list with regard thereto had been prepared. Such seizure list had been marked as Exhibit 7 and 8. He had stated that, money bag, pant and other articles had been seized by a seizure list which had been tendered in evidence and he signed such document which was marked as Exhibit 4/1. Material exhibits have been identified by him. He had identified the two accused in Court.

29. A police personnel who had witnessed the seizure, his signature being Exhibit 9 deposed as PW 15. He identified 24 photographs which were tendered in evidence and marked as Material Exhibit V. He had stated that, the appellant confessed his guilt in the incident of murder of the victim on April 7, 2012. Appellant had agreed to show one pant which was in the tool box in the motorcycle of that hotel. Accordingly, the appellant had taken them to the hotel and the appellant showed the police party the pant in that hotel

and the motorcycle. Police had seized the motorcycle and the pant and prepared a seizure list. He had witnessed such seizure. He had identified his signature in such seizure list dated April 20, 2012 which was marked as Exhibit 5/2.

30. PW 15 had stated that, the other accused Mojesh stated that he was also involved in that murder and that he would trace out the pant in his house which he wore at the time of the murder. Then the police party had gone to the house of the accused Mojesh and from there recovered one pant. Mojesh had also shown one money purse on which the word Bharati was written in Bengali, one silver chain and some coins Police had seized those articles and prepared the seizure list. He had identified his signature which was tendered in evidence and marked as Exhibit 4/2.

31. PW 15 had stated that, subsequently the accused person had taken the police to Lalbanglaw ECL area where the appellant told them that the underwear which he wore at the time of the incident was lying nearby a bush outside the pump house. The appellant had recovered such underwear which was seized by the police. He had identified his signature in such seizure list which was marked as Exhibit 7/1.

32. PW 15 had stated that, the accused Mojesh had recovered another underwear from outside the bush and the police had seized the same. He had identified his signature in such seizure list which was marked as Exhibit 8/1. Garments seized had been shown to PW 15 and they were identified by him and marked as Material Exhibit at the trial. He had identified the appellant and the co-accused in Court.

33. The police constable who had dealt with the 24 photographs marked as Material Exhibits had deposed as PW 16. He had identified his signature on the seizure list which was marked as Exhibit 9/1.

34. PW 17 had witnessed the seizure of the garments marked by Exhibit 7 and 8. He had identified his signature on such seizure list. The police constable who brought the dead body of the victim had deposed as PW 18. He had also prepared a seizure list which was tendered in evidence. The dead body challan had been tendered in the trial and marked as Exhibit 10.

35. The Sub-inspector of Police who received the telephonic information with regard to the discovery of the dead body of the victim on April 8, 2012 had deposed as PW 19. He had described the steps which he had taken upon receipt of

the information. He had lodged a suo motu complaint which he tendered in evidence and the same was marked as Exhibit 12.

36. A friend of the victim had deposed as PW 20. She had stated that, she along with the victim and others had gone to Lalbangla to work as a sex worker. Suddenly they had found the appellant and the co-accused there. The appellant and the co-accused had arrived by riding a bicycle. In fear, they had tried to flee away from the place. The appellant and the co-accused had used to threaten them and extracted money from them and therefore, they intended to avoid the appellant and the co-accused. While they were fleeing, the appellant had been able to nab the victim. The victim had been under influence of liquor and could not manage to flee away from the clutches of the appellant and the co-accused. Both the appellant and the co-accused had dragged the victim towards the bank of a pond nearby. The victim had been crying for help. After some time they had tried to save her and called her by her name arriving at the bank of the pond. They had found the victim lying at the place near the bank of the pond. They had found her wearing blouse had disappeared. She had only

a petticoat on her body. They had also found her motionless. They had found the victim dead.

37. PW 20 had stated, seeing the victim in such a position, they were frightened and left the place and fled away towards Durgapur. She had stated that the victim could not save her life from the appellant and the co-accused at that night. Over the incident of murder, she had been examined by the police. Her statement had been recorded by the police. She had also recorded her statement before the learned Magistrate afterwards. She had put her left thumb impression on the statement. She had identified the appellant and the co-accused in Court. She had stated that the appellant and the co-accused used to threaten them, and call them frequently over the mobile phone, used to extort money from their earning and used to assault them when they denied to give money.

38. The Judicial Magistrate before whom PW 20 had recorded her statement under Section 164 of the Criminal Procedure Code deposed as PW 21. The statement of PW 20 had been marked as Exhibit 13. The police constable who witnessed the seizure of the photographs had deposed as PW 22. His signature had been tendered in evidence and marked

as Exhibit 9/2. PW 23 had witnessed the seizure taking place at the hotel on April 20, 2012. He had identified his signature in such seizure list which was marked as Exhibit 5/3. He had been declared hostile by the prosecution. He had denied the suggestions put to him in cross-examination by the prosecution.

39. The police personnel who had registered formal First Information Report deposed as PW 24. The formal First Information Report had been tendered in evidence and marked as Exhibit 13 A. He had identified his signature on the written complaint which was marked as Exhibit 12/1. He had investigated the police case. He had narrated about the course of investigations. He had handed over the case diary to the next Investigating Officer.

40. PW 25 had conducted the subsequent investigations. He had narrated about the investigations. He had stated that, he had recorded the statement of PW 20 under Section 161 of the Criminal Procedure Code and produced PW 20 before the learned Magistrate for recording her statement under Section 164 of the Criminal Procedure Code. He had arrested the appellant on April 15, 2012. He had produced PW 13 before the learned Magistrate for recording his statement under

Section 164 of the Criminal Procedure Code. He had arrested the other accused being Mojesh on April 18, 2012. He had described about the seizures effected by him. He had identified his signatures on the material exhibits. He had collected the post mortem report of the deceased. He had examined various witnesses. He had stated that during the police custody period appellant made a leading statement which was marked as exhibit. He had identified the two accused in Court. He had submitted the charge sheet.

41. On conclusion of the evidence of the prosecution, the appellant had been examined under Section 313 of the Criminal Procedure Code. He had claimed to be innocent and falsely implicated. He had declined to adduce any evidence of any defence witness.

42. Dead body of the victim had been found on April 8, 2012. The dead body had been sent for post mortem. PW 8 had conducted the post mortem on the dead body of the victim. On examination of the dead body of the victim, he had found various injuries on such dead body which he noted in his post mortem report being Exhibit 3. He had deposed as to the nature of injuries he found on the dead body of the victim at the trial. He had opined that the death of the victim was

due to Asphexya as a result of strangulation ante mortem and homicidal in nature. The defence had declined to cross-examine PW 8. The opinion of PW 8 as to the cause of death had remained unchallenged by the defence.

43. Consequently, on the strength of Exhibit 3, the post mortem report of the victim, and the deposition of the PW 8, the doctor conducting the post mortem and his opinion as to the cause of death and the nature of death the prosecution had been able to establish at the trial that victim was murdered.

44. The appellant and the co-accused had been on police patrolling duty as temporary night guard on April 8, 2012. PW 13 was also engaged in police patrolling duty as a temporary night guard on that day.

45. PW 13 in his deposition had stated that, he along with the appellant and the co-accused had been doing their duty jointly. He had stated that, on April 7, 2012 in the night he had seen sex workers at Ranishayar. From Ranishayar he had returned at Chanda along with the appellant. At Chanda the appellant had told him that the appellant would go further patrolling duty at Ranishayar with Mojesh the accused.

46. PW 20 was with the victim when the appellant and Mojesh had arrived riding a bicycle. PW 20, victim and others had tried to flee away seeing the appellant and Mojesh. PW 20 and others were successful in fleeing but the victim was not. PW 20 had stated that, appellant was able to nab the victim who was under influence of liquor and could not manage to flee away. PW 20 had also stated that, both the appellant and Mojesh had dragged the victim towards the bank of the pond nearby.

47. The appellant and Mojesh had been last seen together with the victim near the place of occurrence and immediately prior to the time of the incident.

48. PW 20 along with others had returned to the place of occurrence to find the victim. PW 20 had discovered the victim lying dead at the place where she had last seen the victim with the appellant and Mojesh.

49. In his examination under Section 313 of the Criminal Procedure Code, appellant has not offered any explanation as to how the victim came to be murdered.

50. Articles belonging to the victim had been seized on the appellant and the co-accused showing the location of the same.

51. In the facts and circumstances of the present case, the post mortem report of the victim did not suggest that the victim had been raped. The failure of the prosecution to sustain the charge of rape as against the appellant and his co-accused has not adversely affected the case of the prosecution.

52. The prosecution had been able to establish a chain of circumstances leading to the irresistible conclusion of the guilt of the appellant and the co-accused in the murder of the victim. The appellant and his co-accused had been last seen together with the victim.

53. Colleague of the victim had identified the dead body of the victim. Such colleague of the victim being PW 20 had vividly described how the appellant and the co-accused arrived at the vicinity of the place of occurrence and how they nabbed the victim and dragged her towards the bank of the pond nearby. PW 20 had identified the dead body of the victim on her return to the place of occurrence. Therefore according to us, the dead body of the victim had been adequately identified by PW 20 as that of the victim.

54. The prosecution had been able to establish motive for the murder. PW 20 had stated that the appellant and the co-

accused used to extort money from them as sex workers and on their refusal to pay appellant and his co-accused used to assault them. On the fateful day, appellant and the co-accused had arrived at the vicinity of the place of occurrence suddenly whereupon, PW 20 and the victim had tried to flee away along with the other sex workers there. The victim had been unsuccessful to flee.

55. In such circumstances we are of the view that, the prosecution had been able to establish that the appellant along with the co-accused had murdered the victim and had stolen properties belonging to the victim. The co-accused did not prefer any appeal from the impugned judgement of conviction and the order of sentence as has been reported by the department on March 24, 2023.

56. In such circumstances, we find no ground to interfere with the impugned judgement of conviction and the order of sentence.

57. The sentences awarded shall run concurrently.

58. Period of detention suffered by the appellant prior to the trial, during trial and post trial shall be set off against the sentences imposed.

59. A copy of this judgement and order along with the Trial Court records be transmitted to the appropriate Court forthwith.

60. CRA 270 of 2021 is dismissed.

61. In view of the dismissal of the appeal nothing survives in the interim application. CRAN 2 of 2022 is also dismissed.

62. Urgent Photostat certified copy of this judgement and order be supplied to the parties applying for the same, on completion of all formalities.

[DEBANGSU BASAK, J.]

63. I agree.

[MD. SHABBAR RASHIDI, J]