

Rafique Molla and ors. Vs. the State

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Court : Kolkata

Decided On : Feb-06-2006

Reported in : (2006)3CALLT1(HC)

Judge : Alok Kumar Basu and; Pranab Kumar Deb, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 201, 302 and 376(G); ;Code of Criminal Procedure (CrPC) - Section 164

Appeal No. : C.R.A. No. 2004

Appellant : Rafique Molla and ors.

Respondent : The State

Advocate for Def. : Ashim Roy and; Joy Sengupta, Advs.

Advocate for Pet/Ap. : Milon Mukherjee and; Aslam Khan, Advs.

Disposition : Appeal allowed

Judgement :

Pranab Kumar Deb, J.

1. This appeal being C.R.A. 29 of 2004 has been directed against the conviction and sentence under Sections 302/34 IPC, 376(G) IPC and 201/34 IPC passed by the Additional District and Sessions Judge, 2nd First Tract Court. Alipore in

connection with Sessions Trial No. 7(6) of 2002.

2. With the alarming rise of commission of crime against the womanhood, stringent measures are required to be taken to curb the growing menace. Lopsided investigations of cases of such a nature will encourage the wrong doers, sending wrong signal to the society.

3. This is a sad story of murder of a minor girl following commission of gang rape on her. The prosecution story, as disclosed in the FIR, was to the effect that on 19/11 /99 at about 5 P.M., a girl Sakila Khatun aged about 14 years only went out of her house as usual. Since she did not return by the evening, her father and other relations went out searching for her. Her whereabouts, however, could not be found despite search being conducted. Nearly three days thereafter on 22/11/1999, some children of their village found her dead body floating on the eastern bank of the pond of one Rahiul Haque Molla with her 'Orna' being tied round her neck and her wearing apparels being misplaced.

4. With the father of the girl lodging the FIR with the local police station, a case under Section 302/201 IPC was registered by Baruipur Police Station. Subsequently, Section 376(G) IPC also added. Meanwhile, the police officer held inquest over the dead body of Sakila Khatun and thereafter sent the dead body to the hospital for post mortem examination. The Investigating Officer also made a prayer before the learned Magistrate for recording the statement of one witness called Yusuf All Mondal. The statements of the other witnesses, in the mean time, were also recorded by him. Eventually, on examination of all the available witnesses and collection of the documents including the post mortem report, charge-sheet was submitted against the four appellants.

5. With the commitment of the case to the Court of Session, charges under Sections 376(G) IPC, 302/34 IPC and 201/34 IPC were framed against the appellants. They were charged with having added and abated each other in furtherance of their common intention to commit gang rape on Sakila Khatun. They were also charged with having committed the murder of Sakila Khatun in furtherance of their common intention. Finally, they were charged with having caused disappearance of evidence by dumping the dead body inside a pond for

the purpose of screening themselves. All the four appellants, however, pleaded innocence. Following the denial of their involvement in the commission of crime, the prosecution side examined as many as 13 witnesses including the father of the girl, some inmates of the locality, the doctor conducting the post mortem examination and the police officer participating in the investigation. Banking heavily on the testimony of P.W. 3 who claimed to have seen the incident and the supportive post mortem report, the learned Additional District Judge convicted all the four appellants for commission of offence under Sections 302/34 IPC, 376(G) IPC and 201/34 IPC. The appellants were sentenced to rigorous imprisonment for life and fine of Rs. 10,000/- each, in default, to suffer further rigorous imprisonment for six months for commission of offence under Section 302/34 IPC. They were also sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs. 5,000/- each, in default, rigorous imprisonment for three months for commission of offence under Section 376 (G) IPC. They were also sentenced to suffer rigorous imprisonment for two years for commission of offence under Section 201/34 IPC.

6. Aggrieved by the conviction and sentence, the appellants have jointly preferred the instant appeal.

7. Appearing on behalf of the appellants, Mr. Milon Mukherjee has submitted that the Trial Court convicted and sentenced the appellants purely on speculation without having cogent proof to substantiate the allegation. Mr. Mukherjee contends that in the absence of any corroboration of the statements of P.W. 3, conviction and sentence purely on the statements of a single witness were not proper. It is submitted that it is quite unbelievable that the persons intended to do a nefarious crime would call a person to witness their misdeed. Since an absurd story was introduced long after the alleged commission of crime, the Trial Court should not have placed any reliance whatsoever on the testimony of P.W. 3. The imaginary story as propounded by P.W. 3 should not have inspired any confidence. Mr. Mukherjee has further submitted that the Trial Court has also failed to appreciate that the statements of the witnesses were recorded long after the alleged incident. The statement under Section 164 of the Code of Criminal Procedure was recorded after the detention of P.W. 3 for nearly seven days in police custody. Finding no

clue whatsoever as to how the crime was committed, the Investigating Agency set Yusuf All Mondal up to entangle the appellants.

8. Drawing our attention to the first information report. Mr. Mukherjee has submitted that there is no whisper in the FIR about the role of the appellants in the alleged commission of murder of one Sakila Khatun. P.W. 3 claimed to have divulged to P.W. 9 Kaji Abdul Halim as to the appellants committing rape and murder of Sakila Khatun. Had such facts been known to P.W. 9 at the time of drafting of FIR, such fact ought to have been incorporated in it. Non mentioning of the names of the appellants as the perpetrators of commission at crime of rape and murder does indicate that the witness had no idea as to who committed, the nefarious crime of such a nature.

9. Mr. Ashim Roy representing the State has defended the conviction and sentence, submitting that the Trial Court did nothing wrong in convicting the appellants on the testimony of a solitary witness. It is argued that the Court can bank on the statement of a solitary witness if it is found to be trustworthy and reliable. P.W. 3 Yusuf Mondal having seen the occurrence from point blank, the prosecution tapped the best witness for the purpose of establishing the charges against the appellants. The fact that appellants disappeared after the occurrence was also a strong factor which weighed with the learned Trial Judge in convicting the appellants. Furthermore, there is post mortem report which tends to affirm that the girl was brutally ravished before being murdered. The chains in the circumstantial evidence having been properly linked up, there was no hesitation on the part of the Trial Judge to convict and sentence the appellants for their nefarious role in the commission of rape and murder of a girl of 14 years only.

10. The prosecution side to bring home the charges examined some of the inmates of the locality where the crime was committed. The informant spoke about the disappearance of his daughter and subsequent recovery of the dead body from inside the tank. Some of the respectable persons including a teacher and Kazi were examined on behalf of the prosecution. Strangely enough, none of them stated anything against the appellants at the time of the trial. In fact, most of the prosecution witnesses had to be declared hostile. What was really before the

Court was the evidence of P.W. 3 Yusuf Ali Mondal. The Trial Court heavily banked on the statement of Yusuf Ali Mondal to convict and sentence the appellants for their alleged role in commission of murder and rape of a minor girl. It is true that Court may act on the testimony of a single witness provided it is found to be convincing, reliable and trustworthy. Corroboration would be required only in the event of his testimony being found to be doubtful. As per statement of P.W. 3 Yusuf Ali Mondal, on the eventful day at about 9-30 P.M. Rafique and Gora called him in the house on the pretext of showing him the video. Accordingly, he went to the house of Rafique. He was asked by Rafique and Gora to sit on the road near the garden where the murder had taken place. They gave him fifty rupees with a warning not to disclose the fact to anybody else. They also gagged his mouth to prevent him from screaming out. The witness further alleged that Rafique and Gora strangled the girl with a 'Orna (Scarf)', while the other two accused persons namely Safique and Pocha @ Pocha Abdul Razzak gripped her. As per his testimony, Safique and Pocha committed rape on the girl. Thereafter Rafique and Gora also did the same. Finally, all of them killed her. The witness further disclosed that he stayed with the accused persons in Bangaon for two days. On return, he reported the matter to the Prodhan of their village.

11. As claimed by P.W. 3 Yusuf Ali Mondal, the incident occurred at about 9-30 P.M. He testified that at about 11 P.M.. he went to the house of Rafique. Rafique and Gora then asked him to sit on the road near a garden where the murder had taken place. This creates doubt as to whether he had at all seen the incident of rape and murder. As rightly pointed out by Mr. Mukherjee representing the appellants, wrong doers will not call a person to witness a misdeed which they contemplate of doing. What was the reason for the witness staying with the appellants for two days in Bangaon is not clear either. Had he been just a witness to the occurrence, there was no earthly reason for him to abscond immediately after the incident. The witness was forwarded to the Court with an endorsement letter after his detention in police custody for nearly seven days. The story as presented through P.W. 7 is not believable. As per his statement, he slept on the Varandah of their house along with his brothers. It is quite unbelievable that his brothers did not hear the call of the accused persons at about 11 P.M. It is not believable that his brothers did not notice him going out. He did not mention

anything about the incident to his parents and brothers. All that he did was to disclose the fact to the Proadhan of their village. P.W. 9 Kazi Abdul Halim, however, denied having heard anything from him. The testimony of P.W. 3 Yusuf Ali Mondal is lacking in corroboration. The statements are not convincing either. Had the incident of rape and murder by the appellants been known to P.W. 9 Kazi Abdul, it ought to have been mentioned in the FIR drafted by him. Non-mentioning of the names of the appellants in the FIR under the circumstances would be an indicative of the fact that efforts were made to entangle the appellants in the alleged commission of crime through a witness who was in police custody for nearly seven days. What P.W. 3 Yusuf Ali Mondal stated before the Magistrate during investigation and what he divulged at the time of the trial do not inspire any confidence. It is hard to accept that he was just called to witness the incident of murder and rape. His role is also found quite dubious. The statements are full of contradictions. The story as projected by him was not believable either. The statements not being convincing, reliable and trustworthy, the conviction and sentence practically on the uncorroborated testimony of P.W. 3 were not desirable. Thorough investigation ought to have been made for collection of materials. Dolefully, it was not done. The conviction and sentence on scanty and unsatisfactory evidence thus cannot stand.

12. In the result, the Criminal Appeal being C.R.A. No. 29 of 2004 is allowed, setting aside the conviction and sentence of the appellants passed in Sessions Trial No. 7(6) of 2002 passed by the learned Additional District and Sessions Judge, 2nd First Track Court, Alipore.

13. Send the L.C.R. with a copy of the Judgment to the Trial Court for information.

Let another copy of the Judgment be sent down to the Superintendent of Jail/Correctional Home where the appellants are in detention with the direction to set them at liberty forthwith, if they are not detained in connection with any other case.

Alok Kumar Basu, J.

14. I agree.

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