

Narayan Chandra Dey Vs. State

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Court : Kolkata

Decided On : Apr-03-1987

Reported in : 1988CriLJ387

Judge : J.N. Chaudhuri and ;A.C. Sen Gupta, JJ.

Appellant : Narayan Chandra Dey

Respondent : State

Judgement :

A.C. Sen Gupta, J.

1. The appellant has been convicted and sentenced to suffer imprisonment for life and to pay a fine of Rs. 500/- under Section 302, I.P.C. by the Sessions Judge, Hooghly in the Sessions Trial Case No. 57 of 1983 of that Court on the finding that the appellant murdered his youngest son aged about 2 1/2 years on 7-8-82.

2. The learned Sessions Judge after discussing the circumstances of this case on the basis of which he passed the order of conviction held that though motive for the murder could not be proved by the prosecution, there could be only one conclusion from the circumstances that the appellant caused the death of his baby Nayan by drowning him in the Ganges and that the plea of insanity having not been proved the appellant was liable to be convicted and sentenced under Section 302, I.P.C.

3. Being aggrieved by the order of conviction and sentence passed by the learned Sessions Judge, the accused has preferred the present appeal.
4. The point for consideration is whether the charge under Section 302, I.P.C. can be said to have been proved against the appellant according to the standard set forth in Section 3 of the Evidence Act.
5. This case is based on circumstantial evidence only. Before discussing the circumstances on the basis of which the prosecution attempted to bring home the charge under Section 302, I.P.C. against the appellant, the prosecution case may be briefly noted:
6. The appellant who was an employee of Hind Motor Co. lived with his wife D.W. 1 and three children in the house of his father P.W. 1 who worked as a tailor, where P.W. 1 lived with his another son Biplab and unmarried daughter P.W. 4. The appellant was in separate mess from his father. At the time of the occurrence P.W. 9 then aged about 14/15 years was also a resident in the house of P.W. 1, the uncle (Pisamasaya) of P.W. 9.
7. The wife of the appellant was absent from the house on the date of the occurrence. The appellant got his wife admitted in a Nursing Home wherefrom she came about 3/4 days after the occurrence. She was taken to the Nursing Home by the appellant on the day preceding the date of the occurrence.
8. On 7-8-82 at about 12 noon when the baby Nayan was in the lap of P.W. 9 the appellant sent P.W. 9 to a shop for purchasing biscuits for that baby and gave Rs. 2/- for that purpose. After P.W. 9 got out with the baby for going to the shop the appellant took away the child from P.W. 9. After returning to the house P.W. 9 told his aunt that the appellant took away the child on a cycle. About half an hour thereafter the appellant alone returned to the house. The child was not with him. Then P.W. 4 and others asked him about the whereabouts of the child but the appellant did not tell them anything. Then P.W. 4 and some of her neighbourers including P.W. 5 went out in search of the child. P.W. 6 the married daughter of P.W. 1 also on getting same information rushed to the house of her father from the house of her father-in-law and began to search for her nephew like others. It takes

about 20 minutes to cover the distance between the house of his father and that of her father-in-law. Ultimately the dead body of the child was found lying on the bank of the Ganges by P.Ws. 4 and 5. P. Ws. 5 and 6 took the child to the hospital where on examination by the Medical Officer P.W. 7 on that date at about 2.30 p.m. the child was found dead.

9. P.W. 1 was absent from his house when all the aforesaid incidents took place. He returned to his house from his tailoring shop at about 12 or 1 p.m. when the appellant left the house after changing his garments and wearing good clothes. On getting some information P.W. 1 left his house and found his dead grandchild being carried in a Rickshaw. He did not accompany his grandchild. He went to the Police Station and after lodging First Information Report which was recorded by the S.I. of Police of Utter para Police Station, P.W. 1 returned to the house. He did not then find the appellant in the house. The appellant returned to the house at about 4 p.m. He did not also see the appellant in his house or on the way while he was proceeding towards the bank of the Ganges, on getting some information. He also did not find the appellant near the bank of the Ganges or in the Thana or in the Hospital. He and others searched for the appellant but could not trace him.

10. P.W. 10, S.I. of Police who took charge of investigation of this case from P.W. 2 held inquest into the dead body and sent the dead body through the constable P.W. 3 to hospital for Post-mortem Examination, where P.W. 8 held the Postmortem Examination and found that death was due to ante-mortem drowning either accidental or homicidal. P.W. 10 after sending the dead body for Post-mortem Examination visited the house of the informant. He did not find the accused in that house. He first visited that house. He found the accused there when he went there at about 8 p.m. and arrested the accused and after completing investigation submitted charge-sheet.

11. The prosecution has also suggested a motive for the occurrence. The accused suspected that his wife had illicit connection with Mrinal Chakraborty, one of the tenants in the house of P.W. 1 and that his youngest son Nayan was not his son. The accused claimed to be innocent. From the suggestions given to prosecution witnesses and the evidence of the appellant's wife D.W. 1 it appears that the

accused's case is that he has been falsely implicated in this case by P.W. 1 who deprived him of the properties of P.W. 1 because the relationship between him and P.W. 1 was strained on account of the fact that the accused protested against the squandering of money by P.W. 1 in liquor. It is also suggested that from long before the occurrence Nayan lived elsewhere in separate mess and that the appellant was 'suffering from mental derangement at the time of the occurrence.'

12. In his examination under Section 313, Cr.P.C. he denies that he took away the child from P.W. 9.

13. Now the question whether on the basis of the circumstances set forth by the prosecution the charge under Section 302, I.P.C. can be said to have been proved according to the standard set forth in Section 3 of the Evidence Act may be taken up for consideration, i.e. whether the order passed by the learned Sessions Judge can be said to be justified on the basis of the circumstances proved in this case.

14. Before discussing the circumstances of this case the law with regard to circumstantial evidence may be briefly noted:

15. The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established.

16. Those circumstances should be of a definite tendency unaidingly pointing towards the guilt of the accused.

17. The circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.

18. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation on any other hypothesis than that of the guilt of the accused, that is to say, circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

19. With reference to the law regarding circumstantial evidence the learned Advocate for the appellant argued that motive plays an important role and that in a

case based on circumstantial evidence prosecution cannot succeed if the motive alleged by it is not proved. In this connection, he cited the case of State v. Gulzarilal reported in : 1979 CriLJ1057 . But after perusing the decision we are unable to accept the exposition of law given by the learned advocate for the appellant. In that case the respondent Gulzarilal Tandon was tried on a charge under Section 302, I.P.C. for causing the murder of his newly married wife Mina Tandon in the house of the respondent. A few days after the marriage of Mina Tandon with the respondent Mina Tandon was found dead. The parents of Mina Tandon suspected some foul play and lodged the F.I.R. and the case was started. In that case the order of acquittal passed by the trial Court was not interfered with by the Supreme Court not because of the fact that no motive for murder was proved in that case but because the Court held that the evidence could not prove the case of the prosecution. The case of the accused in that case was that Mina Tandon died of Epilepsy. In that case the prosecution and the accused adduced medical evidence, one to rule out the possibility of Epilepsy and the other to prove it and the Court held that such evidence on both sides was more or less equally balanced and that being the position the benefit of doubt must go to the accused and order of acquittal was passed on the finding that possibility of epilepsy could not be ruled out in that case and that the prosecution case had not been proved beyond reasonable doubt. It is in such perspective that the Court made the observation that in cases where the case of the prosecution rests purely on circumstantial evidence the motive alleged which could not be proved in that case played an important part in order to tilt the scale against the accused. The order of acquittal was upheld in that case because it was not proved that the circumstances of that case were wholly inconsistent with the innocence of the accused.

20. In this connection, the case of the State of Madhya Pradesh v. Digvijay Singh reported in : 1981 CriLJ1278 may be referred to. In that case the respondent was charged under Section 302, I.P.C. for causing the death of his wife by firing. That is also a case based wholly on circumstantial evidence, and in that case motive for murder was not proved. The order of acquittal passed by the High Court was set aside and the respondent was convicted and sentenced under Section 302, I.P.C. for the murder of his wife Tulsabai. In a case of circumstantial evidence the moot

point is not whether any motive has been proved or not but whether the circumstances proved are wholly inconsistent with the innocence of the accused.

21. Though the motive for the occurrence in the present case has not been proved clearly by the prosecution as has been rightly held by the learned Sessions Judge the circumstance proved in this case may be considered in the perspective of the law noted above.

22. The learned Sessions Judge held the accused guilty of the offence punishable under Section 302, I.P.C. on the basis of the following circumstances which he after consideration of the evidence on record, held to have been proved in this case:

(1) Accused had kept his wife in the nursing home in the morning and knew that the child Nayan was left at home and though constantly anxious watch of the mother on the child would not be there.

(2) Accused Narayan asked P.W. 9 to purchase biscuits for Nayan when Nayan was in the arms of P.W. 9. P.W. 9 went out with Nayan in his arms to purchase biscuits and shortly thereafter the accused also went out and in the midway took Nayan from the arms of P.W. 9 and drove away in a cycle with Nayan.

(3) About half an hour after accused returned home alone and when asked by the inmates about the whereabouts of Nayan, did not reply anything.

(4) When the inmates of the house and para people went out in search of Nayan the accused slipped away from the house after changing his dress.

(5) At about 1 p.m. or shortly thereafter the dead body of Nayan was discovered on the bank of the Ganges about 2 Kms. away from the house of P.W. 1.

(6) The post-mortem report shows that the death took place by drowning - accidental or homicidal.

(7) The conduct of the accused that he slipped away from the house and not only that he did not take part in the search he was not found in the locality when the dead body of Nayan was discovered and when the same was taken to the

hospital. The accused also did not go to the hospital to see the child. He returned home at about 4 p.m. and then again went out and he was available in the house only at about 8 p.m. when P.W. 10 went there and arrested him.

23. Before considering whether the aforesaid circumstances have been proved by the prosecution it may be noted here that the finding with regard to the question as to whether the charge under Section 302, I.P.C. has been proved or not should be arrived at not on the basis of one circumstance or another considered in an isolated manner but on the basis of the total effect of all the facts and circumstances wholly proved by the prosecution.

24. The learned advocate for the appellant and the learned Public Prosecutor took us through the entire evidence on record. After considering the total effect of the entire evidence on record we find that the circumstances noted below have been proved by the prosecution according to the standard set forth in Section 3 of the Evidence Act:

(1) That the appellant lived with his wife (D.W. 1) and his three children in the house of P.W. 1 where P.W. 1 lived with his wife and daughter P.W. 4 and another son named Biplab and that on the day previous to the date of occurrence the appellant took his wife to the nursing home and that the child that is the deceased was left in the house of P.W. 1 with others. The evidence of P.W. 1 in this regard is unchallenged. The wife of the appellant examined as D.W. 1 admits that she, was taken to the nursing home by her husband. But from the evidence on record it cannot be held that the circumstance that the appellant got his wife admitted to a nursing home on the day preceding the date of the occurrence is an incriminating one.

(2) On 7-8-1982 sometime at about noon when the deceased was in the lap of P.W. 9 a boy then aged about 14/15 years the appellant sent P.W. 9 to a shop for purchasing biscuits for the child after giving two rupees therefor and that when P.W. 9 was going to the shop, the appellant took away the child from P.W. 9 and drove away on a cycle. The learned advocate for the appellant contended that this alleged taking of the baby by the accused from P.W. 9 has not been proved by the prosecution. He argued that the mother of the accused to whom P.W. 9 reported

taking of the baby by the appellant has not been examined and that therefore the evidence of P.W. 9 regarding taking should not be believed. He contended that the evidence of P.W. 4 in chief that at about quarter to 12 while she was in the house her cousin brother P.W. 9 came and told her mother that the appellant has taken away Vaku from him cannot be believed in view of her evidence given in cross-examination that she did not hear P.W. 9 who talked with any one on that date in respect of the child. We are unable to accept this submission of the learned advocate for the appellant because the word 'talked' has a larger connotation than the word 'told'. No adverse inference can be drawn against the prosecution for non-examination of the mother of the accused, in a case of this nature. The evidence of the mother if given would only have been corroborative evidence.

The learned advocate for the appellant also submitted that the evidence of P.W. 9 should be disbelieved not only because it has not been corroborated but also because the prosecution failed to produce the cycle on which the appellant is said to have carried the baby. It is not the evidence that the cycle belonged to the appellant or to any member of the household. In his cross-examination P.W. 9 states that he cannot say who is the owner of the cycle on which Valu was taken. After considering the entire evidence of P. W. 9 in the light of the facts and circumstances of the case some of which would be narrated hereafter we find no reason to disbelieve the substantive evidence of P. W. 9 about taking of the child by the appellant from him. The submission of the If earned advocate for the appellant that P.W. 9 with whom the child was at the relevant time might have negligently left the child and that thereafter the child had accidental death by drowning cannot be accepted because no such suggestion has been given to any of the prosecution witnesses and no such case could be made out by the accused. On consideration of the entire evidence of P.W. 9 we find that he is a truthful witness having no axe to grind against the accused. His evidence cannot be disbelieved because his evidence elicited in cross-examination that he did not state before the Magistrate that the appellant returned from Hind Motor Factory at 12.30 p.m. is contradicted by his statement recorded under Section 164, Cr.P.C. According to the evidence of P.W. 9 the mother and sister (P.W. 4) of the accused were present in the house when he returned to the house after the appellant took away the child. There is some discrepancy in the evidence of P.Ws. 4 and 9 with

regard to the actual time of taking. P.W. 9 in his cross-examination states that the appellant returned to the house at about 12.30 p.m. after he took the child from him. The evidence of P.W. 4 is that at about quarter to twelve P.W. 9 told the mother of the appellant that the appellant had taken the child from him and that the appellant returned 10/15 minutes after P.W. 9 reported the said fact to the mother. This discrepancy with regard to time is very minor and on that ground the evidence of P. W. 9 cannot be disbelieved and we find no reason to disbelieve the evidence of P.W. 9 that the appellant took the child from him on 7-8-82 at about 12 noon.

(3) The other circumstances that the appellant after taking away Vaku on a cycle returned alone to the house at about 12.30 p.m. is also proved by the evidence of P.W. 9. His evidence is also substantially corroborated by the evidence of P.W. 4 except that there is some minor discrepancy with regard to the time of return of the appellant to the house as has already been pointed out.

(4) The appellant after returning alone to the house did not tell the inmates of the house anything on being asked about the whereabouts of the child. This evidence of P.W. 4 remains unshaken in her cross-examination.

(5) It has also been proved by the prosecution that soon after the appellant returned alone P.W. 4 and others went out in search for the child and found the dead body of the child lying on the bank of the Ganges on that afternoon. The evidence of P.W. 4 and P.W. 5, a neighbour of P.W. 4 who together went out in search for the child clearly proves this circumstance. We do not find any reason to disbelieve the evidence of P.Ws. 4 and 5 with regard to this fact, the evidence of P.W. 6, elicited in cross-examination is that the ghat on the Ganges is about 5/7 minutes' walk from the place near the G.T. Road where the child was given to her and that G.T. Road is about 20/25 minutes' walk from the house of P.W. 1.

(6) The evidence of P.Ws. 5 and 6 considered with the evidence of the Medical Officer P.W. 7 clearly proves the circumstance that the child on being taken to the hospital on 7-8-82 by the P.Ws. 5 and 6 at 2.30 p.m. was found dead. The evidence of the Doctor who held Post-Mortem Examination on the dead body of the child established the fact that there were mud and sand particles in the larynx and trachea of the child and that death was due to antemortem drowning which

might be either accidental or homicidal.

(7) The other circumstance proved by the evidence is that accused after returning alone to the house left the house soon thereafter after changing his clothes and thereafter remained unconcerned about the child. The evidence of P.Ws. 1 and 4 considered together clearly proves these facts. P.W. 1 returned to the house from the shop at about 12 or 1 p.m. He says that the appellant returned to the house at about 1 p.m. In his cross-examination he states that he did not get any opportunity to talk with the appellant because the appellant left the house immediately after P.W. 1' returned to the house and that the appellant left the house after changing his garments and after wearing good clothes. The evidence of P.W. 1 considered with the evidence of P.W. 4 clearly established the fact that the appellant did not go near the bank of the Ganges or to the hospital or to the police station after he left the house on changing his clothes and that he could not be traced out in spite of searches to trace him out made by P.W. 1 and many others.

25. The evidence of the Doctor P.W. 8 who held post-mortem examination on the dead body of the deceased considered with the circumstances noted in items Nos. 2 to 5 clearly proves that the child was murdered by the appellant. This circumstance taken cumulatively forms a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else and that this circumstantial evidence is incapable of explanation on any other hypothesis than that of the guilt of the accused and is inconsistent with his innocence. This finding is supported the evidence with regard to the conduct of the accused noted in item No. (7) above.

26. The finding of the learned Sessions Judge that the accused failed to prove that he was entitled to get the benefit of the general exception contained in Section 84 of the Penal Code is also correct. The learned Sessions Judge has correctly considered the evidence with regard to the allegation that the accused suffered from mental derangement and rightly held that this plea could not be proved according to law in this regard. The law with regard to the plea of insanity is stated in Section 84 of the Penal Code which runs thus:

Nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing either wrong or contrary to law.

27. It is only unsoundness of mind which materially impairs the cognitive faculties of the mind and that can form a ground of exception from criminal responsibility, the nature and the extent of the unsoundness of mind required being such as would make the offender incapable of knowing the nature of the act or that he is doing what is wrong or contrary to law. Only a person who by reason of mental disease is prevented from controlling his own conduct or a person who is deprived, by mental affliction, of the power to rationalising on the moral conduct of the act, would be entitled to the benefit of this section. Mere eccentricity or strange behaviour or a mental set up not amounting to insanity as known to the law, could not absolve a person of the consequences of his acts.

28. To establish a defence on the grounds of insanity it must clearly be proved that at the time of committing an act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or, if he did know it, that he did not know that he was doing what was wrong or contrary to law. The crucial point of time at which unsoundness of mind should be established is the time when the crime is actually committed. The mere fact that on former occasion the accused had been occasionally subject to insane delusions or have suffered from the derangement of the mind or that subsequently he had at times behaved like a mentally deficient person is per se insufficient to bring his case within the exception. It should however be noted that the antecedent and subsequent conduct of the person pleading insanity is admissible in evidence as relevant facts only for the purpose of showing the state of his mind at the time the act was committed. The court is only concerned with the state of mind of the accused at the time of the act.

29. Section 105 of the Evidence Act places the burden of proving such a plea upon the accused. The section runs thus:

When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Penal

Code...is upon him, and the court shall presume the absence of such circumstances.

30. It should however be noted that the burden on the accused is not as heavy as the burden lying on the prosecution to prove its case. Where the evidence adduced fails to satisfy the court of the existence of circumstances bringing the case within the exception pleaded, the accused is entitled to be acquitted if upon a consideration of the evidence on both sides the court is left in a state of reasonable doubt as to whether the accused is or not entitled to the benefit of the exception pleaded.

31. It is true that the father (P.W. 1) and sister (P.W. 4) of the appellant have deposed that the appellant suffered from mental derangement but evidence does not show that the accused at the time of committing the act suffered from such unsoundness of mind as to make him incapable of knowing the nature of the act or that what he was doing was either wrong or contrary to law. On the other hand, the evidence rules out the possibility of such unsoundness of mind. The evidence as already noted shows that the appellant himself took his wife to a nursing home and got her admitted there. It is also the evidence that the appellant worked in Hind Motor Factory as Convoy Driver. The appellant asked P.W. 9 to purchase biscuits, and after P.W. 9 went out with the child the appellant took the child from P.W. 9 and drove away on a bicycle and thereafter returning home alone he went out after changing his clothes. All these facts rule out the possibility of unsoundness of mind. Moreover, such a plea was not specifically taken by the appellant. Even his wife deposing as D.W. 1 did not put forward such a plea.

32. In view of the findings made above, we find no reason to interfere with the order of conviction and sentence passed by the learned Sessions Judge under Section 302 I.P.C. excepting that imposition of fine in a case like this is unnecessary.

33. The appeal is accordingly dismissed subject to the modification that the sentence of fine imposed is set aside.

J.N. Chaudhuri, J.

34. I agree.

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