

Bhim Das Alias Bhim Chandra Das Vs. the State

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Court : Kolkata

Decided On : Apr-18-1995

Reported in : (1995)2CALLT46(HC)

Judge : Arun Kumar Dutta and ;Satya Narayan Chakrabarty, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 164; ;[Indian Penal Code \(IPC\), 1860](#) - Section 302; ;[Evidence Act, 1872](#) - Section 3

Appeal No. : Crl. Appeal No. 341 of 1989

Appellant : Bhim Das Alias Bhim Chandra Das

Respondent : The State

Advocate for Def. : Amalendu Pal and ;U.A. Dewan, Adv.

Advocate for Pet/Ap. : Ranjan Roy, Adv.

Disposition : Application dismissed

Judgement :

Arun Kumar Dutta, J.

1. This Appeal is directet by the accused-appellant, Bhim Das (hereinafter referred to as accused) against the judgment and order of conviction and sentence dated 15.7.89 passed by the Learned Additional Sessions Judge,, 14th Court at Alipore,

24-Parganas (South), in S. T. No. 2(4)/87 before him.

2. The accused stood charged before the Trial Court for having; allegedly committed an offence punishable under Section 302 Indian Penal Code (hereinafter shortened into I.P.C.) for committing murder by intentionally causing the death of his wife Kamala Das on 23rd June, 1982 at the house of Surendra Nath Das, village-Haripur, within P.S. Namkhana, on the allegations made in the F.I.R.

3. It is alleged that on 23rd June, 1982 at about 12.30/13.00 hours the accused had picked up a quarrel with his wife Kamala Das and had kicked on her abdomen and also assaulted her mercilessly causing injuries all over her body with a wooden stick (bata) as a result of which she had fallen down on the ground and started groaning. His mother Bhagabati Das had tried to come to her rescue, but failed to do so. Two/three minutes thereafter, Kamala succumbed to her injuries, whereupon the said Bhagabati had raised a hue and cry, as a result of which many villagers had rushed to the spot, The accused Bhim told them that the victim Kamala committed suicide by hanging, and he had pulled her down from the bamboo beam of their house. But his mother told them that Bhim had murdered her. The accused had, accordingly, faced trial before the court below on the aforesaid charge, to which he had pleaded not guilty, and claimed to be tried.

4. The prosecution had examined 16 witnesses in all in support of their case. Upon consideration of the evidence on record and after hearing both sides, the Learned Trial Judge had come to the conclusion that the accused Bhim had committed murder of his wife Kamala Das, and had accordingly found him guilty for having committed an offence punishable under Section 302, I.P.C., and had convicted him thereunder, and sentenced him to suffer imprisonment for life by passing the impugned judgment and order dated 15.7.89.

5. Being aggrieved by the judgment and order of conviction and sentence passed by the Learned Trial Judge, the accused has preferred the instant Appeal.

6. The point for decision here before us is how far the Learned Trial Judge was justified in convicting and sentencing the accused/appellant on the findings, as he

did.

7. We have perused the entire evidence on record, as also the impugned judgment rendered by the court below. Upon perusal of the same, we find nothing to interfere with the judgment and order of conviction and sentence passed by the court below for the reasons quite ably discussed by it. We would like to add that let alone the evidence of the other P.W.s, the P.W. 13 Bhagabati Das, the mother of the accused/appellant Bhim Das, had clearly stated in her evidence on oath before the Court on 9.2.1988 that she had made a statement before a Magistrate at Diamond Harbour that his son Bhim had killed her daughter-in-law. She went on to add that she had also stated before the Magistrate that Bhim Das had assaulted her daughter-in-law on waist and at her back with a lathi and had also kicked her and throttled her throat, and also kicked her on her abdomen, as a result of which she had died. The evidence so presented by her before the Court is also confirmed by the statement made by her before the Learned Magistrate, recorded under Section 164, Cr. P.C. She being the mother of the accused Bhim, it would seem so unlikely as to be scarcely credible, and it would be naive to believe, that she would have stated so before the learned Magistrate, as she did, falsely against her own son so as to falsely implicate him in such a case punishable with death or imprisonment for life. She must, therefore, be presumed to have told the truth before the Magistrate while her statement had been recorded under Section 164, Cr.P.C. In her cross-examination before the Court on 9.2.88 during the trial, about six years after the alleged occurrence, she sought to state that she had made the Magistrate as per the advice of police. That is nothing unusual for a mother when her son is facing trial for an offence punishable under Section 302, I.P.C. She presumably must have stated so in her cross-examination just to save her son from the gallows or from life imprisonment, which a mother would invariably do, in such circumstances. There could, therefore, be little doubt that she had stated the real facts and the truth before the Learned Magistrate when her statement was recorded under Section 164, Cr.P.C, shortly after the alleged occurrence, which was subsequently sought to be retracted by her during trial for obvious reasons, as indicated above. There could, therefore, be little reason for discarding her evidence, read with her statement recorded under Section 164, Cr.P.C.

8. Apart from her aforesaid evidence, the P.W. 11 Nakul Das, the younger brother of the accused Bhim, had as well stated in his evidence before the Trial Court on 18.12.87 with more than usual clarity and conviction that about five years back his Dada Bhim had assaulted his Boudi Kamala Das by lathi and kicks. Being assaulted by his dada, his boudi had died on the same day. His mother was in the house at the time of the incident. On that day, Bhim wanted two rupees from Kamala, and as she did not give that money to him, he (Bhim) had assaulted her in that way. It was a 'Rathayatra' day. He and his mother Bhagabati had made statements before a Magistrate at Diamond Harbour Court. He had stated his age to be 14 years on the day of his examination (on 18.12.87). At the time of the alleged incident on 23rd June, 1982 he was about 8/9 years old. He must be deemed to have attained sufficient -maturity of understanding to depose the way, he did. It further appears from the record that the witness was duly tested by the Learned Trial Judge before recording his evidence. The way he had made his statement before the Learned Magistrate, recorded under Section 164, Cr.P.C, and deposed before the court, depicting the entire incident in details, quite coherently and consistently all-throughout, further stating that it was a 'Rathayatra' day, would clearly seem to confirm the conviction that he was mature enough to make statement before the Learned Magistrate and depose before the Court, the way he did. There could, therefore, be little reason for discarding his evidence merely because he was a boy of 8/9 years when the incident had allegedly taken place. That, per contra, seems to be all the more reason why his evidence should be relied upon as he is expected to tell the truth out of his innocence. Being the younger brother of the accused Bhim, it is beyond belief that he would depose falsely against his own elder brother, having no malice against him, to falsely implicate him in the case to his peril. It would also be pertinent to note in this context that the P.W. 13, Bhagabati Das, has also clearly stated/ admitted in her evidence before the court that P.W. Nakul was in the house when Kamala had died, and he knows about the matter. The P.W. 11, Nakul, must, therefore, be held to be the most competent and qualified witness to testify about the incident in question. He further appears to have firmly stood the test of cross-examination and remained unshaken, despite his tender age, making no departure from the statement made by him before the Magistrate, recorded under Section 164,

Cr.P.C. There is, therefore, no reason whatsoever to refuse to rely upon his evidence.

9. In view of the discussions above, the Learned Trial Judge seems to us to have been perfectly justified in relying upon the evidence of the P.W.s 11 and 13, confirming their statements, recorded under Section 164, Cr.P.C (vide exhibits 3 and 4). All the more so, the aforesaid evidence of the, P.W.s 11 and 13 further appear to be fully corroborated by the Medical evidence on record. The P.W. 12, Dr. R. N. Roy, who had held the Post Mortem Examination, had found the following injuries on the dead body of the deceased Kamala on 25.6.82 :

'1. One oblique abrasion l'x 1 1/2' over right breast near sternum.

2. One elongated oblique swelling upper right part of the abdomen.

3. One oblique indistinct ligature mark non continuous around the neck high up in front and around the neck. On dissection the inner surface of the skin and underlying tissues were not found, white banded and glistening in appearance.'

10. On dissection he had found the right lung injured, liver ruptured, and fourth rib on the right side fractured.

11. The death, in his opinion, on due to rupture on liver, injury on the lung, fracture of the fourth rib, shock and haemorrhage. He has further stated that liver may be ruptured owing to severe kick over the abdomen and also by severe blow.

12. Upon the materials on record, such as they are, the Learned Trial Judge, to our Judgment, was therefore, fully justified in finding the accused guilty to the charge under Section 302, I.P.C., convicting him thereunder and sentencing him to suffer imprisonment for life on the findings, he did, for the reasons discussed by him at length in his impugned judgment and order. There seems no substance in the Appeal, which is thus liable to fail, as we find no ground for interference.

13. In the result, the Appeal fails and be dismissed.

Satya Narayan Chakraborty, J.

14. I agree

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