

21.01.2025
Court No.13
Item No.5
Sudipta/AP

GA 7 of 1992

**State of West Bengal
Vs.
Amar Mondal @ Babu and Ors.**

Mr. Debasish Roy, Ld. P.P.,
Mr. Saryati Datta, Adv.
....For the appellant/State.

Ms. Jonaki Saha, Adv.
....For the respondent (Amicus Curiae).

1. The instant appeal has been preferred by the State against the judgment and order dated 25th February, 1992 passed by the Additional Sessions Judge, 2nd Court, Nadia in Sessions Trial No. 2 of 1991 arising out of Sessions Case No.5 of 1990. The accused have been acquitted by the Trial Court.
2. The prosecution case in brief is that the deceased Bithika Mondal was married to one Samar Mondal who died within two year of marriage by suicide. Thereafter, with the intervention of the villagers the deceased was given marriage to accused no. 1 Babu @ Amar Mondal.
3. The accused no. 2 Basu Mondal is the brother of accused no. 1 and the accused no. 3 Sukhen Mondal is the maternal uncle of the accused no.1. The prosecution story further goes to indicate that the

accused no. 1 continuously tortured the deceased demanding dowry and money. To allay the demands of the accused no. 1, the de facto complainant Gopal Mondal, father of the deceased, gave 5 cottahs of land to the accused no. 1. There was allegedly some peace for couple of years but the torture has started again.

4. As per the complaint dated 18th January, 1987, in the early hours of fateful day, the complainant who was working as a night guard in a local samiti at village Kustia, was informed by one Ashim Biswas that his daughter was lying unconscious in her house.
5. The complainant PW 1 immediately rushed to the house and found his daughter lying dead in the courtyard. Upon hue and cry being raised the villagers assembled. They searched out the accused no. 1 and 2 and brought them out of the locality and started beating them. Upon such beating the accused no. 1 stated to have confessed that he, his brother accused no.2 and the accused no. 3 had throttled and killed the victim Bithika.
6. The body of the Bithika was removed by PW 7 and send for post mortem. Investigation was conducted by PW 12. Chargesheet was filed. The trial commenced. PW 1, father of the victim, was the

complainant who narrated the prosecution case as indicated above. PW 2 was a resident of Dhopat village adjacent to Kustia. He denied having heard the accused no. 1 confessing the murder of his wife.

7. PW 3 is Dipak Kumar Sinha Roy. He had no knowledge of the relation of Babu and Bithika. His evidence is hearsay. He could not throw any direct light on the role of the accused person and in the death of the victim. He tried to assert the marriage between accused no. 1 and the deceased.

8. PW 4 was Ashim Kumar Biswas, uncle of the accused. While he stated that accused no. 1 admitted to have killed his wife before him, he also admitted in cross-examination that the accused no.1 was beaten badly before the alleged confession.

9. PW 5 Joydeb Mondal, a resident of village Kustia. He denied that the accused no. 1 had confessed as regards the death of his wife.

10. PW 8, Susanta Kumar Mondal, is a resident of Kustia village. He confirmed the marriage of the deceased with accused No.1. He admitted that the accused No.1 was severely assaulted and only then he had confessed that the uncle of accused No.1 and his mother had killed the deceased by strangulation.

11. P.W.-9, Ashim Sarkar, was a resident of Kustia village. He denied having informed the I.O. of any confession by the accused No.1.
12. P.W.-10 and P.W.-11 are residents of the village Dhopat. P.W.-12 was the Investigating Officer.
13. P.W.-13, Dr. Niharendu Deb was the doctor, who performed the post mortem. It is only the post mortem report that indicates that the death of the victim occurred by strangulation and the thyroid bone was broken.
14. This Court notes that in course of examination under Section 313 of the Cr.P.C., the accused No.1 wholly denied that he was married to the victim. The examination under Section 313 of the Cr.P.C. to say the least is embarrassingly poor. None of the main circumstances against the accused No.1 were confronted to him. The examination under Section 313 of the Cr.P.C. of accused Nos.2 and 3 comprise in only two questions each. Due caution required to be given to the accused by the Trial Judge was also not so given.
15. This Court notes that no clear evidence indicating the involvement of the accused persons in the death of the victim. While it is true that the post mortem report indicates that the death occurred due to

strangulation, there is no evidence to indicate who strangled the victim.

16. The alleged extra judicial confession of the accused No.1 was clearly obtained under threat, coercion and after severe beating. No reliance can be placed on such extra judicial confession. In fact, there is direct contradiction in the evidence that the accused No.1 had at all confessed. Such confession, if any event, was not recorded before a magistrate. No credence can be given to such confession.

17. Having regard to the facts and circumstances of the case, this Court finds that the impugned judgement dated 25th February, 1992 calls for no interference.

18. The instant appeal fails and hereby dismissed.

19. In view of the dismissal of the instant appeal, connected applications, if any, are also dismissed.

20. Let a copy of this judgment be sent down the Court below for information.

21. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)