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Tapas Shil Vs. State of Tripura

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Court : Guwahati

Decided On : Jul-26-2006

Judge : Ranjan Gogoi and A.B. Pal, JJ.

Acts : Evidence Act, 1872 - Sections 8 and 27; Indian Penal Code (IPC), 1860 - Sections 302; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. A. No. 63 of 2000

Appellant : Tapas Shil

Respondent : State of Tripura

Advocate for Def. : D. Sarkar, P.P. and R.C. Debnath, Adv.

Advocate for Pet/Ap. : A.C. Bhowmik and D.C. Roy, Advs.

Disposition : Appeal dismissed

Judgement :

A.B. Pal, J.

1. This criminal appeal is directed against the judgment dated 10-9-1996 passed by learned Additional Sessions Judge, North Tripura, Kamalpur in S.T. 3(NT/KMP)/1996 convicting the appellant herein under Section 302 of the Indian Penal Code (for short 'IPC') and sentencing him to undergo imprisonment for life.

2. We have heard Mr. A.C. Bhowmik and Mr. D.C. Roy, learned Counsel for the appellant and Mr. D. Sarkar, learned Public Prosecutor with Mr. R. C. Debnath, learned Counsel for the State-respondent.

3. The prosecution version leading to the criminal proceeding may be noticed in brief:

The deceased Subimal Sarkar was a tenant in the house of appellant Tapas Shil and his brother in the village Hararkhala under Kamalpur police station. Subimal was serving as Field Assistant in the Department of Agriculture and at the relevant time he was posted at Hararkhala. On 29-5-1995 Subimal invited his friends Kajal Chandra Das (P.W. 3), Bijoy Das-l(P.W. 8), Bijoy-2 (P.W. 11), Ranjit Deb (P.W. 10) and Anath Adhikari (not examined) for dinner in his rented house. All the friends spent the night in his house enjoying food and film by means of a VCP. The appellant also once came to the house of the deceased and took few pieces of meat. Very early in the following morning (30-5-1995) when the friends were leaving, the appellant was found near the house of the deceased. The gruesome murder took place at about 10 a.m. when suddenly the appellant with an 'axe' in his hand stormed into the house of the deceased and by a surprise onslaught on him caused severe injuries brought about his instantaneous death. Thus, was Subimal suddenly murdered in his own rented house by his own landlord. The appellant then concealed the axe in his 'ekchala hut' and proceeded towards the police station. There, in presence of Sudhangshu Mitra (P.W. 13) who was Sub-Inspector of Police and In-charge of the Kamalpur police station on that day and Newlafru Mog Choudhury (P.W. 14), Sub-Inspector of Police of the same police station, the appellant made confession that he had committed the murder of Subimal Sarkar. He also told them he would be able to show the axe, by which the murder was committed, from the place where it had been concealed. The statement of the accused was immediately recorded in Kamalpur P.S. G.D. Entry No. 1246, dated 30-5-1995 by P.W. 13. P.W. 14 was assigned the task of making preliminary enquiry. Accordingly, the statement of the appellant was recorded again separately with his signature on the same, which is Ext. 11. Thereafter, P.W. 14 with a police constable, Rabindra Debbarma (P.W. 12) and a Chowkidar, Prafullya Kumar Dey (P.W. 7) went to the place of occurence and found the

deadbody of Subimal lying in his room with injuries and in pool of blood. All necessary steps for investigation of the offence were taken by P.W. 14, which included taking of photograph of the dead body, preparing hand-sketch map and causing seizure of blood-stained pillow cover and bed-sheet. A large number of people of the village gathered at the spot, in whose presence the convict appellant stated again that he had hidden the weapon in his ekchala hut. Accordingly, in presence of all the witnesses, he recovered the said weapon with blood-stains. The dead body was sent for postmortem after the inquest report was prepared. The appellant was arrested and after returning to the police station the police officer formally lodged an FIR, which was registered under Section 302 of IPC. The formal investigation that had followed ended into a charge-sheet after recording evidence of witnesses and collecting materials which made out a strong prima facie case against the appellant. A full dressed trial was afoot in the Court of Session, which finally found the appellant guilty of the offence of murder. He was, accordingly, convicted and sentenced as notice above.

4. When formal charge under Section 302, IPC was read over, the appellant pleaded not guilty. During cross-examination of the prosecution witnesses by the defence lawyer his alleged involvement was stoutly denied. His making of inculpatory statement and discovery of weapon of offence was also retracted. A stand was taken that the ekchala hut from where the axe was recovered did not belong to the appellant herein. Confronted with this rival position, the learned trial Court proceeded to appreciate the prosecution evidence consisting of 15 witnesses including the Police Officers and the Medical Officer, who did the autopsy. The fact that the deceased was a tenant in the house of the appellant or his brother and on the night before there was a dinner party hosted by the deceased are not in dispute. P.Ws. 3, 8, 10 & 11, who were the guests and spent the night in the house of the deceased had seen the appellant near the house of the deceased early in the morning on 30-5-1995. The gruesome murder allegedly by the appellant had taken place few hours after the departure of the guests, at 10 a.m. inside the room of the deceased. In the fact situation no eye-witness to the occurrence was around, the victim who could tell the story having lost his life at the spot. But, what is very remarkable and eloquent circumstance to be noticed is that within 10 minutes after Subimal was done to death the appellant, before nobody

else had any knowledge about the murder of the deceased, ushered in the police station confessing in presence of the two police officers (P.Ws. 13 & 14) that he had committed the murder of Subimal few minutes before. Though such an inculpatory statement by the accused to the police officers confessing his own guilt is not admissible in evidence, the very conduct of the accused that within a few minutes after the commission of the offence he was in the police station to make a confessional statement and saying that he would be able to locate the weapon of the offence concealed by him, is very much admissible in evidence under Section 8 of the Evidence Act putting a burden on the accused to explain his above conduct including his exclusive knowledge about the hidden weapon of offence in order to show how it is consistent with his innocence.

5. With such a strong circumstance in the launching-pad the learned trial Court proceeded to discuss the oral evidence of Sunirmal Sarkar (P.W. 1), the younger brother of the deceased and Anadi Sarkar (P.W. 2), according to whom the accused in their presence had confessed that he had committed the murder of the deceased and concealed the weapon in his ekchala hut. At the time of making such statement other persons were also present. It is on record that following his statement, the police officer (P.W. 14) in presence of other witnesses went to the ekchala hut led by the accused, wherefrom he recovered the weapon of offence, which was seized. The statement of the accused Tapas Shil, the appellant herein, so recorded by police on 30-5-1995(Ext. 11) reads as follows:

My name is Tapas Shil aged 30 years, s/o Late Naresh Shil of village Hararkhola.

Being present at the Kamalpur police station today dated 30-5-95 at 10.00 o'clock morning, I am stating to the effect that I have killed Subimal Sarkar who is residing as tenant in my house, hacking him with a spade today at 10.00 o'clock morning on entering into his room. I have kept the said spade concealed in a one roofed hut. If I am taken to that place, I would able to bring out the aforesaid spade.

It is the settled legal position that the inculpatory part of the above statement is not admissible in evidence. But the other part, which reads - 'I have kept the said spade concealed in a one roofed hut. If I am taken to that place, I would able to bring out the aforesaid spade', is very much admissible under Section 27 of the

Evidence Act, particularly for the reason that following the statement the 'spade' (read 'axe', because the weapon which the accused had recovered is not a 'spade' but an 'axe', though the police officer may be for poor knowledge in English used the word 'spade') was actually recovered at the instance of the accused-appellant. Thus, it came to be amply proved that the alleged offence was committed by the 'axe' recovered and seized and, therefore, the statement leading to recovery of the 'axe' stands out to be another strong circumstantial evidence against the appellant herein.

6. Though, it is not necessary for the prosecution to prove the motive of the offender in a case of murder as the same is setf-explicit, the question that may loom over the prosecution version is why the appellant, who apparently had no enmity with the deceased had taken the extreme step of putting him to death. On this point some flicker of light comes from the deposition of Smt. Maharani Das (P.W. 6), the wife of the deceased Subimal Sarkar. What appears from her statement is that on 22nd May, 1995, appellant had requested the deceased to lend him Rs. 100/-, which he refused. Having been refused he had rebuked the deceased. Apart from this, nothing is available to focus on possible acrimony between the two, which might have overpowered the accused to commit the offence. Though apparently it may be difficult to believe that the deceased was done to death only for his refusal to lend Rs. 100/- to the appellant, it has to be borne in mind that human psychology is so difficult a subject that under no circumstances it can be said with certainty how a man would react to certain behaviour. Even a very petty incidence or behaviour may cause grave repercussion to one and no adverse reaction to another. The human mind and its response and reactions remains unfathomable. Bearing in mind about unknown facts of human psychology it may not be unusual to take a view that the behaviour of the deceased refusing to lend Rs. 100/- might have created a sense of insult and anger in the accused whose mind might have reacted sharply taking a turn for revenge when he saw the deceased having enough money to spend on dinner for the guests.

7. In his examination under Section 313, Cr. P.C. the accused-appellant took a stand that on 30-5-1995 he went to his Homeopath Dispensary on duty and at

about 10 a.m. he came back to his house. Finding the window of the room of Subimal open, he called the deceased. When no reply came, he peeped through the window and saw the dead body lying in pool of blood. Then he went to the police station and lodged the information. Learned trial Court refused to accept this version at its face value because of gross infirmity therein as the accused could not explain why he had to come back to the house at 10 a.m. and if he was really innocent how immediately after he reported to the police station about the death of Subimal he could find out the weapon of offence from the ekchala hut. This welf-con-tradictory and weak defence could not dent into credibility of the prosecution story assiduously built on a chain of circumstances noticed above. The learned trial Court carefully analysed the circumstances, particularly, the conduct of the accused immediately after the commission of the offence by reporting to the police and making a statement, his recovery of the weapon of offence immediately after the occurrence and his unusual and unexplained return to the house at 10 a.m. when the occurrence had taken place which unmistakably establish that he was the first and only person to have knowledge about the death of Subimal, failing to explain if he was not the assailant who else could have committed the offence or, if he is innocent how could he recover the weapon of offence soon after the occurrence. The statement of P.W. 6 about the acrimony between her husband and the accused and the deposition of P.Ws. 3, 8, 10 & 11 that early in the morning accused was found loitering near the house of the deceased supply additional strength to the chain of circumstantial evidence pointing out guilt of the accused only. Accordingly, the conviction and sentence was recorded.

8. The submission of the learned Counsel for the appellant that if the confessional part of the statement recorded by police is excluded being not admissible, there remains nothing for the prosecution to find the appellant guilty. We find it difficult to accept such a submission, as we have already noticed above the strong circumstances which give rise to the only hypothesis that none but the appellant was responsible for the alleged murder. At the risk of repetition, it may be seen again that the appellant ushered at the police station within 10 minutes from the time of occurrence to state to police that he had committed the murder and would be able to show the weapon of offence which he had concealed. Though inculpatory part of the statement has to be excluded, the other part of the

statement that he would be able to recover the weapon of offence is admissible and remains strong evidence against him as it was made immediately after the occurrence. If he was really innocent how could he come to know where the weapon was concealed by the real offender. Even if the ekchala hut where the weapon was concealed was not in his exclusive possession as strenuously argued in his defence, his exclusive knowledge about the weapon of offence concealed in the ekchala hut constitutes a strong circumstance about his involvement in the alleged offence. His own statement that at 10 a.m. he returned to his house and saw the dead body of the deceased lying in pool of blood is another conduct admitting his presence at the time the murder was committed, without explaining his unusual presence during duty hours. The statement of P.Ws. 3, 8, 10 & 11 together show that the appellant had some sort of acrimony against the deceased and he was found loitering in the morning near the house of the deceased. The above circumstances having taken together, rationally arranged and appreciated, the learned trial Court appear to have correctly taken the view that the chain of circumstances set out then unmistakably prove the guilt of the appellant. We are firmly and fully in agreement with the reasons recorded by the learned trial Court. We find no infirmity in the appreciation of evidence made and the findings recorded.

9. For the reasons aforementioned, this appeal appears to have no merit and consequently, the same is dismissed. There shall be no order as to cost.

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