

Male Boroni Vs. the State

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Court : Guwahati

Decided On : Jan-18-1971

Judge : M.C. Pathak and D.N. Sen, JJ.

Appellant : Male Boroni

Respondent : The State

Prior history : M.C. Pathak, J. 1. This appeal from jail is directed against the order of conviction of the appellant Under Section 302, Indian Penal Code and sentence of imprisonment for life. 2. The prosecution case is that on the night of 15th October, 1967 at about 2 a.m. while Gurmao Boro was sleeping in his house, his first wife Male Boroni struck several dao blows on him. On receipt of the dao blows Gurmao Boro ran towards the house of Khala Boro and accused Male Boroni chased him with the dao in her h

Judgement :

M.C. Pathak, J.

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2. The prosecution case is that on the night of 15th October, 1967 at about 2 a.m. while Gurmao Boro was sleeping in his house, his first wife Male Boroni struck several dao blows on him. On receipt of the dao blows Gurmao Boro ran towards

the house of Khala Boro and accused Male Boroni chased him with the dao in her hand. Gurmao Boro fell down in the court-yard of Khala Boro and the accused Male Boroni dealt him two more blows with the dao. Meanwhile, the second wife of Gurmao Boro who was sleeping in another house, roused by the sound, went to the house where Gurmao Boro was sleeping. She saw Gurmao Boro running towards the house of Khala Boro being chased by Male Boroni with a dao in hand. She found Gurmao Boro lying in the court-yard of Khala Boro and the accused gave two more blows on him. She then called the neighbours. At this Jalu and Chawa Boro came to the place of occurrence and they called Dhaniram Basumatari. The accused on being questioned by Dhaniram Basumatari, confessed that she intentionally killed her husband out of sheer disgust and sorrow. Khala snatched away the dao from the hand of the accused. In the meantime, Gurmao succumbed to the injuries. Dhaniram Basumatari lodged the first information report at Bijni Police Station.

3. On completion of investigation the Police submitted charge-sheet against the accused Mala Boroni Under Section 302, Indian Penal Code. The learned Magistrate framed a charge Under Section 302, Indian Penal Code against the accused and committed him to stand his trial before Sessions Court. Before the Sessions Judge also the accused Male Boroni was charged Under Section 302, Indian Penal Code. The prosecution examined seven witnesses including the doctor and the Police Officer. The defence did not examine any witness. The defence was that of denial.

4. On an examination of the evidence of P.W. 1, Dr. J. N. Bhuyan, Sub-Divisional Medical and Health Officer, Dhubri, who examined the dead body of deceased Gurmao Boro, it is found that there were eight incised injuries on the body of Gurmao Boro which are as follows:

(1) Incised injury over the upper part of the front of the neck more on the left over the left 4' x 2' x 1 1/2'.

(2) One incised wound over the dorsum of the left wrist joint area 2' x 1' cutting the lower end of the radius.

(3) One incised wound over interdigital space of the left thumb and index finger 2'x1/2'x1/2'.

(4) One incised wound over the outer aspect of the middle of the left forearm 2 1/2'x1'x1/2'.

(5) One incised wound over the left cheek 1 1/2' x 1/2' skin deep.

(6) One incised wound over the medial aspect of the right wrist joint cutting the lower end of the radius 2' x 3/4 x 1/2'.

(7) One incised wound over the thenar area of the right palm 3' x 1/2'.

(8) One incised wound over the outer aspect of the middle of the right forearm 2'x1/2'x1/2'.

5. In the opinion of the doctor the death was due to shock and haemorrhage following the aforesaid injuries which were antemortem.

6. On consideration of the evidence of the doctor as well as the other prosecution evidence on record, there is no doubt that Gurmao Boro died as a result of the injuries caused on his person on the date of occurrence.

7. The next and the most important point that requires consideration is whether the accused Male Boroni caused the injuries on the person of Gurmao Boro as alleged by the prosecution. Mr. G. Sarma, the learned Advocate, appearing as amicus curiae, submits that there is no reliable evidence in the instant case to prove the charge against the accused. We have examined the evidence on record. P.W. 5, Landi Boroni is stated to be the eye witness of the occurrence. She is the younger wife of deceased Gurmao Boro. Her evidence, in substance, is that on the night of occurrence on -hearing some noise, she woke up and came out of the house and saw accused Male Boroni with a dao in hand in the store house. She further stated that she saw Male Boroni hacking Gurmao with a dao and thereafter Gurmao ran out of the house being chased by Male Boroni; on reaching Khala's house Gurmao fell on the verandah and there Male Boroni again gave some more strikes on Gurmao with the dao. Thereafter she called Jalu and Jalu called Chawa

and they came to the house of Khala. Jalu and Chawa took away the dao from Male's hand. Thereafter Dhaniram Basumatari came and the accused confessed before Dhaniram that she cut Gurmao to death.

The witness stated that she saw Male Boroni giving dao blows on Gurmao and she further added that Jalu and Chawa had also witnessed the cutting of Gurmao by Male. Jalu is P.W. 6 but Chawa has not been examined in the case. Jalu Boro P.W. 6, however, stated in cross-examination that he had not seen the hacking of Gurmao Boro. So, from the evidence of P.W. 6 it appears that he was not an eyewitness to the occurrence and he contradicts P.W. 5 on this very material point. The occurrence took place at about 2 a.m. at night. P.W. 5 was sleeping in her house. Gurmao was sleeping in the store house and the accused was sleeping in a separate house. P.W. 5 stated that there was no lamp in the store house and it was dark. It was past midnight, there was no light in the house, and under those circumstances it is very much doubtful whether P.W. 5 could have seen any dao in the hand of Male Boroni at that point of time. P.W. 5 further stated that she followed Male Boroni who was chasing Gurmao and she saw hacking of Gurmao and at that time P.W. 6 Jalu and Chawaram came and saw the occurrence. P.W. 6 categorically stated that he did not see the hacking, hence it is very much doubtful whether P. W 5 herself saw the cutting of Gurmao in the courtyard of Khala. '

It is in evidence that deceased Gurmao used to quarrel with P.W. 5 It is curious to note that the two sons of the accused who stayed separately near the house of Gurmao were not at all called by P.W. 5. These two sons of accused Male were by her former husband. The relation between the two co-wives is admittedly strained. Considering the entire evidence, we are unable to accept the evidence of P, W. 5 to the effect that she saw the actual hacking of Gurmao by accused Male Boroni. There is no other eye-witness to the occurrence. The prosecution also relies on the confessional statement made by the accused before the Magistrate. The statement was made by the accused in Boro language, which was interpreted by one Jadab Chandra Boro, Office Assis-tant of Kokrajhar Supply Office. The statement appears to be a clear confession disclosing even the motive of the murder. It is found from the confessional statement Ext. 1 that the accused was arrested at 9 a.m. on 16-10-1967 at village Noapara and she was taken to the

Police Station at Bijni on the same date. She was kept there at the Police Station on 16th and 17th October, 1967. on 18-10-1967 she was produced before the Magistrate by a constable.

It is thus clear that the accused after being arrested was kept in police custody for about three days and thereafter she was produced before the Magistrate directly from police custody for making the confessional statement. The confession has been retracted by the accused. Before the Sessions Judge she stated, inter alia, that the villagers and the Officer-in-charge of the Thana had told her that the Magistrate would pardon her if she confessed and if she did not confess then the police would arrest her sons and herself and for that reason she was compelled to make the confession. The Magistrate who recorded the confessional statement has been examined as P.W. 2. In his cross-examination P.W. 2 stated that a constable had produced the accused before him, he did not remember who were present at the time of recording the confession, and he was an Executive Magistrate at that time. It is, therefore, not ruled out that some police personnel might be there at the time of recording the confessional statement. In view of the significant circumstances that the accused who is a woman and was kept in police custody after her arrest for about 3 days, was taken to the Magistrate for recording the confessional statement directly from police custody, that there might have been police personnel present at the time of recording the confessional statement and that the accused retracted the statement alleging that the Officer-in-charge told her .that the Magistrate would pardon her if she confessed and if she did not confess police would arrest her sons and herself, it cannot be reasonably held that, the confessional statement was voluntary as required under the law.

8. In this connection the following passage from the judgment of the Supreme ; Court in the case of Sarwan Singh Rattan Singh v. State of Punjab : 1957 CriLJ1014 may be usefully quoted:

There can be no doubt that, when an accused person is produced before the Magistrate by the investigating officer, it is of utmost importance that the mind of the accused person should be completely freed from any possible influence of the police and the effective way of securing such freedom from fear to the accused

person is to send him to jail custody and give him adequate time to consider whether he should make a confession at all. It would naturally be difficult to lay down any hard and fast rule as to the time which should be allowed to an accused person in any given case.

However, speaking generally, it would, we think, be reasonable to insist upon giving an accused person at least 24 hours ; to decide whether or not he should make a confession. Where there may be reason to suspect that the accused has been persuaded or coerced to make a confession, even longer period may have to be given to him before his statement is recorded.

9. In the instant case, as we have already observed, the accused after her arrest was kept in police custody for about three days; and she was directly produced before the Magistrate from police custody and therefore she had no time to make herself free from any possible police influence or persuasion in making the confessional statement. Taking all the circumstances into consideration, we are of the opinion that the confessional statement in the instant case cannot be said to be voluntary, and, as such, no reliance can be placed on it.

10. The prosecution next relies upon the extra-judicial confession made before P.W. 4, Dhaniram Basumatari corroborated by P.W. 6, Jalu. Immediately after the occurrence, P.W. 5 raised halla and P.W. 6 along with Chawaram appeared at the place of occurrence and thereafter they were sent to call P.W. 4. Dhaniram Basumatari who was the Vice-President of the Gaon Panchayat. P.W. 4 stated that he was raised by Jalu from sleep at night and informed him that Male murdered her husband. P.W. 4 came to the place of occurrence and he found Gurmao lying dead on the verandah of Khala Boro in a pool of blood. P.W. 4 asked Male Borom as to why she had murdered him, to which she replied that she had cut him to death out of sorrow of her mind. Admittedly P.W. 4 was a man of influence in the locality. He is the Vice-President of the Gaon Panchayat; it was he who lodged the First Information Report at the Police Station. He asked the accused authoritatively why she had murdered her husband to which the accused replied that she had cut her husband out of sorrow of her mind. Neither P.W. 4 nor P.W. 6 was an eye-witness to the occurrence. The point that arises for

consideration is whether this extra-judicial confession made before P.W. 4 Dhaniram' Basumatari, Vice-President of the Gaon. Panchayat is hit by Section 24 of the Evidence Act. Section 24 of the Evidence Act reads as follows:

An confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceedings from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

11. The accused in her statement before the Sessions Judge stated that the villagers and the Officer-in-charge of Thana had told her that the Magistrate would pardon her if she confessed and if she did not, the police would arrest her sons also. Considering the position of P.W. 4, who held the office of the Vice-President of the Gaon Panchayat and the manner of his asking the accused as to why she murdered her husband, we are clearly of the opinion that the accused made the extra-judicial confession due to the threat that proceeded from the Vice-President of the Panchayat. In the circumstances we hold that the extra-judicial confession alleged to have been made before P.W. 4 is not relevant in the case and it cannot be relied upon for conviction of the accused.

12. The following observation of the Supreme Court in the case of Swaran Singh Rattan Singh : 1957 CriLJ1014 (supra) is relevant:

It is no doubt a matter of regret that a foul cold-blooded and cruel murder should go unpunished. It may be that there is an element of truth in the prosecution story against the appellant. The prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of the distance must be covered by legal, reliable and unimpeachable evidence before an accused can be convicted.

In the instant case, the evidence on record may raise a strong suspicion against the accused but suspicion, however, strong, is no substitute for proof. On a careful

consideration of the evidence on record, we find that the prosecution in the instant case has failed to establish the charge Under Section 302, Indian Penal Code against the accused beyond reasonable doubt.

13. We therefore set aside the conviction and sentence of the accused-appellant. The appeal is allowed. The accused-appellant shall be set as liberty forthwith.

D.N. Sen, J.

14. I agree.

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