

Parimal Banerjee Vs. the State

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Court : Kolkata

Decided On : Jun-03-1985

Reported in : 1986CriLJ220

Judge : N.G. Chaudhuri and; Gobinda Chandra Chatterjee, JJ.

Appellant : Parimal Banerjee

Respondent : The State

Judgement :

N.G. Chaudhuri, J.

1. Parimal Banerjee, hereinafter to be referred to simply as Parimal for the sake of brevity, has come up in appeal aggrieved with the judgment, of conviction and sentence rendered against him by the Sessions Judge, Hooghly in Sessions Trial No. 33 of 1980. He was charged under Sections 302/34 I.P.C. and 201/34 I.P.C. on the allegation that in furtherance of common intention of himself, his mother Lilaprobha, Banerjee and another Swapan Karnakar they intentionally caused the death of Manju Dutt, wife of Sudhir Dutt on 28-8-78 and caused disappearance of evidence of the offence by secreting the dead body. Lilaprobha Banerjee faced the trial jointly with Parimal and has been acquitted. Swapan has been absconding. Parimal has been convicted of both the offences under Sections 302 and 201 I.P.C. divorced from and independently of Section 34 I.P.C. He has been sentenced to life imprisonment for the first mentioned offence and to seven years

R. I. and a fine of Rs. 1000/-in default thereof to R. I. for one year for second offence.

2. For a proper appreciation of the points raised in the appeal, the case, prosecution came up with at the trial is required to be given in some details. Dr. Subodh Dutt has a two storied building close to the Strand, in the locality known as Hatkhola in the town of Chandernagore. The main gate of the house is on its West and opens on Kabi Bharat Chandra Road, on the East, beyond the 5ft high boundary wall of the house, flows the river Hooghly. On the ground floor of the house there are two self contained flats, one comprising the western portion having its entrance on the West and another comprised of the eastern portion having its entrance on the East. Dr. Dutt resides on the first floor with members of his family and entrance to the first floor with staircase is on the South of the house. On the North of the plinth of the building there are a water reservoir and three septic tanks; and thereafter there is the northern boundary wall 8/9 ft. high and beyond that wall there is the godown for building materials belonging to Shib Chandra Pal. The reservoir and the septic tanks are situate close to the western boundary wall and are in proximity to the western ground floor flat; the easternmost septic tank, however stands close to the door of the latrine and bathroom of the eastern ground floor flat. Ex. 13, the sketch map of the house may be seen in this connection.

3. Sudhir Dutt, a 53 year old Signal Inspector, employed under the Eastern Railways having his place of work at Howrah, took up tenancy in respect of the Western flat aforesaid in May 1977 and began to reside therein with his wife Manju, aged 34 years at the time of her,death, son Soumitra (P. W. 4) reading in a school aged about 14 years then and a daughter Snigdha (P. W. 7) also reading in a school and 12 years old at the time. Sudhir Dutt used to leave the flat around 7 A.M. on week days to attend his Workshop and return around 7 P.M. Soumitra used to leave for school around 9.30 A.M. and return at 4 P.M. and Snigdha used to leave for her school at 8.30 A.M. and return at about 3 P.M. From 9.30 to 3 P.M. Manju used to live all alone in the flat.

4. In June 1977 Parimal a graduate aged 32 years a bachelor having a car and running a restaurant near Janaki Cinema Hall in Barabazar area of the town took up tenancy in respect of the eastern flat aforesaid and begun to live therein with his aged widow mother Lilaprobha. Lakshmi (P. W. 3) was engaged by both the families to serve them as maid-servant on part-time basis; she served both the flats in the morning up to 10-30 A.M. and again in the afternoon after 4 P.M.

5. The stage was set for growth of familiarity between the two families living in the adjacent flats. As a matter of fact Parimal started addressing Sudhir Dutt as 'Dada', Manju as 'Boudi' and Soumitra and Snigdha started addressing Parimal as 'Kaku' and Lilaprobha as 'Dida' and familiarity grew between the two families in course of 2/3 months, because of Manju's lonely stay in her flat during noon, limits of decency were crossed soon and illicit intimacy between Parimal and Manju grew up. Member of the Dutt family while at the witness box were for obvious reasons shy of giving details of this illicit intimacy. But the photographs marked Exs. B, B(I) produced on behalf of the defence showing Parimal and Manju bear testimony to that; they are seen in a pose in which young couples soon after their marriage get themselves photographed. Cross-examination of Sudhir Dutt reveals that Parimal used to present Manju with saries. The warmth of relationship between Parimal and Manju is again revealed by the answer Parimal gave to question No. 21 put to him by the Sessions Judge in course of his examination under Section 313 Cr. P.C. As stated by Parimal and as shown 'by photographs Manju's beauty was above average. Parimal used to think, as cross-examination of P. W. 1 on his behalf indicates, that Sudhir Babu was no match for Manju on account of his old age, ungainly figure and othe'r things; and Parimal was worthy of her

6. On 28-8-78, a Monday Sudhir Dutt, Soumitra, Snigdha left their flat to attend to their respective business as usual by 9.30 A.M. Even the maid servant finishing her work left the flat at about 10 A.M. leaving Manju alone. First to return to the flat, Snigdha found the entrance door locked at 3 P.M. and found Lilaprobha sitting near the collapsible gate at the entrance/Of their flat. Snigdha guessed that her mother had come to the flat of Parimal to talk with his mother and accordingly made inquiries with Lilaprobha regarding her mother's whereabouts. Lilaprobha handed over the key of the flat of the Dutt's to Snigdha giving out that her mother

had left her flat at about 11 A.M. leaving the key with her; and instructing her to hand over the key to Snigdha or Soumitra on their return from School. She gave out that she did not know where Manju had gone. Unlocking the entrance door to their flat and entering into the flat she found pulses burnt up in a pot on the extinct oven, and things lying in disarray. Manju's vanity bag was found on the cot. This appeared to be surprising, because her mother was of extremely orderly habits. At about 4 P.M. Soumitra returned and found his mother absent and learnt everything from his sister. He went to Parimal's flat, found him there and enquired of him about his mother's whereabouts to learn that Parimal did not know the same. Anxious Soumitra went to Kali-temple which his mother occasionally visited to trace out his mother, but failed to find her out. Anxious brother and sister kept waiting in their flat for the return of their mother. At about 9 P.M. Sudhir Dutt returned without being accompanied by his wife as was expected by his son and daughter. Both of them narrated everything to their father. Sudhir Dutt knocked at the door of Parimal again, Parimal from inside his flat gave him to understand that he had not seen Manju after the morning and he himself was extremely tired and was retiring to his bed. Fondly hoping that Manju had gone to the house of her brother and mother at Serampore, Sudhir Babu left for Serampore. He could not find Manju there at Serampore and returned to Chandernagore flat with his brother-in-law Dilip Ghose P. W. 8 and sister-in-law at about 12 midnight. Every one in the family was thrown into a tension. During 29th and 30th August, 1978 Sudhir Dutt continued to make inquiries with other friends and relatives to whom Manju might have gone. On 31-8-78 Sudhir Babu lodged a missing report regarding Manju at Chandernagore thana. This was recorded as Ex. 8. Herein, he amongst other things, stated that his daughter had obtained the keys of their flat from Parimal's mother who had disclosed that Manju had left the flat on 28-8-78 at 11 A.M.

7. On 2-9-78 Sudhir Dutt learnt from Sailen Chandra 'P. W. 4) an employee of Shib Chandra Pal's gola on the north of their flat, that on 28-8-78 while he was coming from the Chandernagore Electric Supply Corporation he had seen Manju sitting on a cemented bench at the strand at about 11 A.M. Parimal coming to her and thereafter both of them proceeding towards Dr. Dutt's house in two separate rickshaws. Sudhir Dutt also learnt from Prosanta Seth (P. W. 5) and Bimal

Banerjee (P. W, 6), both of their locality, that they had seen Parimal and Manju either walking together or riding a rickshaw together occasionally prior to her disappearance. Sudhir Babu came to know this from P. Ws. 5 and 6 towards the end of August, 1978.

8. Equipped with the above information and accompanied by some local gentlemen P. Ws. 5 and 6 and other Sudhir Dutt went to the flat of Parimal on 3-9-78 and asked him as to where he had kept Manju concealed. Parimal went into a rage. Then all of them caught hold of Parimal and brought him to thana. At the thana Sudhir Dutt lodged a written information to the effect that with a view to marry Manju Parimal had concealed her. On the basis of this information Chandernagore P. S. Case No. 3 dt. 3-9-78 under Sections 365 and 366 I.P.C. was started at 3.50 P.M. and Parimal was detained in thana lock up. Investigation of the case was also taken up.

9. On 4-9-78 when Parimal was in police custody he is alleged to have made a statement that the dead body of Manju after being put into two gunny bags, one from the side of her head and another from the side of her foot, with coloured petticoat, baessiere and blouse on the person tied with a piece of rope was kept concealed in the easternmost septic tank of their house. Relevant portions of Parimal's statement have been marked Exs. 9 and 9/1. Subsequent to making the statement Parimal is alleged to have led the police party and people of the locality to the said septic tank. Sweepers were called, manhole cover and cemented covering of the septic tank were removed and Manju's dead body was discovered to be identified by Sudhir Dutt and Soumitra and Snigdha amongst others, while the dead body was being brought out from the tank a red bead fell off from the tuft of hair of Manju and this was seized under Ex. 3/1. Inquest was held over the dead body and thereafter sent to Chandernagore Hospital through Constables for post-mortem examination. Posting Police guards outside Parimal's flat to prevent Parimal's bed room, and things lying therein from being disturbed by anybody. I. O. sent requisition to F. S. L. Calcutta for sending an expert. Parimal's mother was arrested in the meantime.

10. On 8-9-78 at about 7.45 Parimal is alleged to have led the I. O. and police party to his bedroom and pointed out a porcelain container from which he brought out a string of red beads and some loose beads to be seized' by the police under Ex. 4/4. Investigation had revealed that Manju constantly used a string of red beads and the bead found from her dead body and those from porcelain container were of same colour and size.

11. On 11-9-78 P. W. 19 Senior Scientific Officer attached to F. S. L. visited Parimal's bedroom and under his advice P. W. 3 the I. O. seized from Parimal's room some articles like pillow cases, piece of cloth, bed cover etc. under seizure list Ex. 10 and sent them to Calcutta for serological examination. The serological report marked Ex. 16 revealed that stains of blood were detected on the seized pillow case, pillow cover, piece of cloth, bed cover and rexin on the sofa cum bed, but origin and group thereof could not be determined on account of disintegration and delay.

12. P. W. 12 the autopsy surgeon was of opinion that Manju had died of homicidal injuries found on her person which were ante-mortem and sufficient in the ordinary course of nature to cause death.

13. In the circumstances stated above Parimal was sent up for trial before the Sessions Judge for the offences alleged. Parimal pleaded not guilty. On his behalf it was contended that in all probability Sudhir Dutt being annoyed with his unfaithful wife had her murdered by some one or by himself. It was also contended that the prosecution case being exclusively based on circumstantial evidence, the hypothesis of innocence of the accused was not totally incompatible with the evidence.

14. The learned Sessions Judge, however, overruled the defence contention and relying on 18 circumstances listed by him in the body of his judgment said to have been established by unimpeachable evidence convicted Parimal as stated.

15. Mr. Dilip Dutt, the learned advocate for the appellant argues with force that the learned trial Judge in flagrant violation of the provisions of Sections 25 and 26 of the Evidence Act wrongly admitted in evidence the alleged statements of Parimal

while he was in police custody and relied upon the statement treating the same as confession. He contends that the learned Judge after wrongly admitting into evidence totally inadmissible evidence allowed himself to be prejudiced against Parimal and ignored probabilities and facts which went in favour of the appellant. He goes to the extent of saying that Parimal did not make the statement attributed to him on which the conviction primarily rests.

16. In the written complaint marked Ex. 1 (on the basis whereof formal F. I. R. Ex. 1/2 was drawn on 3-9-78 at 15.50 hours) Sudhir Dutt P. W. 1 clearly recited that with the help of local gentlemen named therein he brought Parimal to the thana and thereafter made allegations incriminating him. P. Ws. 5 and 6 corroborate P. W. 1 on this point. Parimal in course of his examination under Section 313 Cr. P.C. in answer to question No. 15 stated that he went to thana on 3-9-78 and police arrested him. From the above the conclusion is inescapable that on 4-9-78 he was in police custody. This fact is confirmed by the order of 4-9-78 recorded by the Magistrate before whom he was produced. It is no use arguing that endorsement dated 28-10-78 made by the Magistrate on the so called statement of Parimal indicates that the statement was not there on 4-9-78. A close study of the order of the learned Magistrate dt. 4-9-78 rather indicates that some statement regarding weapon of assault was there.

17. Reading portions of the statement made by Parimal marked Exs. 9 and 9/1, Mr. Dutt argues that they partake the nature of a confession made by Parimal while he was in police custody and their admission in evidence is expressly barred by Sections 25 and 26 of the Evidence Act. He reads out portions of the judgment under appeal and Parimal's statement in Court under Section 313 Cr. P.C. to substantiate his contention that the learned Judge treated them as confession. Relying on the decisions of the Privy Council in the case of Pulukuri Kottaya reported in AIR 1947 PC 67 :1947-48 Cri LJ 533 and of the Supreme Court in Md. Inayatulla v. State of Maharashtra, reported in : 1976 CriLJ481 Mr. Dutt contends that the learned Judge was totally wrong in admitting Exs. 9 and 9/1 in evidence. Section 27 of the Evidence Act has been explained in the Privy Council case as follows 'The condition necessary to bring the section into operation is that discovery of a fact in consequence of information received from a person accused

of any offence in the custody of a police officer must be deposed to and therein upon so much of the information as relates distinctly to the facts thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given some guarantee is afforded thereby that the information was true and accordingly can be safely allowed to be given in evidence but clearly the extent of the information admissible must depend on the nature of the fact discovered to which the information is required to relate'. From the deposition of P. Ws. 1,2 and 13 coupled with seizure list Ex. 3 we find that the following facts were discovered pursuant to information disclosed by Parimal, namely: (1) the dead body of Manju was dressed in a violet petticoat, red brassiere and blue blouse: (2) thereafter the dead body was put inside two gunny bags, one from the side of her head and another from the side of her feet and tied up with a piece of rope, and (3) thereafter the dead body in the above condition was kept concealed in the septic tank. So much of the information embodied in Exs. 9 and 9(1) as distinctly related to the discovery of the above three items of fact were admissible in evidence although Parimal disclosed the above information on 4-9-78 while he was in the custody of Police Officer P. W. 13. We therefore hold that such portion of statements marked Exs. 9 and 9(1) as strictly and distinctly relate to the discovery of the above three items of fact were only admissible in evidence; portions in excess, relating to Parimal's conduct which could not be objectively proved or discovered was not, however, admissible in evidence. Accordingly accepting in part the argument of Mr. Dutt we omit from our consideration offending portions of Exs. 9, 9/(1), the non offending portions of Exs. 9 and 9(1) coming within the ambit of Section 27 of the Evidence Act, we find, incriminates Barimal to a very large extent.

18. Mr, Dutt's next branch of argument is that the I. O. (P. W. 13) who investigated the case initially was biased against the appellant and the investigation was unsatisfactory. He goes to the extent of submitting that P. W. 13 fabricated a false case. To strengthen his contention Mr. Dutt reads out the deposition of P. W. 13 and P. W. 18; and points out that P. W. 13 carried on investigation of the case after drawing up of the F. I. R. despite endorsements of investigation in favour of S. Saha and did not make over the C. D. to P. W. 18 in spite of the order of D. I. G., C. I. D. so much so that although P. W. 18 started investigation from 17-10-78

yet he did not get the C. D. from P. W. 15 before 21-11-78. He points out that Soumitra's statement allegedly recorded on 3-9-78 was not found in the C. D. and deliberate destruction thereof was suggested to P. W. 13, It was elicited from P. W. 18 that some pages of the C. D. were found scored through and when the C. D. was forwarded to the court the statement of Soumitra recorded by P. W. 13 was not there. He argues that there is no indication as to whose statement P. W. 13 recorded on 5-9-78. Mr. Dutt accordingly contends that after having fabricated a false case P. W. 13 handed over the C. D. to P. W. 10 without sufficient materials. Negligent or insufficient discharge of duty by Police Officers is not uncommon but that is no reason to disbelieve the prosecution case totally, if the evidence laid is cogent and convincing. We cannot, therefore, accept Mr. Dutt's argument in this behalf.

19. In point of fact, Mr. Dutt argues that the illicit intimacy between Parimal and Manju could not have been unknown to Manju's husband Sudhir Dutt P. W. 1 and this was an insult to his age and manhood, and this must have caused great excitement in him. In that background, he contends that the probability of Sudhir Dutt's having his wife murdered by himself or somebody else cannot be ruled out. He points out, that the F. I. R. was lodged almost a week after Manju's disappearance and that from P. W. 1 it was elicited in course of cross-examination that Manju had a tubectomy operation done on her. So Parimal had no fear of Manju's possible pregnancy and had accordingly no motive for murdering her. Even if he had murdered Manju he would not have concealed the dead body in the septic tank at the risk of being detected by passers by on the busy road or by neighbours; rather he would have thrown away the dead body in river Hooghly flowing along the eastern boundary of the house. He points out that P. W. 7 Snigdha had deposed definitely that the interconnecting door between the two flats was locked from both sides, namely, from the side of the flat of Dutts and from the side of the flat of Parimal, making it impossible for Parimal to reach Manju in her flat for the purpose of murdering her. Relying on the decisions of the Supreme Court in the case of Udaipal Singh v. State of U. P. reported in AIR 1972 SC 54 : 1972 Cri LJ 7 and of the Calcutta High Court in Mahadev Ghosh v. State reported in 1983 Cri LJ 1854. Mr. Dutt contends that in cases like the present one resting entirely on circumstantial evidence, prosecution was required to produce cogent

evidence regarding motive, but there was absolutely none in the present case. He argues that in the present case there is no credible evidence that Manju and Parimal were last ' seen together at about 11 A.M. on 28-8-78; the evidence on the point was totally unworthy of reliance. Even if the evidence was accepted at its face value relying on the case of Mahadev Ghosh, Mr. Dutt contends that the said fact by itself cannot be held to be of incriminating effect. Mr. Dutt in this connection contends that all the 18 circumstances listed by the learned trial Judge did not have definite incriminating tendency and were not as such sufficient to complete the chain of circumstances to make the conclusion regarding Parimal's guilt absolutely inescapable or unavoidable.

20. From the evidence of P. Ws. 1, 2, 3 and 7 it is clear that Manju was left alone in her flat around 10 A.M. and she was found missing therefrom from 3 P.M. on 28-8-78. Her dead body was discovered from the septic tank on 4-9-78. From the above data it is clear that whoever might have murdered Manju and kept her dead body concealed in the septic tank must have done that between 11 A.M. to 3 P.M. on 28-8-78. Sailen Chandra (P. W. 4) an employee in the building material's godown of Sibchandra Pal on the adjacent north of Dr. Dutt's house deposed on 17-3-82 that three years prior to the date of deposition and prior to Manju's disappearance he found Manju sitting on a cemented bench on the strand near Patal Bari, Parimal coming there in a rickshaw and little thereafter Parimal and Manju going towards Dr. Dutt's house in two rickshaws. The point that for covering so short a distance they would not have two rickshaws is not important; the determining factors are their habit and financial condition. The competence of P. W. 4 to know and identify Parimal and Manju is out of question because P. W. 4 worked in the godown contiguous to Manju's flat. We have it in evidence that Manju was conspicuous for her beauty and glamour and people like P. Ws. 4, 5 and 6 knew that she was not the wife of Parimal yet occasionally moved in close company of him. The last mentioned conduct of Manju and Parimal was sufficient to attract notice of local people. The fact that Manju and Parimal were seen together at about 11 A.M. on 28-8-78 near their residence itself has no incriminating effect, but it assumes great significance when it is considered that the time and place of Manju and Parimal having been last seen together is very close and proximate to the time and place of Manju's murder and concealment of

her dead body. P. W. 4 the maid servant serving both the families, it is worthy of note was not allowed access to Parimal's flat on 28-8-78 afternoon on some excuse and for some days following she was not allowed to sweep and clean Parimal's personal bedroom in his flat. Manju had obviously an image to maintain before her children and husband. So it is highly probable that during mid-day by arrangement with Parimal they had the interconnecting door opened and after enjoying themselves they had the door closed from both sides. To our mind the fact that the interconnecting door was closed from both sides is of no significance whatsoever. The most significant and incriminating fact is that returning from school Snigdha (P. W. 7) found the entrance door to their flat locked and had the keys from Parimal's mother to unlock. We have no reason to disbelieve Snigdha on the point. Before definite allegations were made against Parimal in the F. I. R. Sudhir Dutt has asserted the above fact in the C. D. embodying the missing information regarding Manju marked Ext. 8. If Sudhir Dutt had intentions to implicate Parimal in a false case he would not have waited till 3-9-78 to lodge F. I. R. If somebody other than Parimal had killed Manju the key of her locked flat could not have been found in the custody of Parimal's mother. If Sudhir Dutt had reasons to suspect that his wife was indulging in adulterous conduct, at an advance age above 50 years, he was most unlikely to react passionately and violently, particularly because of their growing children. If Manju's conduct became unbearable to him he would have the marriage tie severed by having a decree of divorce and an order in his favour for custody of children. On the other hand because of his young age Parimal was more likely to react violently to Manju's disclosure of any tenderness for Sudhir Dutt. Again so long as both Parimal and Manju kept their intrigues concealed from others it was perfectly safe for Parimal to continue the game but human nature being what it is the intrigues could not be kept at that stage for long. Probably Manju was becoming desperate and more demanding threatening the image of Parimal before others and also Parimal's gay, irresponsible and carefree life. In the above context Parimal was more likely to murder Manju. This brings us to the motive aspect of the case. Reading cases of Uday Pal Sing 1972 Cri LJ 7 (SC) and Mahadev Ghosh 1983 Cri LJ 1854 (Cal) cited by Mr. Dim we cannot construe them as laying down that in a case of prosecution based entirely and solely on circumstantial evidence, evidence of

motive for committing the offence is absolutely necessary or that lack of evidence of motive will negate all other incriminating circumstances. Motive is indeed a strong circumstance and if evidence regarding motive is available that lends strength of conviction. In this connection we may refer to the decision of the Supreme Court in the case of Rajinder Kumar v. State of Punjab reported in : 1966 CriLJ960 . Very often a person accused of murdering another is found to have apparently a close and loving relationship with the victim. If too much insistence is laid on evidence of motive such persons can never be convicted. It is common knowledge that love changes into hatred; a sweet relationship into a bitter one for a variety of reasons unknown to others outside the relationship. We have, therefore, no hesitation to overrule the contention of Mr. Dutt in this behalf.

21. We now proceed to consider if Parimal would have concealed the dead body of Manju in the septic tank after murdering her. If Manju was murdered in her own flat and the person murdering her wanted to throw away her dead body in river Hooghly, he would have been required to cover a distance of more than 100 ft. openly at the risk of being seen by others. Soumitra and Snigdha have deposed that the distance of the eastern boundary wall of the house from the entrance to Parimal's flat is above 35 ft. and the gap between the room of murder and the said entrance is to be added. From Snigdha (P.W. 7) we get that even at the time of high tide the water in the river remains more than 20 ft. away from the eastern boundary wall. So the person attempting to throw away the dead body of Manju into the river would be required to cover a distance of at least 100 ft. during a midday. This was obviously hazardous, because he would be seen by the people on the river bank and passers by crossing the river in boats etc. The risk of detection in the matter of concealing the dead body in the septic tank was far less. Snigdha deposed in cross-examination that if anybody walked to the eastern septic tank from the western entrance to their flat he would not be visible because of the 5/6 ft. high boundary wall of the building on the west. We have it from Soumitra, Snigdha and others that the gap between the septic tank and the 8/9 ft. high northern boundary wall was 5 ft. so the person reaching the septic tank with Manju's dead body was unlikely to be seen by any one from the northern side of the tank. Such a man could not again be seen by anybody from the south because Sudhir Dutt's flat at that time was empty. He could not be seen by any one from

the east because of the existence of a garage with R. T. shed at the north east corner of the building. Ext. 16 the serological report, seizure list Ext. 10 and deposition of P.W. 13 proved cumulatively that the murder was committed in the bedroom of Parimal. Against that background, a careful study of map of the house Ext. 13 indicates that it was convenient for Parimal to carry the dead body of Manju totally unnoticed by others through the doors of bath room marked 3 and 4 in the map to the eastern most septic tank. We thus find that Parimal had a motive for murdering Manju and it was easy and convenient for him to conceal Manju's dead body in the septic tank, from which the dead-body was eventually discovered, during the midday of 28-8-78.

22. One incriminating circumstance in this case is discovery of a red bead from the dead body of Manju Ext. I and seizure of a string of such beads from the room of Parimal Ext. III.

Dr. Marjit P.W. 17 an expert has deposed that the beads are exactly similar in colour and size. P.Ws. 1, 2, 3, 4 and 7 leave no room for doubt that Manju ordinarily used such a string of beads to decorate her neck. Remnants of the string with loose beads discovered from the bed room of Parimal certainly indicate that Manju was murdered in that room. The argument that Parimal was unlikely to preserve such a trinket as a memento of Manju with whom he had been disenchanted has no point. Parimal did not probably preserve such beads in the porcelain container as memento; he might have kept it there to throw away at the appropriate time.

23. From an analysis of the evidence on record we are satisfied that all the 18 circumstances enumerated by the learned trial Judge in his judgment from which he drew the inference of guilt of Parimal were satisfactorily established by cogent and convincing evidence and each of the circumstances in the backdrop of the close connection between the parties tended to incriminate Parimal. We have no hesitation to hold that the chain of circumstances incriminating Parimal is complete and Parimal is so firmly entangled that he cannot come out of the chain. We are satisfied that Parimal himself with the help of some other had intentionally caused the death of Manju and concealed her dead body in the septic tank. The

hypothesis of innocence of Parimal and probability of some one else committing the offences is totally incompatible with the incriminating circumstances noted. We have already discussed the improbability of Sudhir Dutt's murdering Manju. In point of fact prosecution with the help of Attendance Register maintained at the place of work of Sudhir Dutt marked Ext. 7 proved by P. W. 11 supplemented by the deposition of P.W. 1 himself has convincingly proved that Sudhir Dutt was working at the relevant time in the Railway work shop at Howrah far away from Chandraagore where the offences were committed.

24. In spite of addition of Section 34 I.P.C. to the principal offence under Section 302 and 201 I.P.C. the learned trial Judge has convicted Parimal for the offences under Section 302 and 201 simpliciter. In our view Parimal could not have committed the offences single handed unaided by others within so short a time even if Lilaprobha has been acquitted there is scope for holding that in furtherance of their common intention somebody like Swapan helped Parimal in committing the offences. The implication of the learned Judge's order of conviction is that Parimal alone committed the offences, we find difficult to confirm that proposition in that narrow and pointed form, we cannot brush aside from our mind that Swapan is still absconding. We find, therefore, that the proper course for the learned trial Judge was to convict Parimal under Section 302 read with 34 I.P.C. and Section 201 read with 34 I.P.C. We therefore propose to slightly modify the order of conviction accepting substantially the findings of fact arrived at by the learned trial Judge.

25. We now come to the sentence imposed on the appellant. The appellant is a young Honours Graduate with cultural pretension. He treacherously caused the death of a lady when she was alone in her flat. In that view of the case the learned trial Judge should have imposed death sentence on the appellant on his conviction under Section 302 I.P.C. but he has as a matter of fact punished him with Life Imprisonment. We do not expatiate ourselves on the point fruitlessly as the State Government has not filed any appeal for enhancement of the sentence.

26. For the offence under Section 201 I.P.C. the learned trial Judge has imposed on the appellant the maximum sentence of 7 years R.I. prescribed by the Code and a fine of Rs. 1000/- in default R.I. for one year. For the offence under Section

302 I.P.C. besides life imprisonment, the trial Court has not imposed additional punishment by way of fine although Section 302 like Section 201 embodies the words 'and shall also be liable to fine'.

The learned Judge has not given reasons for imposing punishment by way of fine for the offence under Section 201 I.P.C. in addition to the ordinary punishment of imprisonment. The learned Judge has not given reasons why in addition to life imprisonment he did not punish the appellant additionally by imposing fine on him under Section 302 I.P.C. which he could very well do. We cannot, therefore, justify and affirm imposition of additional punishment by way of fine on the appellant under Section 201 I.P.C. While on the point of sentence by way of fine we note that a study of provisions of the I.P.C. reveals that offences for which fine has been prescribed as a punishment can be classified into three groups. In group 'A' come offences which on being proved shall be punished with imprisonment for a term as prescribed in the relevant section or with fine or with both, as for example, Sections 147, 148, 151, 152 etc. of the I.P.C; in Group 'B' fall offences which are similar to the offences in group A but differ from them in so far as maximum amount of fine has been clearly prescribed in the relevant section, as for example, Sections 272, 273, 274 of the I.P.C.; in group 'C' come offences which after being visited with punishment by way of imprisonment may in addition be punished with imposition of fine as indicated by the words 'and shall also be liable to fine' used in the relevant section, e.g. Sections 302, 304 Part I, 307, 395 etc. of the I.P.C. From the words 'and shall also be liable to fine' an inference is permitted that where the court feels inclined to punish the offender additionally by imposing the sentence of fine the court is expected to give reasons for such additional imposition. When a Court tries an offender alleged to be guilty of more offences than one and imposes on him the sentences or imprisonment for different terms for different offences the Court is to spell out if the sentences are to run concurrently or consecutively; similarly when a Court finds an accused guilty of more offences than one which can be punished with fine in addition to imprisonment the Court may, if it so chooses, observe that as fine for one offence has been imposed, fine for the other offences is not imposed. If the Courts become mindful of the provisions of the Code authorising them to impose fine, punishments imposed on offenders may be made retributive to addition to being deterrent; costs of investigation have

increased; very often victims of offences deserve compensation. These purposes may be served by imposition of a sentence of fine wherever possible. The Courts, however, in their wisdom and experience will take into consideration the gravity of the offence, the financial and social condition of the offender. However, we conclude that the learned trial Judge was arbitrary in the matter of imposing 'of fine on the appellant for the offence under Section 201 and in omitting him to punish similarly for the offence under Section 302 I.P.C. The sentence of fine for the offence under Section 201 I.P.C. will therefore be set aside and reduced.

27. In the result we conclude that the appeal should fail. The appeal accordingly is dismissed. The judgment of conviction and sentence appealed against is affirmed subject to slight modifications as indicated below: (1) The appellant is found guilty of the offence under Section 302 read with Section 34 I.P.C. and Section 201 read with Section 34 I.P.C. as he was charged with and convicted therefor, in place of Section 302 and Section 201 I.P.C. divorced from and independent of Section 34 I.P.C. as found by the learned trial Judge, (2) The appellant is sentenced to life imprisonment for the offence under Section 302 read with Section 34 I.P.C. and to 7 years R.I. for the offence under Section 201 read with 34 I.P.C. Only, the sentence of fine of Rs. 1000/- in default one year's R.I. for the last mentioned offence as imposed by the learned trial Judge is set aside and is reduced. The sentences will run concurrently. In respect of the last mentioned offence and sentence the appellant is entitled to get the benefit of set off under Section 428 Cr. P.C.