

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Nov-25-2014

Judge : Nishita Mhatre

Appellant : Appellant

Respondent : Respondent

Judgement :

Form No.J(1) IN THE HIGH COURT AT CALCUTTA Criminal Appellate Jurisdiction Appellate Side Present: The Honble Justice Nishita Mhatre And The Honble Justice Samapti Chatterjee C.R.A413of 2004 Archana Mandal.Appellant Versus The State of West Bengal..Respondent For the Appellant : Mr. P.S. Bhattacharya For the State : Mr. Pawan Kumar Gupta Heard on Judgment on :

11. 11.2014 :

25. H November, 2014. Samapti Chatterjee, J.

1. The instant appeal is directed against the Judgment and Order of conviction passed in Sessions Trial Being No.1of 2004 and Sessions Case being No.185 of 2003 passed by the learned Additional Sessions Judge 2nd Court, Malda ON28h April, 2004 holding the appellant/accused person guilty of offence punishable under Sections 364/302/201 of the Indian Penal Code. She is sentenced to suffer 8 (eight) years of Rigorous Imprisonment and to pay a fine of Rs.5000/-, in default to suffer Rigorous Imprisonment for 6 (six) months for the offence under Section

364 of the Indian Penal Code. The appellant is also sentenced to suffer Rigorous Imprisonment for life and to pay a fine of Rs.5000/-, in default to suffer another Rigorous Imprisonment for 6 (six) months for the offence punishable under Section 302 of the Indian Penal Code. The appellant is also sentenced to suffer Rigorous Imprisonment for 8 (eight) years and to pay a fine of Rs.5000/- in default to suffer Rigorous Imprisonment for 6 (six) months for the offence punishable under Section 201 of the Indian Penal Code.

2. Put in a short frame, the prosecution case runs as under: On 20.01.2003 one Sanika Mandal lodged a written complaint in Manik Chak Police Station that she got marriage to Biswanath Mondal of Narayanpur Karticktola, P.S. Manikchak about 15 years back and since marriage they have been living together as husband and wife. Sometime in the month of Bhadra, 1408 B.S., Biswanath Mandal took another woman namely Archana Mandal to their family and over that matter defacto-complainant Sanika Mandal quarreled with Archana Mandal. A few days later husband Biswanath Mondal and co-wife Archana Mandal had been to Delhi to work as labourer and came back on 13.02.2003. Thereafter Archana Mandal picked a quarrel with Biswanath Mandal for want of unison of her earnings and during such quarrel Biswanath Mandal assaulted Archana and told her to leave his house. Then she threatened to kill their children before she departs. On 18.01.2003 Archana slapped their daughter Rama when taking launch and in the afternoon Biswanath Mandal again assaulted her. On the following day Archana took Utpal, son of Biswanath Mandal and Chumki daughter of Biswanaths brother to Fulahar river at Yudhstirghat and returned home at 1 p.m. alone. She denied the fact firstly of taking away both Utpal and Chumki to Yudhistirghat, but in the afternoon she confessed before the villagers that it was she who killed them by drowning into river Fulahar. After holding the FIR police started investigation in Manikchak P.S Case No.5 of 2003 dated 20.01.2003 and on completion of investigation charge-sheet under Sections 364/201/302 of the Indian Penal Code was submitted against the accused Archana Mondal. Accordingly trial started and after completion of trial the learned Sessions Judge, 3rd Court Malda convicted the appellant as aforesaid.

3. In order to prove its case the prosecution has examined as many as 15 (fifteen) witnesses. P.W.1, mother of the deceased Utpal in her evidence stated that on 19th January, 2003 both Utpal and Chumki died. Accused Archana was another wife of her husband. Accused took her son Utpal and her Bhasurs daughter Chumki to the bank of Fulahar river at about 7 a.m. P.W.1 further stated that on the previous day i.e. on 18.01.2003 a quarrel took place between her husband and the accused Archana. She saw accused Archana took her son Utpal and daughter of her Ja (sister-in-law) Chumki towards Fulahar river, Yuthisthir Ghat. She further deposed that on that day at about 1 p.m. accused Archana returned home alone. P.W.1 asked the accused regarding whereabouts of Utpal and Chumki. Then the accused replied that she did not see Utpal and Chumki. Both Utpal and Chumki did not return to their house. P.W.1 further stated that on that very date at about 5 p.m. accused Archana confessed before her in presence of other villagers namely Gobinda Mondal, Bataran Mondal, Montu Mondal, Dhiren Mondal , Haripada Mondal , Girish Mondal and others that she murdered both Utpal and Chumki by drowning them in the Fulahar river. P.W.1 further stated that she informed the above incident to Manikchak Police Station in writing. Ashutosh Mondal of their village wrote the complaint as per her direction and she put her LTI thereon. In her evidence P.W.1 further stated that Archana initially did not confess her guilt but when the villagers including Bataran (her husbands brother) assaulted Archana and also threatened to kill her if she did not disclose what happened to Utpal and Chumki then she confessed that she murdered Utpal and Chumki by drowning them the river.

4. P.W.2, villager in his deposition stated that he knew Utpal son of Bisnupada and he also knew Chumki daughter of Bataran, aged about 6 and 4 years respectively, they died on 19.01.2003. He further deposed that Archana in his presence and also in presence of Bullu Mondal, Gobinda Mondal, Subol Mondal, Gour Mondal, Fekan Mondal, Girish Mondal and Sisir Mondal confessed that she murdered Utpal and Chumki by drowning them in river Fulahar at Yudhisthir Ghat. He was also the signatory of inquest report. He further deposed that he could not remember whether he put his signature on the seizure list or not. But in cross-examination he deposed that he did not disclose the names of villagers to whom accused Archana confessed her guilt. He further stated that he informed the police

over phone regarding the incident. Thereafter police came and recovered two dead bodies.

5. P.W.3, brother of Bishnupada Mondal in his evidence stated that on 19.01.2003 accused Archana took his daughter Chumki and his brothers son Utpal to Fulahar river at Yudhisthir Ghat. Accused murdered them by drowning them in the Fulahar river. Subsequently Archana came back at 1 p.m. on that day. Accused Archana confessed before him in presence of other villagers that she murdered the daughter of P.W.3 namely Chumki and his nephew Utpal by drowning them in the said river. P.W.3 further stated that he was not examined by police. In his cross examination he further stated that he came to know from the villagers including Gour Mondal that accused Archana was seen going towards river along with two children.

6. P.W.4 villager who in his deposition stated that on 19.01.2003 at about 9 a.m. while he was working in his Parwal field he saw accused Archana going towards Fulahar river at Yudhisthir Ghat along with Chumki and Utpal. While accused Archana was found returning home at 10 a.m. but Utpal and Chumki were not with her. He further deposed that accused Archana confessed before him in presence of Dhiren Mondal, Ashutosh Mondal, Bataran Mondal, Sanika Mondal and other in the house of Bataran that she murdered both Chumki and Utpal.

7. P.W.5, villager who in his evidence stated that accused Archana confessed that she killed Utpal and Chumki by drowning them in river Fulahar.

8. P.W.6, villager who in his deposition stated that on 19th January, 2003 at about 4.30/5 p.m. he came to the house of Bataran Mondal and found a gathering there. Thereafter he came to know that Archana Mondal murdered Chumki and Utpal by drowning them in river Fulahar.

9. P.W.7, villager who in his evidence stated that on 19th January, 2003 accused Archana Mondal killed Utpal and Chumki by drowning them into the river Fulahar near Yudhisthir Ghat. When in the evening he went to the house of Bishnupada Mondal the accused Archana confessed that she killed Utpal and Chumki by drowning them in the said river. P.W.7 also wrote the complaint as per direction of

Sanika Mondal (Exbt.4). He further deposed that in the written complaint there was no whisper that Sanika herself and her family members saw accused Archana going towards Fulahar river along with Chumki and Utpal. It was only contended in the written complaint that Sanika heard from some local boy that they saw Archana while going towards Fulahar river with Utpal and Chumki.

10. P.W.8, Magistrate who recorded statement of Ashutosh and Gour Mondal under Section 164 of Cr.P.C. stated that signature of all the witnesses were attested by him. He also stated that there was no note in the Exbt.5, 6 and 7 that wherefrom the witnesses were produced.

11. P.W.9, villager who tendered for cross-examination.

12. P.W.10 constable who took dead bodies to the Malda Sadar Hospital for post-mortem examination by a rickshaw van.

13. P.W.11, Superintendent of Malda Sadar Hospital who held post mortem examination over the dead body of Utpal Mondal. The Doctor in his opinion stated that death was to the effect of ante-mortem due to drowning.

14. P.W.12, Doctor who held post mortem examination over the deadbody of Chumki Mondal opined that death was due to effect of drowning.

15. P.W.13, was a villager and one of the signatories of the inquest report.

16. P.W.14, police personnel who started the case on 21st January, 2003 under Sections 364/201 of the Indian Penal Code.

17. P.W.15, Investigating officer of the case, arrested the accused Archana Mondal and as per his statement he went to the bank of Fulahar river at Yudhisthir Ghat and thereafter he seized one old blue coloured sweater, one old blue sando ganji, one old used navy blue pant, one chappal, one old black frock and an old frock and one used red coloured sweater in presence of witnesses (exbt.3). He also visited the place of occurrence and prepared a sketch map with index. He recorded statements of five witnesses under Section 161 Cr.PC. He made search for deadbody along with villagers but failed to recover the deadbodies. Thereafter

he came back to the police station and accused Archana was also taken to police station. He sent message to the contiguous police station for making a search for dead bodies. Thereafter he interrogated accused Archana Mondal at police station and noted her statement. He further stated that on that day at noon time they received one telephonic call and knew about dead body of Chumki Mondal. Then he along with force went to the Paschim Naraynapur Char Diara. gathering of people. There he found The huge gathering of people identified the dead body as Chumki Mondal. Thereafter he held inquest on the dead body of Chumki Mondal in presence of villagers on 21st January, 2003. On 26th January, 2003 he received one telephonic information that the dead body of Utpal Mondal was lying on the bank of river Fulahar. Then he visited the place and held inquest on the dead body of Utpal Mondal in presence of witnesses. He examined available witnesses during investigation and he sent three witnesses to the Court for recording their statement under Section 164 of the Cr.P.C. He submitted charge-sheet under Section 364/201 of the Indian Penal Code and added Section 302 of the Indian Penal Code against the accused Archana Mondal. P.W.15 further deposed that P.W.2 did not state before him that villagers namely Ashutosh, Bullu, Gour, Girish, Fekan were present when the accused made confessional statement about the death of Chumki and Utpal. P.W.15 further stated that P.W.5 Sisir Mondal did not state that the date of death of both Chumki and Utpal. He further deposed that witness Sisir Mondal did not tell him that accused Archana Mondal confessed her guilt of committing murder of both Chumki and Utpal by drowning them in Fulahar river in presence of villagers namely Ashutosh, Bullu, Girish, Gour , Fekan. P.W.15 further stated that P.W.6 did not tell him that he came to learn from villagers that accused Archana was the assailant of Chumki and Utpal. P.W.15 further deposed that P.W.7 did not state before him that he lodged complaint to the police station at about 12 oclock midnight. P.W.15 also stated that he did not examine every villager save and except the charge-sheet witnesses. He also did not record the statement of defacto complainant in course of investigation. He only examined and recorded the statement of witnesses namely Haripada, Bataran, Gour, Sisir on 29th January 2003 at about 20:05 hours. He submitted charge-sheet on 2nd April , 2003. He did not make any attempt to take the fingerprints on the wearing apparels. P.W.15 also did not make any attempt to check for fingermarks on the

neck of Chumki. He further stated that no prayer was made before the Court for recording the confessional statement of the accused Archana Mondal.

18. Mr. P.S. Bhattacharya learned Advocate appearing for the appellant contended that the entire case of the prosecution is based on circumstantial evidence together with theory of last seen together and the alleged confessional statement of accused Archana. He further contended that on 20th January, 2003 there was no FIR.

19. Mr. Bhattacharya contended that it is evident from the written complaint that on 19th January 2003 in the morning at about 7.30 a.m. Archana left the house after quarreling with Bishnupada Mondal but no FIR was lodged on 19th January, 2003. Only on 21.01.2003 at about 13.10 hours the FIR was lodged that means after two days after FIR was lodged and the delay was not explained. He further contended that the chain of events shows nothing was done by the prosecution though on that very date police was informed and came to the house but no FIR was lodged. He further submitted that after inquest was done FIR was lodged.

20. He further contended that there was every probability to falsely implicate Archana by Sonika (first wife of Bishnupada Mondal) out of grudge.

21. Mr Bhattacharya further vehemently urged that P.W.1 Sonika in the FIR stated that she came to know from two little boys that Archana took Utpal and Chumki with her but in her evidence P,W.1 stated that she saw Archana took Utpal and Chumki with her. Regarding alleged confessional statement Mr. Bhattacharya contended that so called confessional statement of Archana was the outcome of assault and threatening which was evident from the testimonies of witnesses.

22. Mr. Bhattacharya further urged that save and except the theory of last seen together there was no chain of evidence. On the point of last seen together Mr. Bhattacharya urged that P.W.4 saw Archana with Utpal and Chumki at about 9 a.m. but in the FIR the P.W.1 stated Archana came at 1 p.m. P.W.1 also stated in his evidence that Archana took Utpal and Chumki at about 7 a.m.

23. Mr. Bhattacharya vehemently urged that it is evidence of Investigating Officer deposed that P.W.2, P.W.5, P.W.6, P.W.7 disclosed to him that accused Archana never made any confessional statement before them regarding her guilt of committing murder of Chumki and Utpal by drowning them in the river.

24. Mr. Bhattacharya further contended that P.W.1 and P.W.4 who in their evidence narrated theory of last seen together but the time mentioned by those P.Ws were not matching with each other as P.W.1 stated that she saw accused took away Utpal and Chumki with her at 7 a.m. but P.W.4 stated that he saw accused took away Utpal and Chumki with her at 9 a.m.

25. Mr. Bhattacharya therefore strongly emphasized that the prosecution miserably failed to form a chain of events. He further contended that it is settled principle of law by catena of decisions passed by Honble Supreme Court that in a circumstantial evidence if any link is missing then chain of circumstantial evidence could not be formed.

26. Mr. Pawan Kumar Gupta learned Counsel appearing for the State submitted that the FIR cannot be treated as delayed FIR as FIR was lodged after finding the deadbodies.

27. Mr. Gupta further contended that in the FIR motive was very much mentioned by the P.W.1. In respect of theory of last seen together Mr. Gupta contended that P.W.1, P.W.3, P.W.4 saw the children with Archana and next day deadbody of Chumki was recovered. He also contended that it is evident from the FIR that the motive was there to murder the children as a quarrel took place on 19th January 2003 between Bishnupada Mondal and the accused Archana Mondal. Therefore, motive and last seen together theory as per Mr. Guptas version has been proved by the prosecution to convict the appellant under Sections 364/201/302 of the Indian Penal Code.

28. Considering the rival submissions there cannot be any dispute that the victims Chumki Mondal and Utpal Mondal died an unnatural death. Now the question is whether the prosecution has been able to connect the present accused with the alleged crime.

29. Let us now examine/asses the evidence on record to ascertain whether the appellant is at all connected with the alleged crime.

30. On a close and critical analysis of the evidence both oral as well as documentary with meticulous care we find that the incident occurred on 19.01.2003 but no FIR was lodged though police was informed . FIR was lodged only on 21st January, 2003 at about 13.10 hours but inquest of Chumki was done on 21st January 2003 at about 3.15 a.m. which clearly shows that inquest of Chumki was held prior to lodging of FIR.

31. We further find that the P.W.1 in the FIR stated that she came to know from two little boys that they saw accused Archana took Utpal and Chumki towards Fulahar river with her. But the P.W.1 in his evidence stated that she saw accused Archana took away Utpal and Chumki which is not corroborating with the FIR. We further find that with regard to so called confessional statement of Archana that was obtained by force after assaulting and threatening the accused . It is evident from the evidence of the Investigating Officer P.W.15, that P.W.5, P.W.6, P.W.7 did not state before him that accused Archana confessed her guilt of committing murder of both Chumki and Utpal by drowning them in the river. P.W.15 also deposed that the P.W.2 did not state before him that the villagers namely Ashutosh, Bullu, Girish, Fekan, Gour were present when accused Archana made her confessional statement about committing murder of Chumki and Utpal by drowning them in the river.

32. We also find in respect of last seen together theory that P.W.1 in her evidence stated that she saw Archana took away two children at about 7 a.m. but the P.W.4 in his evidence stated that he saw Archana took away Chumki and Utpal towards Fulahar river at about 9 a.m.

33. Therefore, in the facts and circumstances and upon the evidence analysed above, we have no hesitation to hold that there were various lacunae, inconsistencies, contradictions, absurdities, loosends and untold stories in the prosecution case. So, the prosecution case in our view cannot be said to have been proved beyond all doubt.

34. Therefore, the appellant gets the benefit of doubt. The learned Trial Court had therefore wrongly convicted the appellant of the alleged offence. The Judgment and Order of conviction and sentence dated 28th April, 2004 convicting the appellant of the offence punishable under Sections 364/201/302 of the Indian Penal Code is therefore set aside.

35. The appellant is found not guilty of the offence punishable under Sections 364/201/302 of the Indian Penal framed against her.

36. The appellant is given the benefit of doubt and acquitted. She be released from the custody if her detention is not required in any other case.

37. The appeal is accordingly allowed. (Samapti Chatterjee, J) (Nishita Mhatre, J).

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