

Kamrul Huda Vs. the State

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Court : Kolkata

Decided On : Nov-16-1988

Reported in : (1989)1CALLT252(HC)

Judge : Mukul Gopal Mukherji and ;Manabendra Nath Roy, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 364

Appeal No. : Criminal Appeal No. 341 of 1987

Appellant : Kamrul Huda

Respondent : The State

Advocate for Def. : Sasanka Ghosh, Adv.

Advocate for Pet/Ap. : Dilip Dutta and ;M.R. Chowdhury, Adv.

Disposition : Appeal allowed

Judgement :

Mukul Gopal Mukherji, J.

1. The appellant, Kamrul Huda has preferred the instant appeal against an Order of conviction passed by Shri P. K. Sengupta, Additional Sessions Judge, Islampore, Dist. West Dinajpur in Sessions Trial No. 1 of 1987 convicting him under Section 364 IPC and sentencing him to rigorous imprisonment for seven

years along with a further conviction under Section 302 IPC sentencing him to imprisonment for life, both the sentence being directed to run concurrently.

2. The prosecution story as given out in the FIR lodged on September 7, 1979 at 1 P.M. gives out inter alia that Ramena Khatoon, aged about 16 years along with her younger sister Marzina Khatoon aged about 10 years proceeded towards the house of their relatives Abbas Ali of Lodhan on Tuesday, the 4th September, 1979 at noon. At about 2 P.M. when they reached beneath a mango tree in the northern side of Godarhat, the present accused along with another youngman came over there and forcibly caught hold of Ramena Khatoon and proceeded, towards west when both the sisters raised a hue and cry. The younger of the two sisters went to the house of Abbas Ali and narrated the incident whereupon Abbas searched for the accused at his house and other places including Kishanganj but did not find her. The first informant, the father of Ramena, was informed about his daughter Ramena floating in the northern side of the bridge over the river Siriani. The dead body was identified to be that of his daughter Ramena. Her hands and legs were found tied up. They had a suspicion that the accused Kamrul Huda must have murdered her and thrown her down in the river. The first informant further gave out that the accused Kamrul Huda wanted to marry her daughter Ramena Khatoon but his daughter did not agree. About a year before, she was given in marriage to one Rafique Sk. of Lodhan but Kamrul having threatened his son-in-law and asked him to sever all relations with Ramena, ultimately Rafique severed all his relations with Ramena for the last 6/7 months. Then Kamrul Huda wanted to marry his daughter Ramena but his daughter did not agree. It was under such circumstances that Kamrul kidnapped his daughter Ramena in order to murder her. Kamrul's father was not at all in favour of this marriage. He also thought that there was a collusion and complicity between Kamrul's father Aulad Ali and his brother-in-law Nakimuddin in this matter. The police registered a case under Section 364 and 302 I.P.C. against the present accused and on completion of investigation submitted a charge-sheet pursuant to which the appellant was put on Trial before the Learned Additional Sessions Judge, which ultimately resulted in his conviction. The first informant Sk. Mataru, father of Ramena, the victim girl, died before the completion of Trial and could not be examined by the prosecution. The prosecution relied upon the testimony of the younger sister of the victim girl

Ramena, PW 1., Marzina Khatoon, PW 3 Abbas Ali, a cousin of both the sisters who married PW 1 later on despite his existing marriage with PW 4 Koresha Bibi, PW 5 Monoranjan Sarkar, PW 6 Ezahar Ali and PW 7 Rafique Sk., the last three being all rickshaw pullers to prove the case of the present appellant allegedly kidnapping or abducting Ramena in order that she might be murdered and also on the factum that they were last seen together.

3. PW 1 who according to her father was merely a girl of 10 at the relevant time and who at the time of her examination was aged about 18, gave out a story which was not really credible enough to be believed as regards the complicity of the accused to take away Ramena against her will or by application of force. Her testimony was to the effect that on 18th Bhadra, which was a Tuesday at about 2 P.M. while she and her elder sister Ramena were going to the House of their Khalu (mother's sister's husband), they came across the present appellant Kamrul Huda at Godarhat. Godarhat is about 31 miles from their house. The present appellant caught Ramena by her hands at which she and her elder sister cried out. Another youngman came over the scene of occurrence from a nearby jute field and he threatened Marzina with a knife and slapped her on her cheek. Kamrul then forcibly dragged away Ramena and asked Marzina to call his cousin Abbas. She then went to Biprit Chawk Hat covering the distance of three or four miles by foot wherefrom she took a rickshaw and went to Lodhan Chawk. At Lodhan she met her Khalu, Bhadu and gave Rs. 3 to him to purchase sweets as her Khalu (mother's sister) had given birth to a son but curiously she did not tell anything to Bhadu about Kamrul forcibly taking away her elder sister Ramena. She then went to the house of her cousin Abbas Ali at Lodhan which is further two miles away from the house of her maternal aunt's husband. Her cousin Abbas, who later on became her husband, was not at the relevant time in his residence. On the arrival of Abbas, she gave out the incident to him but because of rains they could not make any search for Ramena in the neighbourhood of Biprit Chawk. She stayed for the whole night in the house of Abbas. In the morning of the following day she along with Abbas went out in search of Ramena and made searches for her at Kishanganj, Dharampur and other neighbouring areas. Abbas then advised her to inform her father Mataru, the first informant. Abbas returned home and she also returned to her father's place and narrated the entire incident to him. Her father

Mataru, her uncle Chuman Ali along with herself came back to the house of Abbas and all of them searched for Ramena but did not get any trace of Ramena. When they were contemplating to go to the Police Station on Friday they heard of the dead body of a girl being found out under the bridge of the river Siriani. Going over to that place they identified the dead body to be that of their sister Ramena. PW 3 however, corroborated PW 1 about her giving out the story of Kamrul taking away Ramena. It was also given out to PW 3 by PW 1 that she had earlier been to the house of her maternal aunt's husband Bhadu without telling Bhadu anything about the occurrence at Gaderhat. PW 3 of course gives out that on the same evening he along with PW 1 went out in search of Ramena but could not get any trace of her and in the following morning they searched again and went to Biprit, Dharampur and Kishanganj in search of Ramena and he advised her to go back to her father and inform him,. On Thursday that is 6th September PW 1 accompanied by Mataru and PW 2 Chumanali came to his house and all of them thereafter went out in search of Ramena at Kishanganj and thereafter at Islampore and they returned back to Lodhan and on Friday while they were contemplating to go to the Police Station, they were informed by the local people about the finding of a dead body of a young woman under the bridge over Siriani. It was thereafter that the FIR was lodged by Mataru the father of the victim girl.

4. PW 5 Monoranjan Sarkar, a rickshaw puller testified to the effect that while he was waiting at the rickshaw stand at Biprit Chawk for passengers, two young girls and a young man came to the rickshaw stand. The young man asked him as to when he could go to Lodhan and on his refusal,, he engaged another rickshaw and sent the younger girl by that vehicle. The young man and the elder of the two girls then boarded his cycle rickshaw and he took them to Kishanganj where they got down in front of a Cinema House. He was paid Rs. 5 by the young man as fare. The girl who boarded his rickshaw was wearing a white saree with red border and a white blouse. The girl was also wearing a red ribbon on the plait of her hair. The young man was wearing a shirt and a lungi. He identified that young man in the T.I. parade to be the present accused and also identified the present accused in Court. Rafique, another rickshaw puller, testified about his taking PW 1 to Lodhan. He corroborated PW 5 as regards the elder girl and the young man boarding the cycle rickshaw of PW 5. He heard about one dead body of a girl

being traced out under the Siriani bridge. When he reached that place he found out the dead body. He identified the dead body to be that of the same girl who on 4th September, 1979 boarded the rickshaw of PW 5 with that young man.. He also identified the young man to be the present accused in the T.L parade and also in Court.

5. PW 6 Ezahar Ali another rickshaw puller testified about his carrying: one young man and a young girl from the rickshaw stand at Goalpukur More at Kishanganj to Dharampur and thereafter to Biprit. Both the young man and the young girl got down from the rickshaw and the young, man paid him Rs. 5 as fare. He was, however, produced in the T.I. parade but he could not identify the appellant nor did he identify the apellant in Court.

6. The evidence of PWs 5, 6 and 7 taken together disproves the story of the appellant forcibly taking away the victim girl Ramena Khatoonr It is clear from the evidence on record that there was really no kidnapping, by the accused appellant. In that view of the matter we find that the charge under Section 364 IPC is not sustainable against the accused appellant and the conviction and sentence on this score must be set aside.

7. We are now called upon to decide from the entire evidence on record as to whether the appellant's conviction under Section 302 IPC could stand in accordance with law. It is indeed true that if PWs 5 and 7 are- to be believed, the appellant and Ramena were found boarding the rickshaw afternoon and they got down in front of Indu Cinema at Kishanganj. According to the testimony of PW 5, it was at about 12-30 P.M. when, he left the rickshaw stand with Kamrul and Ramena for Kishanganj. For traversing this distance of about 5 miles, perhaps he did not take more than, one hour and if we are to believe the evidence of PW 6, bereft of his failure to identify the appellant either in T.I. Parade or in Court, the appellant, was last seen together with Ramena at about dusk at Biprit which is only a mile away from the river Siriani. As to whether the appellant could be said' to be culprit beyond reasonable doubt for having murdered Ramena. and having thrown her dead body in the river, we have nothing but certain circumstantial evidences which stand of their own without their making; an irresistible conclusion

as to the complicity of the appellant beyond reasonable doubt. According to PW 15 the post-mortem doctor Dr. Satyendra Kr. Nandi the cause of death was asphyxia caused by strangulation which was ante-mortem and homicidal in nature. On the date of his post-mortem examination, i.e., on 8.9.79, the body was in stage of decomposition and rigor mortis was absent. The doctor admitted that in his report he did not mention the probable time of death. He candidly admitted that it was not possible for him to say exactly the time of death of the victim girl but the absence of rigor mortis indicated that the death occurred at least 24 hours prior to the post-mortem examination. The body was just before the stage of starting of putrefaction. The decomposition of human body submerged in water according to the opinion of the doctor,, usually starts from the 4th day. The putrefaction of such a body normally starts from the 7th day. Hence taking his testimony along with his report, we could not come to any irresistible inference that death must have taken place on the 4th September itself, immediately after the appellant was found with Ramena near Biprit. That apart, it would not also be safe to rely on PW 6 Ezahar Ali, the rickshaw puller about Kamrul accompanying; Ramena on her return journey when he failed to identify Kamrul in the T.I. Parade. Hence only the testimony of PW 5 that he left Kamrul and Ramena at Kishanganj at about 1.30 P.M. leads us to no inference at all, even if we take into consideration the alleged evidence as testified to by PWs 3 and 4 about the motive for the murder.

8. According to PW 4 Kuresha Bibi, the first wife of PW 3 Abbas Ali, she received a letter through a servant Sobhan employed by her husband, in his tea stall from the present accused. It was a post card written in Urdu but she did not know Urdu. She had it read out by her husband Abbas Ali who gave out that there was a threat in the letter asking Rafique to divorce Ramena. There was also a threat in that letter that Kamrul Huda would kill both Ramena and Rafique if Rafique failed to divorce Ramena. PW 4 however did not tell anybody about that letter. In fact,, only a few days after, Rafique divorced Ramena. The letter could not be produced before the Police but PW 4 in her cross-examination gave out: that the letter was burnt in fire. But the fire took place subsequent to the recording of her statement by the Investigating Officer. She admitted that she did not give out before the I.O. any information about the loss of that letter PW 9, the Sub-Inspector K. K. Roy who initially investigated the case, gave out in his evidence that PW 4 Kuresha

Bibi stated to him that she had lost the letter allegedly sent to her by the accused. Sobhan, a servant was also indeed examined in this case but he did not figure as a witness. PW 3 Abbas Ali denied the suggestion given by the defence that he did resort to any foul play leading to the divorce of Ramena by Rafique. He could not say the date, and month of receiving the letter in Urdu which his wife Kuresha got from the accused. He deposed that he knew the accused prior to the marriage of Ramena and Rafique. The letter in Urdu was in a post card which his servant Sobhan gave to his wife Kuresha. Its contents were that his wife should ask Rafique and Ramena to get their marriage dissolved and part with each other as otherwise the accused would kill both of them. He testified about a salish having taken place where he gave out the contents of the letter to Ramena's father Mataru. He could not also give out the date of year of the fire in which the letter was allegedly destroyed. He admitted not having given out to the I.O. anything about the decision in the Salish that appellant should marry Ramena. He did not also give out to the Investigating Officer that he was present in the Salish held in the village of Mataru. He also did not give out to the Investigating Officer anything about a second Salish to be held. It was, however, given out by the first informant in the FIR that Kamrul wanted to marry Ramena but she did not agree to that and after the marriage was solemnised with Rafique, Kamrul threatened Rafique and asked him to leave all relations with that girl as otherwise he would kill either Ramena or Rafique and on the said threat, his son-in-law Rafique left all relations with his daughter. Kamrul thereafter wanted to marry Ramena but she did not agree. On the other hand we find from the testimony of PW 2 Chuman Ali that after divorce of Ramena by her husband. Ramena's father Mataru proposed her marriage with Kamrul and there was a Salish over this matter in which Aulad, the father of Kamrul refused the marriage of his son Kamrul with Ramena on the plea that his son Kamrul was still a school student. As already stated by PW 4 Kuresha Bibi about the threat as contained in the letter allegedly sent by Kamrul that in the event Rafique not divorcing Ramena he would kill both Ramena and Rafique, we are quite at a loss to understand as to what the real motive of the present accused must be in murdering Ramena and in our considered view, the motive is not at all explicit from the evidence tendered by the prosecution. Though the Learned Trial Judge thought that the question of motive was irrelevant and the prosecution was

not legally bound to prove a motive, because a motiveless crime is still , crime, in the case of a purely circumstantial evidence as in the present one, the motive is indeed a dominant factor to be reckoned into consideration. In the facts of the instant case, however, we do not find that the motive for the murder has all been laid bare by the prosecution.

9. We have to see in the facts and circumstances of the present case as to whether the prosecution has succeeded in establishing the chain of events leading to, an irresistible conclusion about the complicity of the accused. As was held in *Mahadev Ghosh v. State* reported in 1983 CrL. Law Journal 1854 'failure of accused to offer any explanation consistent with his innocence cannot by itself be considered as a circumstance against the accused'. In *Deonandan Mishra v. State of Bihar*, reported in : 1955 CriLJ1647 Criminal Law Journal 1647, it was decided inter alia that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established but the completed chain must be such as to rule out reasonable likelihood of the innocence of the accused. As was stated by their Lordships in *Mahadev Ghosh v. State*, the earlier Supreme Court decision reiterate the principle that in a case where the various links have been satisfactorily made out and the circumstances point to the accused as the probable assailant with reasonable definiteness and in proximity to the deceased as regards time and situation and if upon proof of such facts, the accused offers no explanation which might afford a reasonable basis for a conclusion consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain. In *Mahadev Ghosh v. State*, the Division Bench pointed out that the earlier Supreme Court decision is no Authority for the proposition that the mere failure of the accused to offer any explanation consistent with his innocence, in a case where the prosecution has not otherwise succeeded in establishing a chain of events which with reasonable certainty fixes the liability on the accused, should be considered by itself as a circumstances against the accused. In *Mahadev Ghosh v. State*, (ibid) the husband and wife were also last seen together. Following an earlier decision of the Supreme Court in *Lakhan Pal v. State of Madhya Pradesh* 1979 CrL. Law Journal 1217, it was held in that case that the mere fact that the accused was last seen with the deceased does not lead to the irresistible inference that he committed the murder and in that

context, it was held that the prosecution was unable to prove the case beyond all reasonable doubt. Mr. Dutt cited before us a Division Bench decision of the Orissa High Court in Bhagaban Kirsani and Ors. v. Stpte, reported in 1985 CrL. Law Journal 868 which reiterated the principle that the mere circumstance that the victim of murder was last seen in the company of the accused was not enough to hold the accused guilty of the offence. As was held in Lakhmi Raj Shetty v. State of Tamilnadu, : 1988 CriLJ1783 , 'In cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn, should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act must have been done by the accused.

10. In this case the prosecution wanted to emphasise the fact of absconsion of the accused from the mere fact that he was not found in his village home. There is evidence forthcoming from the Headmaster of Manora High School of which the appellant was a student of Class X at the relevant time (PW 13) that the appellant applied for leave for 2 days on 3rd September, 1979, and he did not appear in the Pre-test examination commencing from 4th September, 1979. Though the Attendance Register was brought by the Head Master, no inference was drawn by the Trial Court from the said Register except that the appellant was absent on 1st, 4th and 5th September from the school but as per the records of the Hostel of which the appellant was a boarder, he was present in the Hostel on all the four days. It also transpired from the evidence of PW 13 that the Investigating Officer verified the Register of the boarders of the Hostel. Taken in the background of all these evidences it could thus not be inferred that the appellant was really an absconder in the real sense of the term. In all fairness, having regard to the entire evidence on record, however, much suspicious circumstances it may be as regards the accused taking Ramena to Kishanganj and being dropped by the rickshaw puller PW 5 near Indu Cinema, from that we cannot come to an

irresistible inference that the appellant has caused the murder of Ramena. The appellant is thus entitled to the benefit of a reasonable doubt and the conviction and sentence under Section 302 IPC on this score, should also stand set aside.

11. In the result both the conviction under Section 302 and 364 IPC having been set aside along with the sentences imposed on the appellant he should be released forthwith.

12. The appeal accordingly stands allowed.

Manabendra Nath Roy, J.

13. I agree.

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