

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

C.R.A. 114 of 2018
CRAN 1 of 2018 (Old No. CRAN 2621 of 2018)

Biru Murmu @ Kunkal
Vs.
The State of West Bengal

For the Appellant : Mr. Kallol Mondal, Sr. Adv.,
Mr. Krishan Ray, Adv.,
Mr. Souvik Das, Adv.,
Mr. Anamitra Banerjee, Adv.,
Mr. Akbar Laskar, Adv.

For the State : Ms. Zareen N. Khan, Adv.

Heard on : 18.02.2025, 24.02.2025 & 25.02.2025

Judgment on : 25.02.2025.

Joymalya Bagchi, J. :-

1. Appeal is directed against judgment and order dated 30.01.2018 and 31.01.2018 passed by the learned Additional Sessions Judge, 5th Court, Paschim Medinipur in Sessions Trial No. 02 (01) of 2015 arising out of Sessions Case No.18 (11) of 2014 convicting the appellant for commission of offence punishable under Sections

302/201 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/-, in default, to suffer simple imprisonment for two years more for the offence punishable under Section 302 IPC and to suffer simple imprisonment for three years and to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for one year more for the offence punishable under Section 201 IPC; both the sentences to run concurrently.

Prosecution case:

2. Prosecution case as alleged against the appellant is as follows:-

Eighteen years ago, appellant had married Budhi Murmu. Initially their relationship was good. Thereafter, appellant started inflicting torture upon Budhi. On 13.06.2014, Budhi went missing. On 15.06.2014, body of a lady was seen floating in Talpukur of Gaighata. On the next day i.e. 16.06.2014 Nepal Soren, elder brother of Budhi (PW 1) and other relations identified the body by seeing her wearing apparels and ornaments. Post mortem report revealed Budhi had been murdered by hard blunt trauma associated with strangulation by ligature mark. It was alleged Budhi wanted to convert to Christianity which was opposed by the appellant. This was the motive to commit the crime.

3. On 02.07.2014 Nepal Soren lodged written complaint resulting in registration of Kharagpur Police Station Case No. 376 of 2014 dated 02.07.2014 under Sections 498A/302/201/34 of the Indian Penal Code

against the appellant and other in-laws. Appellant was arrested on 14.07.2014. On his showing a boulder wrapped with a sky blue coloured shirt was recovered from the pond where Budhi's body was found. Statements of witnesses viz. Charan Murmu (PW 10) and Dipankar Bera (PW 11) were recorded before Magistrate who disclosed appellant was last seen going from the house with Budhi; and thereafter he had returned alone. One Dipankar Bera (PW 11) and Ranjan Dolai (PW 12) claimed to be eyewitnesses and their statements were also recorded before Magistrate.

4. In conclusion of investigation, charge sheet was filed against the appellant. Charge was framed under Sections 498A/302/201 IPC. Appellant pleaded not guilty and claimed to be tried. In course of trial, prosecution examined 24 witnesses and exhibited a number of documents.

5. In conclusion of trial, the trial Judge by the impugned judgment and order dated 30.01.2018 and 31.01.2018 convicted and sentenced the appellant, as aforesaid.

6. Heard Mr. Kallol Mondal, learned senior Advocate for the appellant as well as Ms. Zareen N. Khan for the State.

Evidence on record:

7. PW 1 (Nepal Soren) is the elder brother of Budhi and de-facto complainant. He stated appellant used to torture Budhi. She informed about the torture to him. They intervened and the matter was settled. 1½ years ago Budhi went missing. They went to the police station and

identified the dead body from her wearing apparels. He lodged written complaint which was scribed by PW 15. Budhi's body had been recovered from Talpukur tank which is 1½ km away from the house of the appellant. During cross-examination he admitted they had cremated the body but no *sradh* ceremony had been held.

8. PW 2 (Purnima Soren) and PW 5 (Gora Soren) are the parents of Budhi. They deposed Budhi was subjected to torture by the appellant. She had gone missing. Her body was recovered from Talpukur tank. They identified her wearing apparels at the police station. After seeing the wearing apparels they identified the dead body as their daughter.

9. PW 14 (Raghu Soren) is the brother of Budhi. He stated appellant misbehaved with Budhi as she wanted to convert to Christianity. They intervened and the matter was settled. His nephew informed that his mother was missing. They informed the Pradhan who informed the police station. Subsequently, her dead body was recovered from Talpukur.

10. PW 4 (Dhiren Murmu) is the son of the couple and PW 22 (Jyotsna Murmu) is his wife. PW 4 stated 1½ years ago his mother had gone missing. He identified his mother's body before police. Though he was declared hostile, he deposed on the fateful night when his mother went missing, the couple was sleeping in the courtyard while he was sleeping with his wife in the room. PW 22, his wife who was also declared hostile corroborates this fact.

11. PWs.13, 16 and 17 are the brothers of the appellant.

12. PW 13 (Hambai Murmu) had converted to Christianity. He deposed the appellant used to consume liquor and ill-treat his wife over demand of money and as she had expressed desire to convert to Christianity. He is a reported witness and had not seen the incident himself.

13. PW 16 (Khokan Murmu) and PW 17 (Bapi Murmu), the other brothers of the appellant also deposed the relationship between the couple was strained. Appellant used to assault Budhi and demanded money. They did not corroborate PW 13 that torture was on the ground that the victim wanted to convert to Christianity.

14. PW 3 (Ashish Satpati) is a neighbour of the de-facto complainant. PW 6 (Milan Kotal), PW 7 (Gutin Mukhi) and PW 8 (Jhareswar Pain) are co-villagers of the appellant.

15. PW 3 deposed on 15.06.2014 he heard from local people that a body was found floating in the water. He went to the spot. He informed the police station. Police came to the spot. Police pulled out the dead body from the tank. Dead body was of a female. She was wearing a printed sari, red coloured blouse and orange coloured *saya*. One end of the sari was tied round her neck. He also saw earrings, nose ornaments, *sakha*, and *pola* on the dead body. Police prepared inquest. He signed on the inquest report (Ext.2/1). 35-40 days later police brought the appellant to the spot. As per showing of the appellant a boulder tied with a shirt was recovered.

16. PW 6, a co-villager of the appellant deposed on 15.06.2014 he was also present near Talpukur of Gaighata and saw the recovery of the body of a woman. Thereafter appellant was brought to the spot and appellant stated he killed his wife by fastening rope around her neck and threw her into the water with a stone.

17. PWs 7 and 8 are the witnesses to the recovery of the boulder and the shirt. PW 7 stated appellant was brought to the spot. On interrogation he stated his wife wanted to convert to Christianity. He refused to do so. He took alcohol and forced her to drink. Thereafter he fastened boulder to her neck and threw her into the pond. Appellant recovered the boulder with a sky blue coloured shirt from the pond. Police seized the boulder and the shirt. He signed on the seizure list.

18. PW 8 is another witness to the recovery. He deposed appellant stated he had killed his wife and threw her body into Talpukur after tying it with a boulder and his shirt. On the first occasion, appellant could not recover the boulder but recovered the same at the second time. He also signed the seizure list.

19. PW 9 (Nagen Hansda) and PW 10 (Charan Murmu) are witnesses to the fact that the appellant was last seen with the victim prior to the incident. PW 9 deposed on 13.06.2014 he received a phone call that his elder brother Ramesh was sick. He called Charan Murmu to come to his residence. Charan came on a bike. When they were leaving the house to go to their elder brother's residence, they saw the appellant and Budhi leaving the house. They remained in their brother's house

for two hours. When they were coming back, they saw the appellant returning alone. After 2-3 days they heard Budhi was killed. Appellant was missing. During cross-examination, he stated 2-3 days after the incident he had been questioned by police.

20. PW 10 corroborated PW 9 and stated police interrogated him on the sixth day of the incident.

21. PW 11 (Dipankar Bera) and PW 12 (Ranjan Dolai) claimed to be eyewitnesses. PW 11 deposed on 13.06.2014 he along with Ranjan Dolai went to Talpukur to guard wooden logs on the bank. At 01.30 A.M. they heard a scream of a female and went to the eastern side of the bank. By torch light they saw the appellant murder his wife by tying her neck with a sari. Appellant threatened them not to disclose the incident. Out of fear they returned home. They kept mum and did not disclose the incident to their family members. Appellant was taken to Talpukur by police. They were present at the spot. They disclosed everything to police. They also made statement before Magistrate.

22. PW 11's version is corroborated by PW 12.

23. PW 23 (Dr. Samar Sinha Das) is the post mortem doctor. He found the following injuries on the deceased :-

"1. Abrasion 2"x3" placed obliquely over upper part lateral aspect of right arm 2½" below tip of right of shoulder.

2. One transverse continuous ligature mark 15" in the length placed over lower part of neck encircling the neck of around extending from ¾" above to suprasternal notch. On dissection extensive extravasations of blood present over front and right and left lateral aspects of neck

measuring 10"x5" with fracture of hyoid bone and thyroid cartilage.

3. Bruise 4"x3" over mid and lower part of medial aspect of left arm and bruise 4"x4" over mid and lower part of lateral aspect of left arm.

4. Bruise (diffuse) 12"x12" over back of chest.

5. Bruise 4"x3" over lower part of back of right forearm. Bruises were red in colour. Abrasions were fresh and non-scabbed. Injury shows evidence of vital reaction. No other injury could be detected even on careful dissection and examination under a hand lens."

He opined death was due to strangulation by ligature associated with above-noted injuries, ante mortem and homicidal in nature. Injuries were caused by hard blunt trauma associated with strangulation by ligature.

24. PW 24 (Ram Asis Singh) is the Investigating Officer. He took up investigation of the case, visited place of occurrence and prepared rough sketch map. He verified police records and came to know Unnatural Death Case No. 45 of 2014 was registered in respect of the dead body recovered from the place of occurrence. SI Tarapada Tudu was the enquiry officer of the said case. He recorded statements of witnesses. Victim was missing. Missing diary was lodged. After recovery of the dead body, brother of the victim identified the body. He arrested the appellant on 14.07.2014. During police custody he recorded statement of the appellant. In his statement appellant stated he had thrown the body of the victim in Talpukur of Gobinda Kundu. Appellant also confessed in his statement that his shirt and stone had been

recovered and seized as per his identification (Ext.13). Accordingly, on 24.07.2014 he seized the boulder and one sky coloured shirt under a seizure list (Ext.3). He prayed for recording statements of witnesses. He obtained post mortem report and submitted charge sheet. During cross-examination PW 24 admitted till filing of FIR nobody lodged any allegation against the appellant.

Analysis & findings:

25. The prosecution case is based on :-

(i) Eye witnesses' version:-

26. Dipankar Bera (PW 11) and Ranjan Dolai (PW 12) claim to be eye witnesses. They stated they were guarding logs near Talpukur. They had heard a cry from the eastern side of the pond and rushed to the spot. Thereupon, they saw the appellant strangulating his wife with her 'saree'. Appellant threatened them and they kept mum. Only after the appellant was arrested and brought near the pond for the purpose of investigation they disclosed this fact to police. It is relevant to note conduct of the witnesses is most unnatural. Even if one accepts that witnesses had kept mum on the night of the incident, it is contrary to normal human conduct that after the body was recovered and identified by family members the witnesses would keep quiet for more than a month and come out with the incident only after the appellant had been taken to the pond by Police for recovery of incriminating articles.

27. Improbability in the prosecution case is further compounded by the fact that none of the witnesses i.e. PWs 3, 6, 7 and 8 who were

present at the spot where the appellant was taken to the pond for recovery corroborate disclosure of this vital information by PWs 10 and 11. Even Investigating Officer (PW 24) who had taken the appellant to the spot is mum with regard to this fact. He does not disclose how he came to know the identity of these so-called eye witnesses and forwarded them to record their statements before Magistrate. These circumstances render the version of the so-called eye witnesses most unnatural and do not inspire confidence.

(ii) Other Incriminating Circumstances :-

28. If the eyewitnesses' version is discarded, prosecution would rest on the following incriminating circumstances to prove the guilt:-

- (a) Relationship between the appellant and his wife, i.e the victim was strained on the score she wanted to convert to Christianity. This gave motive to the appellant to commit the murder.
- (b) On the fateful night i.e. 13.06.2014 appellant and the victim were sleeping together in the courtyard.
- (c) Around 12 midnight PWs 9 and 10 saw the appellant and the victim leaving the house. Thereafter, they found the appellant returning home alone.
- (d) On 15.06.2014 body of a female was found floating in Talpukur pond.

- (e) On the next day i.e. 16.06.2014 relations of the victim i.e. PWs 1, 2, 3, 4 and 14 identified the body as that of the victim by identifying her wearing apparels and ornaments.
- (f) Post mortem doctor opined victim died due to strangulation by ligature associated with injuries from a hard blunt substance.
- (g) During police custody appellant disclosed that he had thrown the body of the victim in Talpukur pond. He was taken to the pond and on his disclosure statement (Ext. 13) a boulder which was tied to the body with a sky blue coloured shirt was recovered. Appellant also stated the shirt belonged to him.

29. Let me now see whether these incriminating circumstances have been proved beyond doubt.

(iii) Motive :-

30. Firstly, with regard to motive to commit the crime, prosecution has relied on the relations of the deceased i.e. PWs 1, 2, 5 and 14 as well as relations of the appellant i.e. PWs 13, 16 and 17. These witnesses stated initially the relationship between the couple was good. Subsequently, appellant started torturing his wife. She took refuge at her parental home. The matter was settled and she returned to the appellant. Apart from PWs 13 and 14 none of the witnesses claimed the dispute between the couple had cropped up on the issue the victim had wanted to convert to Christianity. Even in their previous statements to Police, the hostile witnesses, namely PW 4 (son) and PW 22 (daughter-

in-law) did not state quarrel between the couple was over the issue of conversion.

31. Prosecution case with regard to motive is a divided house. It is unclear whether disputes cropped up between the couple due to the appellant's wayward habits i.e. alcoholism or unwillingness to work or on the score of the victim's desire to convert to Christianity.

(iv) 'Last seen Theory' -

32. The next incriminating circumstance is the 'last seen theory' which is sought to be proved by PWs 9 and 10. PW 9 is a neighbour of the appellant. He stated on 13.06.2014 he received a phone call that his brother Ramesh was unwell. He called his friend Charan Murmu (PW 10) to come to his house. Around 12 midnight both of them left on a motorcycle to his elder brother's residence. At that time they saw the appellant and the victim leaving the house together. PWs 9 and 10 stayed in his brother's residence for two hours. When they returned he saw the appellant returning alone.

33. PWs 9 and 10 are chance witnesses. Credibility of their deposition that they had gone out on a motorcycle at midnight to the residence of PW 9's elder brother Ramesh is not supported by examination of Ramesh himself.

34. PW 24 (IO) explained Ramesh was very sick and hence he could not be examined. No medical document was produced to support this fact and it is only the *ipse dixit* of the investigating officer which

corroborates PWs 9 and 10 that they had gone out together at midnight to attend PW 9's ailing brother.

35. That apart, both the witnesses had been examined before Magistrate belatedly on 08.08.2014 i.e. more than a month after registration of FIR. Both witnesses claimed they had been interrogated by police earlier i.e. within a week of the recovery of the dead body. They had not disclosed this incriminating fact during earlier interrogation as the Investigating Officer (PW 24) candidly admits no one had made any allegation against the appellant prior to registration of FIR.

36. Ms. Khan argues PW 24 had not been entrusted with the investigation at the material point of time. The enquiry was undertaken by SI Tarapada Tudu in connection with the unnatural death case. Prosecution has not examined SI Tarapada Tudu to show that PWs 9 and 10 had divulged the incriminating fact in course of enquiry in the UD Case. In all probability they had not done so. Had they disclosed this fact within a week of recovery of the body, aforesaid material would have formed a part of the unnatural death case and come to the knowledge of the investigating officer who subsequently took up investigation after registration of FIR.

37. These facts clearly demonstrate after a lapse of 1½ months from FIR and that too when the appellant had been arrested, did PWs 9 and 10 disclose this incriminating fact before Magistrate. Their conduct renders them most unreliable and it is evident the 'last seen' theory was

introduced through the mouths of PWs 11 and 12 is an afterthought to implicate the appellant. Accordingly, I hold the 'last seen' circumstance is not worthy of credence and is liable to be rejected.

(v) Recovery of boulder and shirt:-

38. Finally, recovery pursuant to the disclosure statement of the appellant has also not been proved. A perusal of the disclosure statement (Ext 13) would show the statement was recorded after the alleged recovery had been made and not before that.

39. A confession by an accused in police custody is inadmissible unless it receives corroboration by a subsequent event i.e. recovery of incriminating materials pursuant to the said statement. Prior to the appellant's arrest dead body had already been recovered from Talpukur pond. The place of recovery was known to the investigating officer. Accordingly, it cannot be said the place of occurrence was discovered pursuant to the disclosure statement. It would be argued the knowledge of the appellant regarding the place of recovery is a 'fact discovered'. Place of recovery of body from Talpukur was in the public domain much prior to appellant's apprehension. In these circumstances appellant may have acquired knowledge of the place of recovery from other sources and not from the fact that he had committed the crime and thrown the body into the pond as attributed by the prosecution. That apart, a bare reading of the disclosure statement (Ext. 13) would show the said statement was recorded after the boulder with sky colour shirt was recovered from the pond and

cannot be said to be admissible in law in reference to Section 27 of the Evidence Act.

40. It would be argued that the witnesses to the recovery namely PWs 5, 6, 7 and 8 disclosed that the appellant stated before them that he had killed his wife and had thrown her in the pond after tying the body with a boulder with his shirt. Evidence of these witnesses contradict each other with regard to the exact words spoken by the appellant. While PW 8 states that the appellant claimed that he was unhappy as his wife wanted to convert to Christianity and had made her consume liquor and murdered her before throwing the body into the water with a boulder, the other witnesses refer to a more cryptic statement. PW 3 who was also present during recovery is completely silent with regard to any statement made by the appellant. Even the manner and circumstance leading to recovery is in disarray. PW 8 claims recovery was made on the second attempt which is not corroborated by other witnesses.

41. Given this situation, I am constrained to hold the so-called disclosure statement (Ext 13) recorded by the Investigating Officer is a post recovery statement and would not be admissible in terms of proviso to Section 27 of the Evidence Act.

42. Even the evidence with regard to oral statement of the appellant and the manner and circumstances leading to recovery are not consistent and does not prove this fact beyond reasonable doubt.

Conclusion:-

43. In light of the aforesaid discussion, prosecution case has not been proved beyond doubt and the appellant is liable to be acquitted of the charges levelled against him.

44. Accordingly, the appeal is allowed.

45. The appellant shall be released from custody, if not wanted in any other case, upon execution of a bond to the satisfaction of the trial court which shall remain in force for a period of six months in terms of Section 437A of the Code of Criminal Procedure / Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

46. In view of the disposal of the appeal connected application being CRAN 1 of 2018 (Old No. CRAN 2621 of 2018) is also disposed of.

47. Let a copy of this judgment along with the trial court records be forthwith sent down to the trial court at once.

48. Photostat certified copy of this judgment, if applied for, shall be made available to the appellant upon completion of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)