

Jerka Munda Vs. State

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Court : Kolkata

Decided On : Apr-19-2004

Reported in : 2004(3)CHN316,2004CriLJ4764

Judge : G.C. De and ;Sankar Prasad Mitra, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 304 and 304(2); ;[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 154 and 156; ;[Evidence Act, 1872](#) - Sections 3, 137 and 138

Appeal No. : C.R.A. No. 347 of 1996

Appellant : Jerka Munda

Respondent : State

Advocate for Def. : Kazi Safiullah, Ld. P.P., ;P.K. Roy and ;Hasi Saha, Adv.

Advocate for Pet/Ap. : Partha Sarathi Bhattacharya and ;Subhasis Pachchal, Adv.

Judgement :

G.C. De, J.

1. This appeal is directed against the judgment and order of conviction dated 26.9.96 and the sentence dated 27.9.96 of the 2nd Court of Additional Sessions

Judge, Jalpaiguri in Sessions Case No. 37 of 1996 in Sessions Trial No. 29 of 1996 arising out of Mutelli P.S. Case No. 10/95 dated 12.2.95 on the basis of which G. R. Case No. 144 of 1995 was started.

2. By the said judgment the learned Additional Sessions Judge found the accused Jerka Munda guilty under Section 302 of IPC, convicted him thereunder and sentenced him to suffer R.I. for life.

3. Prosecution case in brief is that on getting telephonic message -police force went to Engo Tea Garden on 12.2.95, asked Jerka Munda to come out from the room and he was caught as soon as he came out. On entering into the kitchen on Jerka Munda dead body of his wife Sukro Munda was recovered. It was noticed that there were bleeding injuries on the head and belly of the victim. One blood stained tangi and knife were lying near the dead body and those were recovered and seized on the basis of seizure list in presence of witnesses. One Ratia Munda handed over a written complaint to the police officer who sent it to the police station for starting a case under Section 302 of IPC. The case was investigated by the police. Witnesses were examined. Report of postmortem examination was collected along with the serological report and ultimately chargesheet was filed against Jerka Munda under Section 302 of IPC.

4. The case was committed to the Court of Sessions where charge under Section 302 of IPC was framed. Since the accused pleaded not guilty to the charge, prosecution examined eight witnesses including the Investigating Officer (PW. 8), and Autopsy Surgeon was examined as a Court witness under Section 311 of Cr. PC. No defence evidence was adduced. After analysing the evidence on record the Trial Court came to the conclusion that the charge against the accused was proved and accordingly the accused was convicted and sentenced in the manner indicated hereinabove.

5. The convict Jerka Munda filed the Jail Appeal on 30.10.96, through the Superintendent of Berhampore Central Jail, Murshidabad and after filing of the appeal the Division Bench of this Court issued direction to the public prosecutor to engage an advocate from the State Panel for representing the appellant at the cost of the State. However, in course of hearing of this appeal Sri Partha Sarathi

Bhattacharyya, learned Advocate filed a vokatnama on behalf of the convict and he argued the case on behalf of the appellant.

6. The main contention of Mr. Bhattacharyya is that neither the investigation was properly done nor the trial of the case was properly conducted. It is also pointed out that the accused being a poor person, a learned Counsel was appointed at the cost of the State for the defence of the accused but, unfortunately the learned Counsel in defence did not perform his duties properly. Analysing the evidence of the witnesses examined, Mr. Bhattacharyya further contended that there has been no eye-witness who actually saw Jerka Munda killing his wife Sukra Munda. So, it was incumbent upon the Trial Court to consider the circumstances in its proper perspective for assessing the part played by the accused in the alleged offence. As regards the circumstances, Mr. Bhattacharyya pointed out that Sitaram Oraon who was sharing the quarter of Jerka Munda was present in the same quarter at the time of the alleged offence but, on examination the PW. 4 Sitaram did not explain as to how and why Sukra was killed.

7. Mr. Bhattacharyya also points out the evidence of the minor daughter of the victim i.e. Anita Munda (PW. 3) to show that Jerka did not like gossiping of Sitaram and Sukra, for which on many occasions the victim was rebuked. So, Mr. Bhattacharyya tried to indicate that murder, if any, was caused on certain provocation for which the offence cannot be construed to be an offence under Section 302 of IPC.

8. Mr. Bhattacharyya of course made a forceful argument alleging that actually the murder of Sukra at the hand of the accused has not been established in this case, and from the evidence of the autopsy surgeon (PW. 6) when there is indication of the possibility of presence of two persons at the time of assault, the benefit of doubt must go in favour of the accused person and as such, on the basis of such benefit the accused may be acquitted.

9. Mr. P.K. Roy, learned Counsel on behalf of the State, however, contended that the murder of Sukra at the hand of Jerka has been established beyond reasonable doubt and as such, it cannot be said that the accused should be acquitted with the aid of benefit of doubt. It is further contended that extra-judicial confession of the

accused before arrival of the police and the threat of killing of others if anybody ventured to enter into his house are sufficient to indicate that the murder was committed by Jerka. Of course, Mr. Roy was fair enough to point out that the defence Counsel in the Trial Court did not handle the case properly and though there are certain indications about disliking of the accused on the mixing of Sitaram and Sukra, proper attempt was not taken for its clarification for the reasons best known to the said defence Counsel. So, Mr. Roy, left the entire matter at the discretion of this Court for consideration as to whether the killing of Sukra was due to certain provocation or not?

10. PW. 1 Selve Oraon claimed that he heard the hue and cry when Sitaram told him that Jerka murdered his wife. On getting this information from Sitaram, PW. 1 along with Gopal (PW. 2) one Ashit who died after filing of the chargesheet, Ratia (PW. 5) reached the house of the accused when policemen also arrived, and Sitaram was also present. At that time it was noticed that Jerka was present and his wife Sukra with bleeding injuries on head and belly was lying dead. PW. 1 further stated that the accused Jerka confessed before them that he had killed his wife by an Axe. PW. 1 also noticed that wearing apparel of the accused was stained with blood. In cross-examination PW. 1 further clarified that Sitaram came before him when he was working in his vegetable garden and requested him to go to the accused's house since police had arrived. PW. 1 indicated that it was about 12 or 12.30 p.m., PW. 1 also confirmed that Sitaram was sharing the garden quarter of Jerka and they used to go together for the work in the garden.

11. It is interesting to note that suggestion was given by the defence to PW. 1 that the victim Sukra refused to give shelter to Sitaram when the latter approached the accused Jerka for a shelter in the quarter. We will deal with the matter at the proper stage of this judgment.

12. PW. 2 Gopal Porza another neighbour of the accused claimed that the alleged incident of murder had taken place at about 7.30 a.m. of 12.2.95 when he was inside his house. PW. 2 further claimed that hearing the cry of the children of accused Jerka he went to their house at about 8 a.m. and noticed that many persons such as Sitaram, Ashit and others were there and accused Jerka raising

an axe was threatening that if anybody would come he would be killed by him. It was also revealed by Jerka that he killed his wife by that axe and knife. Finding this condition the assembly of people decided to inform the police and after such information police came at about 11.30 a.m. when PW. 2 again went there and noticed how the deadbody of Sukra was brought out and how the articles were seized. In cross-examination, PW. 2 further clarified that extra-judicial concession made by Jerka was long before the arrival of the police. In cross-examination of PW. 2 he further clarified that Sitaram was not present in the quarter at the time of his first visit in the morning. But Sitaram came back to the spot when police came.

13. PW. 3 Anita Munda was the daughter of the accused Jerka and victim Sukra. Since she was minor and a student of class III, the Trial Court after certain questions put to her and on being satisfied that the witness could give rational answer went on examining her. The evidence of PW. 3 is that her father Jerka killed her mother in the morning with an axe and a knife. It is further clarified in cross-examination that the victim used to gossip with Sitaram and that the accused Jerka used to rebuke the victim Sukra when she was found gossiping with Sitaram. She further clarified that on her return from play to the place Ashit called Sitaram.

14. PW. 4 Sitaram Oraon also claimed that the accused killed his wife. He further clarified as to why he came to share; the quarter of the accused after severing his relation with his parents. It is also clarified that at the time of the incident Sitaram was alone inside the room adjacent to the kitchen and the wife of Sitaram went to the market and their children went to the house of grandfather. In cross-examination he further clarified that after the incident he went away for calling different persons. He also went to the Secretary's house to call him and the Secretary gave information to the police over telephone. It is also stated that he narrated the incident to Ashit, Gopal (PW. 2) and Secretary. It is also revealed that he came to know from Ashit that accused killed his wife. PW. 4 admitted that he did not see actually the killing of Sukra at the hand of Jerka.

15. PW. 5, Ratia Munda actually wrote the written complaint on the basis of which a formal FIR was drawn. His evidence is that he went to the place of occurrence

after arrival of the police and noticed that the police arrested Jerka after opening the door and brought out the deadbody of Sukra. It was noticed that Sukra died with bleeding injuries on her head and belly. It is also stated that the police seized tangi and knife and other materials from the place of occurrence in presence of PW. 4 and other witnesses and he became the seizure list witness. In cross-examination, PW. 5 stated that he was a compounder of the Tea Estate Hospital. It is also revealed that he informed the police from his Garden Office over telephone. PW, 5 proved the written FIR (Ext. 3). It is to be noted that the said FIR was written in Hindi and signed by PW. 5 in English. It is indicated in the FIR that on getting information of assault upon Sukra, it was noticed that Jerka was standing in front of the door of his quarter with a tangi in his hand. On being asked. Jerka threatened that if anybody approaches near him, he would be killed. Accordingly, he made a telephone call to the police and when the police came everything was done in the manner indicated in the evidence.

16. It is to be noted that arrival of PW. 5 at the spot before the arrival of the police as indicated in the written complaint is not divulged in the substantive evidence. But the fact remains that he lodged the FIR and police arrested Jerka and brought out the dead body of his wife with bleeding injuries on her head and belly.

17. PW. 6, Dayasita Tanti also corroborates that Jerka murdered his wife, police came, arrested Jerka and recovered the deadbody with bleeding injuries. He further stated that Jerka made confessional statement. On being interrogated by the police, Jerka admitted that he had committed murder.

18. PW. 6 also noticed the blood on the wearing apparel of the accused. In cross-examination, PW. 6 further added that when he came to the spot he saw the accused being tied up in the courtyard.

19. PW. 7 Fagu Munda is the brother of Jerka and his evidence is that he heard about the murder of Sukra at the hand of Jerka by means of a tangi on her head and a knife of her belly. PW. 7 also found the deadbody of Sukra with injuries and also found Jerka was being tied up with rope. He also saw blood in his hand and wearing apparel. In cross-examination, he also admitted that Sitaram used to live in the quarter of the accused at the relevant time.

20. PW. 8, S.I. Prasanta Kumar Nandi investigated the case and his evidence narrates all the formalities that are required to be done by the Investigating Officer in course of investigation. But surprisingly enough, he did not make any attempt to find out the cause of assault on Sukra. His evidence in the cross-examination is that when he went to the place of occurrence he noticed Sitaram was standing in the courtyard along with the members of the public. It is also clarified by him that on the basis of sketch map the kitchen wherefrom the deadbody of Sukra was recovered was approachable from the drawing room in which Sitaram was staying. Of course, he further clarified that the kitchen can also be negotiated from the backside. But the most salient part is that he noticed the door of the drawing room open. PW. 8 further denied the suggestion that if any proper investigation was made, it would have revealed something otherwise.

21. Dr. Arabinda Dey, Autopsy Surgeon was brought into Court as Court witness by exercising power under Section 311 of Cr. PC and his evidence is that Sukra died as a result of injuries inflicted on her person which was ante-mortem and homicidal in nature. He also narrated on the basis of post-mortem report as regards the nature of injuries on the head as well as on belly. Suggestion was given whether two of such injuries could be done by one person and the reply was that it might be caused by two persons, one after the other and with a tangi.

22. When the materials collected in the evidence were put to Jerka Munda in his examination under Section 313 of Cr. PC, he simply replied that the allegations are all false. But he did not explain as to how his wife died.

23. After consideration of all the evidence adduced in this case, it is proved beyond all reasonable doubt that Sukra died as a result of assault inflicted on her head as well as on belly. From the evidence, it is also clarified that the injuries on head could be inflicted by a tangi and the injuries on the belly could be done by a knife. Both the weapons were seized with bloodstain from the place of occurrence. It also appears that those weapons and the wearing apparels of the accused were stained with blood. Of course, blood group could not be detected. The ocular version of the witnesses coupled with the facts are sufficient to indicate that it was a case of murder.

24. The Trial Court while considering this aspect of the matter rightly considered that at the time of alleged incident the accused Jerka and Sitaram (PW. 4) were present in the quarter. But it has not been explained as to how the entire responsibilities of murder was imposed on accused Jerka. It appears that placing reliance on the ocular version of the witnesses, the Trial Court took this view. But surprisingly enough neither the Trial Court nor the Investigating Officer, nor the other witnesses could explain as to what prompted Jerka to inflict such injuries on the person of his wife. Though motive does not play any important role in criminal case, even then in a case of this nature where the wife was engaged in the kitchen for preparation of bread, it was incumbent upon the prosecution to ascertain as to what prompted Jerka to assault his wife in that early hour of the day.

25. PW. 4 Sitaram claimed that he was lying in his room at that moment. The learned Counsel appointed as defence, counsel in this case in the Trial Court did not take the trouble of ascertaining as to what was the role played by Sitaram before or at the time of the alleged offence. PW. 4, moreover, stated that the accused Jerka was cutting firewood, victim Sukra was in the kitchen and that PW. 3, daughter of the accused and the victim, was taking bread inside the bedroom. The silence of Sitaram on the point of actual assault indicates an untrue story, which was suggested by the Investigating Officer.

26. It is proved by the witnesses that PW. 4 Sitaram started living in the drawing room of accused Jerka for the last 3-4 months. It is also the evidence that at the relevant time the wife of Sitaram went to the market and his children went to the house of their grandfather.

27. PW. 3 has stated that after eating bread she went away to play. So, there are sufficient materials to indicate that at a particular moment Sitaram (PW. 4) and the victim Sukra were alone in that quarter while the accused Jerka was cutting firewood outside. This important situation coupled with the version of PW. 3 that Sitaram used to gossip with her mother Sukra and that accused Jerka rebuked Sukra suggesting existence of provocative circumstances prior to death of Sukra.

28. Next point is the silence of Sitaram as regards actual incident. It is not clarified by him when he and Sukra were in the house, how and when the accused Jerka

came to assault Sukro. On the other hand, the evidence of Sitaram is sufficient to indicate that immediately after the incident he fled away from the quarter and came back subsequently on the arrival of the police. It is also to be noted that the instrument by which Jerka was cutting firewood appears to have been used in the first assault on the head of Sukra. All these facts if taken together indicate a situation that Jerka himself had seen some incident of Sukra with Sitaram which prompted him to rush to the kitchen with the instrument by which he was cutting the firewood. The manner of assault, on her head by the said instrument (tangi) and also the second attack by the knife are sufficient to indicate that Jerka became so much annoyed and angry that he inflicted the injuries on the person of the wife. Such brutal assault cannot be contemplated without provocation and without any heat of passion.

29. The circumstances indicated hereinabove are sufficient to indicate that the accused Jerka had been annoyed by the victim to the utmost and practically murder was committed in the heat of passion at that moment. Practically the Investigating Officer had added Section 304 of IPC at the initial stage of investigation. But the incapability of the Investigating Officer to investigate on the point of provocation, practically prompted him to submit the chargesheet under Section 302 of IPC. The Trial Court finding no other alternative, had framed a charge under Section 302 of the IPC.

30. After careful scrutiny of the materials on record and the circumstances explained hereinabove, we come to the conclusion that the conviction of the accused under Section 302 of IPC is liable to be set aside and he is to be found guilty under Section 304(II) of IPC and he is to be convicted thereunder. Since the charge was framed under Section 302 of IPC and the conviction is imposed under lesser section, there is no necessity to hear the accused on the point of sentence and we take the view that the accused is to be sentenced to suffer rigorous imprisonment for ten years.

31. The appeal is accordingly allowed in part. The conviction and sentence imposed by the Trial Court under Section 302 of IPC are set aside. The accused is found guilty under Section 304(II) of IPC and is sentenced to suffer rigorous

imprisonment for ten years. Period of detention undergone be set off in terms of provision of Section 428 of the Code of Criminal Procedure. The sentence is thus modified.

32. The Trial Court is directed to issue the modified Jail warrant on receipt of a copy of this judgment immediately.

Sankar Prasad Mitra, J.

33. I agree.

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