

Mahadeb Ghosh Vs. the State

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Court : Kolkata

Decided On : Mar-31-1983

Reported in : 1983CriLJ1854

Judge : B.C. Chakrabarti and ;Jitendra Nath Choudhuri, JJ.

Appellant : Mahadeb Ghosh

Respondent : The State

Judgement :

B.C. Chakrabarti, J.

1. This is an appeal against an order of conviction under Section 302 of the Penal Code passed by the learned Additional Sessions Judge, Nadia in Sessions Trial No. 3 of December 1979 sentencing the appellant to imprisonment for life.

2. The appellant was accused of murdering his wife Sabita alias Chhabi Rani. The prosecution case shortly put is as follows The appellant Mahadeb Ghose and his wife Sabita lived separately from the mother of the accused since Sabita was not pulling on well with her mother-in-law. The appellant works at Dhubulia which is at a distance of about 50 miles from village Bhabanipur where the victim resided On 9-8-1978 the accused came to the village and was seen leaving the village along with his wife Sabita at about 3.30 p.m. by PWs 10 and 11. PWs 10 and 11 are residents of Bhabanipur. On their query the accused gave out that they were going

to the place of their Guru while the wife gave out that they were going to the place of work of the appellant. Sometime later at about 5 p.m. the accused and his wife were seen by PWs 3 and 4 at a place known as Karuigachhi. There also the prosecution case is that the accused gave out to PWs 3 and 4 that they were going to the house of their Guru. Sometime thereafter at about dusk, PW 2 was proceeding from Shyamnagar to his village at Swaruppur and while going along the village pathway he saw near a pakur tree by the side of Hatasisha field a man sitting upon a woman lying on the ground. As PW 2 tried to approach that man the latter threatened him and thereupon Pw 2 came to his village, informed people and came back to the site. When he came back he did not see the man there nor the woman but a groaning sound of a woman was heard coming from inside a paddy-field about 5/6 rassa away. They went to that spot and found a woman lying in an unconscious state. She was removed to Shyamnagar hospital. PW 2 identified the accused as the person who was seen sitting on the chest of the woman. The victim woman ultimately succumbed to the injuries on 11-8-1978. On information of the death being communicated to the P. S. initially an unnatural death case was started and later on a written complaint being lodged by pw 1, the father of the victim girl on 12-8-1978 the formal F.I.R. (Ext. 1) was drawn up.

3. After completion of investigation the police submitted charge-sheet against the accused who is none other than the husband of the victim under Section 302, I.P.C.

4. As many as 22 witnesses were examined in this case although the material witnesses are PWs 2, 3, 4, 10, 11 and 15. The case essentially was one depending on circumstantial evidence.

5. The learned Additional Sessions Judge upon a consideration of the evidence on record found that the victim and the accused were found leaving their house at about 3.30 p.m. that they were found together at about 5 p.m. at Karuigachhi, that sometime thereafter she was found alive towards the evening near the house of PW 15 at Swaruppur and that thereafter she was found still alive under a pakur tree where she was being assaulted by this accused and that thereafter she was found lying unconscious not very far away from that pakur tree. The learned Judge

felt that the circumstances that have been brought out by the evidence on record formed a complete chain of events which is consistent only with the guilt of the accused and inconsistent with any reasonable hypothesis of this innocence. On such a view of the matter the learned Judge found the appellant guilty under Section 302, I.P.C, and in consideration of his age and the fact that he has to maintain his aged parents and unmarried sister imposed the lesser sentence, viz., imprisonment for life. Being aggrieved the appellant has preferred the present appeal.

6. Mr. Adhikari appearing on behalf of the appellant argued that the chain of events sought to be established by the prosecution do not make a complete whole, that there are many missing links that in any event the evidence of PWs 2 and 15 upon which so much reliance has been placed by the learned Judge in the court below ought not to have been believed at all in view of the fact that the accused was not placed in the T. I. parade for identification by these witnesses to whom the accused was not known from before and that the identification by them in court for the first time nearly one year 4 months after the occurrence was of no significance whatsoever.

7. Mr. Chakraborty on the other hand contended that the circumstances established by the evidence of PWs 3, 4, 10, 11 and 2 and 15 coupled with the fact that the accused had no reasonable explanation to offer to show his innocence, such absence of explanation itself is an additional link which completes the chain.

8. There is no dispute that the wife of the appellant Sabita is dead and that she met with a violent death. There is evidence to indicate that Sabita was recovered from a paddy. field by the side of the village pathway from Shyam-nagar to Swaruppur in an unconscious state. She was removed from there to Shyamnagar Subsidiary Health Centre and from there to Saktinagar Hospital. She died on 11-8-1978. Post-mortem on the dead body was held by PW 19. He found several nail marks in the region of the neck, ruptured veins and haemorrhage in the subcutaneous tissue, congestion of brain and spinal cord and fracture of the left hyoid bone. Death in his opinion was due to shock asphyxia as a result of throttling

which was ante mortem and homicidal in nature. The injuries were sufficient in the ordinary course of nature to cause death. The findings of the post-mortem doctor and his opinion were not challenged in cross-examination.

9. Now the question is how Sabita came to receive those injuries and whether it was at the hands of the accused. Strictly speaking there is no direct evidence implicating the accused. The case depends essentially on circumstantial evidence. Before coming to the evidence it may be useful to recall the case as made out in the F.I.R. (Ext 1). The F.I.R. was lodged by PW 1, the father of the victim girl. It is stated in the F.I.R. that the informant got information from his brother-in-law named Ghotan Ghosh that his daughter has been murdered by the accused Mahadeb and that the dead body was lying at the hospital for post-mortem examination. It is further stated that he came to learn from his other son-in-law Dukhiram that the accused Mahadeb came to the village on the 23rd Sravan 1385 B.S. and left the village in the company of his wife. The villagers viz., Ananda Mondal, Sachi Ghose Dukhiram Ghosh and Radhkrishna Ghose objected to that but Mahadeb without paying any heed to their protests left the village with Sabita. They took tea at Shyamnagar and thereafter Mahadeb took the victim to a field at Swaruppur and there with the intention of murdering her throttled her to unconsciousness and left her there. The case as made out in the F.I.R. (Ext. 1) is based on hearsay, for except the portion which speaks about the relations between the accused and Sabita the rest are all learnt from Ghotan Ghose or Dukhiram (sic) was merely tendered. Even though Ext. 1 is treated as the F.I.R. in this case we have in evidence that prior to the lodging of this F, I. R. on 12-8-1978 some information as to the occurrence had earlier reached the police, PW 18 is a hospital assistant attached to Shyamnagar Health Centre. He speaks of the admission of a woman in unconscious state at about 8 p.m. on 9-8-1978. The case appeared to him to be unnatural and it is his evidence that on the following morning he intimated the local police station. We do not know what was the intimation sent. Then we have it in evidence that after the victim died at Saktinagar Hospital, information was sent to P. S. and an U. D. case was started by PW 21. He started the case on receipt of intimation from the medical officer of the hospital. The intimation again has not been produced at the trial. We are therefore left with Ext. 1 which is the available earliest recorded version of the case.

10. The case rests on the testimony of PWs 3, 4, 10, 11 and pW 2 and 15. They speak about different phases of the prosecution story. PWs 3 and 4 are co-villagers of the accused. PWs 10 and 11 are known to the accused from before. The evidence of these witnesses in short is that on 9-8-1978 at about 3.30 p.m. they saw the accused and his wife to pass along their houses. According to PW 10 Mahadeb gave out to the witness on his enquiry that he was going to the place of his guru while according to PW 11 the wife, viz., Sabita gave out that she was going to the place of avocation of her husband. We have it in evidence that the husband at the relevant time worked at Dhubulia which is nearly 50 miles away from the place. PWs 3 and 4 saw the accused and his wife at about 5 p.m. at Karuigachhi According to them the accused told them that they were going to the house of the guru. They proceeded towards Shyamnagar. PW 3, however has made a statement that prior to the date of his deposition in court he did not tell anyone as to what he had deposed in court. Normally a situation viz. the husband and wife going together is not supposed to evoke any curiosity and that may explain why initially the witness did not give any importance to the matter and did not consider it necessary to narrate it to others. But it transpires from his evidence that on the following day he came to learn that Sabita was lying dead at the hospital. Having come to know that it was natural for him to disclose as to what he had seen. His reticence and silence even thereafter is unusual and unnatural. So far with regard to these groups of witnesses. Next comes the evidence of PWs 2 and 15 upon which the learned Judge in the court below has placed so much reliance. PW 2 in his evidence states that while he was returning home from Shyamnagar he noticed a man sitting near a pakur tree. When he approached a few steps towards him he found that the man was actually sitting upon a woman who was lying on the ground. He identified that man in court to be the accused. It is also his evidence that the accused threatened that he would finish the witness if he approached any further. At this he rushed for help to the village and came back with some people but did not find anyone near the pakur tree. Thereafter they found a woman groaning inside a paddy field about 5/6 rasis away from the tree. This witness made a statement which was recorded under Section 164, Cr. P.C. That statement has not been used in evidence although it was open to the prosecution as well as the defence to use it either to support or to challenge the

evidence given at the trial upon a. reference thereto in the statement recorded under Section 164, Cr. P.C. Be that as it may. PWs 5 to 8 claimed to be the persons who came to the spot on getting the information from PW 2. It is significant that PW 2 did not say in so many words that he saw any actual assault upon the woman being committed by the accused whom he identified in court. PWs. 5 to 8 are the witnesses who claimed to have found out the unconscious body of Sabita lying in the paddy field. As to how they came there, the evidence is not very clear or satisfactory. PW 5 says that he and Pari-tosh (PW 8) went out in search of the brother of Paritosh who was missing and in course of the search discovered the body of Sabita. PW 6 says that he went out on getting a report from PW2 that a certain person was assaulting a woman near the pakur tree. PW 7 improved upon the case by saying that PW 2 reported that a man was murdering a woman. Therefore it appears that the story allegedly given out by PW 2 to the villagers was improving from witness to witness. Be that as it may, these witnesses do not prove anything material except the finding of the victim girl in. an unconscious state in the paddy field. They did not say anything on the basis of which the accused could be implicated.

11. Next in importance is the evidence of PW 15. He says that on the 23rd Sraavan, which takes us to the day of the incident, towards the evening a boy with a bundle Potla came to his house and asked for permission to keep the same at his house for some time. A woman was with him at that time and she was standing on the road. After keeping that bundle with PW 15 they both proceeded towards Swaruppur. Sometime later the said person came and asked for his bundle and thereafter left the place with the same. At that time none else was with him. About half an hour thereafter he found some persons to carry a woman who was identified by his family members as that woman who had accompanied the man earlier. So far as this identification is concerned the evidence of the witness is of no avail since it is not his evidence that the same woman was being carried. He was told so by the members of his family who have not been examined. The witness identified the accused as the person who came for permission to keep the bundle with him for some time. This identification was in court.

12. The learned Judge in the court below has correctly enunciated the law regarding assessment of evidence in the matter of a case resting entirely upon circumstantial evidence. He was right when he observed that the circumstances must be satisfactorily established to exclude all reasonable hypothesis of innocence of the accused and the circumstances must be such as to form a complete chain of events pointing to the guilt of the accused. But in appraising the evidence the learned Judge fell into an error by giving undue credence to the evidence of PWs 2 and 15. We have already indicated that PWs 2 and 15 did not know the accused from before. PW 15 wants to make out a story that the accused came to his house and sought for permission to keep a baggage for some time and left the place. PW 2 says that he saw a man sitting upon the chest of a woman near the pakur tree by the side of the village pathway. It is in evidence that at the time when they saw the man the place was, if not enveloped in total darkness, at least was in a state of semi-darkness. They saw the man nearly 1 1/2 years before and identified him in court. There is no explanation why the accused was not placed in a T. I. parade for identification by these witnesses particularly when so much of the case rests on their testimony. Apart from the question of identification about which we shall come to hereafter, the very story given by PW 15 that a man came to his house for the purpose of leaving a bundle for sometime and thereafter came and collected it and left the place is on the face of it an unusual and unnatural story. The evidence of PW 2 that a man was sitting upon the chest of a woman under a pakur tree by the side of the village pathway again also is not free from doubt. If the intention of the man was to commit murder by throttling one would normally expect him to do so in secret and not by the side of the village pathway. It is in evidence that there is a paddy field closeby and there were standing crops in the field at that time. Therefore the more natural conduct of the assailant would be to commit the act, if at all in the paddy field and not by the side of the village pathway where there was every possibility of the act being noticed by passers-by.

13. As regards the failure of the prosecution to place the accused in the T. I. parade for purposes of identification by PWs 2 and 15 the learned Judge has observed that this in the facts of the particular case is not a matter of much importance because PW 15 had the opportunity of seeing the accused twice while

PW 2 had seen him from a close proximity. It was therefore felt that it was possible for the witnesses to remember the features of the man who identified the accused correctly in court even though it may be after a lapse of more than a year after the incident. In assessing the trustworthiness of a witness identifying an accused for the first time in court the court should be extra-cautious. The extent of caution and the value of identification made for the first time in court without testing the veracity of such identification by placing the accused in a T. I. parade has been the subject of several decisions and the principle laid down by the Supreme Court is now well settled. In the case of Budhson v. State of U.P. reported in : 1970 CriLJ1149 it has been observed that as a general rule the substantive evidence of a witness is a statement made in court, that the evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances he came to pick out the particular accused person and the details of the part which the accused played in the crime in question with reasonable particularity. The decision goes on to say that the purpose of a prior test identification therefore, seems to be to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceeding. The decision, however, also observes that there may be exceptions to this general rule when the court is impressed by a particular witness on whose testimony it can safely rely without such or other corroboration. In the instant case, in view of the infirmities already referred to, we do not consider it safe to rely merely on the testimony of PWs 2 and 15 without corroboration in the shape of a prior test identification. This decision in Budhson's case lays down, that test identification is a rule of prudence which should ordinarily be followed. In later cases, however, the Supreme Court went a step further. Short of laying down as an absolute proposition of law that identification in court for the first time without a prior identification in T. I. parade is not legal-ly entertainable the subsequent decisions held that they are for all practical purposes valueless see Mohanlal v. State of Maharashtra : [1982]3SCR277 State of Delhi Administration v. V. C. Shukla : 1980 CriLJ965 Therefore if we leave aside the evidence of P. Ws. 2 and 15 the evidence of P. Ws. 3, 4, 10 and 12 at the most indicate that the accused and his wife left the village home on the particular day at about 3.30 p. m.

and that they were seen together at Karuigachhi at about 5 p. m. the very same day. Thereafter there is no satisfactory evidence as to what happened to them. It will bear repetition that one of the two gave out that they were going to the place of the Guru while the other gave out that they were going to the place of work of the accused, v.z., Dhu-bulia. The next piece of reliable evidence that can be considered is the recovery of the body of Sabita lying in the paddy field in an unconscious state, This is all that transpires in the evidence and nothing beyond this can be said to have been satisfactorily established, Even the statements of P. Ws. 3, 4, 10 and 11 have to be accepted with a grain of salt for reasons already discussed. This apart, we do not know when they were examined by the Investigating Officer Whether shortly after the incident or long thereafter. Be that as it may, even taking their evidence in its face value the most that transpires is that the two were seen last together at 5 p. m. near Karuigachhi.

14. Mr. Chakraborty appearing on behalf of the State contended that the conduct and movements of the accused after the incident is itself suspicious and the suspicion against furnishes a link in the chain of events pointing to the guilt of the accused. He argued that the accused should have if he was innocent, himself initiated the enquiry as to how his wife came by the injuries. Instead he was found to make himself scarce and the Investigating Officer could not find him on search for two successive days. Therefore Mr. Chakraborty relying upon the decision in the case of Deonandan Mishra v. State of Bihar : 1955 CriLJ1647 argued that the conduct of the accused itself is inconsistent with his innocence. What this decision lays down is 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 a reasonable likelihood of the innocence of the accused. The decision then goes on to say 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. This decision, in our view, 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 as a circumstance against the accused by itself.

15. Ordinarily in a criminal trial one does not look for the motive. Motive there must always be and it often happens that the motive remains undiscovered. The failure to establish the motive in a case depending on direct evidence is not of much importance. But in a case resting entirely on circumstantial evidence the proof of motive or the absence of motive, as the case may be, assumes some importance. In the instant case some motive has been sought to be ascribed in the F.I.R. (Ext. 1). There it is stated as if the accused was displeased with Sabita because of her dark complexion, that sometime before the incident the accused wanted to desert and abandon Sabita and that there was an arbitration comprising of impartial and respectable persons of the village at whose intervention the accused promised to lead a happy domestic life with Sabita. Unfortunately the prosecution did not adduce any evidence in support of the case as made out, namely, that the accused was unhappy with Sabita or that he had expressed any intention of deserting her. Such evidence if the story as made out in the F.I.R. be true, should not have been difficult for the prosecution to collect and adduce. Some villagers of Bhabanipore have been examined but none of them was asked about it. There is not even the faintest suggestion that the accused and Sabita were not pulling on well together. On the other hand the evidence suggests that they two were living together being separate in mess from the mother of the accused because Sabita was not pulling on well with the mother-in-law. Such being the position we are unable to find any motive why the accused should suddenly take to his head to murder his wife.

16. As regards the conduct of the accused which has been so much commented upon by Mr. Chakraborty it may be pointed out that according to the accused as per his statement made in answer to questions put to him under Section 313 Cr. P.C. he came to learn at Dhu-bulia sometime after the incident that his wife has been murdered and that thereafter he surrendered in court. If this case be true there could be no question of the accused taking any initiative in the matter of

lodging any complaint with the police, for by the time he came to know of the incident the case had already been initiated and it was the accused who was suspected to have committed the act. Therefore, there was nothing for him to do on his own except to try to extricate himself from the situation in which he has been placed. The I. O. in his evidence has stated that he searched for the accused at his village home at Bhabanipore on 12-8-1978 and again on 16-8-1978 but did not find him there. It will bear repetition that the accused was working at Dhubulia and the I. O. has stated that he made no enquiries at Dhubulia to look for the accused. Therefore we are unable to say that the accused soon after the occurrence is proved to have made himself scarce. He surrendered in court on 25-8-1978.

17. Such being the entire state of evidence in the case the most that we can say is that the prosecution has succeeded in showing that the accused and his wife were last seen together at Karuigachhi at 5 p. m In the case of Lakhanpal v. State of Madhya Pradesh 1980 Supp SCC 716: 1979 Cri LJ 1217 the Supreme Court held 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. Such being the position, we are unable to say that the prosecution has been able to prove the case beyond all reasonable doubt.

18. The appeal accordingly succeeds. The order of conviction and sentence is set aside. The accused appellant be set at liberty forthwith.

Jitendra Nath Chaudhuri, J.

19. I agree.

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