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Court : Kolkata

Decided On : Dec-09-2005

Reported in : 2006(1)CHN573

Judge : Alok Kumar Basu and ;Pranab Kumar Deb, JJ.

Acts : Evidence Act - Section 25; ;Indian Penal Code (IPC) - Sections 34, 201 and 302

Appeal No. : C.R.A. No. 211 of 2001

Appellant : Sukumar Das and anr.

Respondent : State

Advocate for Def. : Asim Kr. Roy and ;Joy Sengupta, Advs.

Advocate for Pet/Ap. : S.S. Roy, ;P.S. Bhattacharya and ;Minoti Gomes, Advs.

Disposition : Appeal dismissed

Judgement :

Pranab Kumar Deb, J.

1. The appeal has been directed against the conviction and sentence under Section 302 IPC passed by the learned Judge Spl-cum-Additional District & Sessions Judge, Cooch Behar in Sessions Trial No.2(7) of 2000.

2. Following recovery of a decomposed body of an elderly lady from beneath the earth, Tufanganj Police Station recorded a case under Section 302/201 IPC. The prosecution case, as reflected in the FIR was to the effect that since the whereabouts of an old lady called Khukibala Das could not be found after 29.01.95, the villagers thought that she had perhaps gone to nearby area for practising 'Kabiraji'. Meanwhile, Sukumar Das and other members of the family took away her household articles and cow to their house. Thereafter, they all started cultivating the land of Khukibala Das. Fleeting suspicion having developed, the villagers started interrogating Sukumar Das and other members of his family. They, however, could not give any plausible explanation for the disappearance of Khukibala Das. The village Pradhan was called. The appellants were further interrogated in presence of the Pradhan of the village. Eventually, the appellants confessed having murdered their aunt on the night of 29.01.95 for the purpose of grabbing her properties.

3. In the wake of such startling disclosure made by the appellants, the local police station was informed. On the identification of the appellants, the decomposed deadbody of Khukibala Das was recovered in presence of the Executive Magistrate and the local police officers. The inquest of the deadbody was done without further wastage of time. The deadbody, though decomposed, was sent for post-mortem examination. The Investigating Officer went on examining the persons having witnessed the recovery of the deadbody on the identification of the appellants. The persons having heard the appellants making confession were also examined. On examination of the material witness and collection of important papers, the chargesheet was submitted.

4. The Additional Sessions Judge, framed charges under Sections 201/34 and 302/34 against the appellants and Katyani Das following commitment of the case. All the three persons pleaded innocence. The stage was set for trial. In the meantime, one of the accused persons namely Katyani Das died and as such the case against her was dropped. The trial proceeded with the two appellants facing the charges levelled against them.

5. In course of the trial, the prosecution side examined as many as eleven witnesses with another witnesses being tendered for cross-examination. Relying on the extra-judicial confessions made by the appellants and the factum of recovery of the deadbody in pursuance of the statements of the appellants, banking on the post-mortem report, and placing importance on the recovery of some incriminating articles from the possession of the appellants, the learned Additional Sessions Judge was pleased to convict the appellants under Section 302 IPC. Both the appellants were sentenced to imprisonment for life and to pay a fine of Rs. 3,000/-, in default, to suffer rigorous imprisonment for further period of two years. Both of them were, however, exonerated of the charge under Section 201/34.

6. Aggrieved by, and dissatisfied with, the order of conviction and sentence, both the appellants have jointly preferred the instant appeal.

7. Appearing for the appellants, Mr. P.S. Bhattacharya has submitted that the case was instituted at the instance of those interested people who had an eye on the properties of the old lady called Khukibala Das. To achieve their sordid design, they entangled the near relations of the old lady so that nobody could stand in their way of grabbing the properties. It is submitted that the appellants would have inherited the properties of the old lady on her death as her legal heirs. There was no reason whatsoever for them to dig their own earth. If they had intention to get rid of their aunt, the deadbody would not have kept in their village. They carried on their normal avocation. These were the clear manifestations of their innocence, as contended by Mr. Bhattacharya.

8. Referring to the provision of Section 25 of the Evidence Act, Mr. Bhattacharya has submitted that confession made before police officials is not admissible in evidence. Unfortunately, the prosecution side introduced the story of alleged confession through round about way. Their endeavour was to show that such confession was made before the arrival of the police personnel. The truth, however, could not be suppressed. When the police personnel were informed of the incident by the Pradhan through his letter, he did not mention anything about the appellants making confession of their guilt. It clearly shows that such alleged

confession was made well after the arrival of the police personnel. That being so, such alleged confession was rendered inadmissible in evidence.

9. Accepting that extra-judicial confessions are strong piece of evidence. Mr. Bhattacharya has submitted that cross-examination of the witnesses belies that confession was the outcome of gentle persuasion. On being confronted in cross-examination, the witnesses duly acknowledged that the appellants were pressurized into making confession statements. Allurement and promise were also held out. Such distorted and tainted confessions, as urged by Mr. Bhattacharya, have got no evidential value.

10. Mr. Bhattacharya has submitted that since the deadbody was lying in an open field, everybody could have some idea about his presence. There was no logic in making an assumption that the appellants had only the exclusive knowledge about the existence of the deadbody on the field in their own village. Such weak piece of evidence cannot be used as a link on the chain of circumstances even. All these disjointed unsatisfactory evidence can never form the foundation of a case sought to be based on circumstantial evidence.

11. Mr. Asim Roy, representing the State, on the other hand, submits that the extra-judicial confession made by the appellants before the villagers was rightly relied upon by the Trial Court to convict and sentence the appellant for commission of offence of murder. Mr. Roy contends that nowhere in the evidence there is slightest indication that the appellants were forced into making confessional statement. In view of the unnatural and unexpected disappearance of an old lady, the appellants were interrogated. There was nothing wrong in interrogation of a person having direct knowledge about whereabouts of an old lady. Had the appellants been assaulted or tortured, they would have sustained injuries. Absence of any sort of injuries on their person is a clear indication that nothing was done to compel them to make confessional statement. The voluntary confession paved the way for the recovery of the deadbody. The two important factors-confession and recovery-were sufficient enough to sustain the charge under Section 302 IPC.

12. The conviction and sentence of the appellants are mainly on the extra-judicial confession made by the appellants before the co-villagers. The defence took a lot of strain to prove that the appellants were pressurized and allured into making confessional statement. The question, therefore, is whether the circumstances afford reasonable grounds for believing that there was inducement or threat. In the instant case, the prosecution side examined several residents of the locality including the Pradhan P.W.1 Bipin Ch. Das, who incidentally lodged the FIR, testified that both the appellants namely Sukumar Das and Ratan Das on interrogation confessed before them that they had murdered Khukibala Das. He further testified that Sukumar Das and Ratan Das confessed before them that they had buried the deadbody of the old lady Khukibala Das. Nowhere it was suggested him that the appellants had been forced or induced to make such confessional statement. Similar statements were made by P.W.3 Jagadish Das. He too confirmed that after much interrogation, the accused persons namely Sukumar Das and Ratan Das confessed having murdered the old lady Khukibala Das. P.W.4 Sadhan Saha and P.W.5 Gour Das were also the residents of West Falimari, Bhubaneschar. They also came out with the allegation that the appellants confessed having murdered Khukibala Das. Similar accusation was made by P.W.6 Narayan Das, the Pradhan of the locality. It is true that he disclosed that pressure was put upon the accused persons through interrogation and ultimately they admitted having caused the murder of the old lady called Khukibala Das. The stray statement that pressure was put is not sufficient to show that it was shorn of voluntariness. It is only when it appears to the Court that making of the confession has been caused by any inducement, threat or promise from a person in authority, the Court would be at liberty to reject it as inadmissible. The evidence on record does not give an impression that inducement or threat or promise was made for making them confess their guilt. Practically, there was no person in authority before them. What we find was the presence of the co-villagers. Since the appellants started handling the property of an old lady after her disappearance in strange circumstances, they were interrogated by them. Such interrogation never took the shape of threat. The statement of P.W.10 Sasthi Ch. Das that the accused persons were assured that no action would be taken against them in the event of their making a confession, was not corroborated by any other villagers. It

was not even suggested to the witnesses that the appellants were forced or induced to make confession before them. The co-villagers were not persons in authority either. The villagers with one accord spoke about the confession being made before them. There is nothing on record to suggest that the appellants were roughed up. No promise or allurement was offered. The Trial Judge thus rightly considered the confessions to be true.

13. The Defence Counsel has argued that since confession was made before the police personnel, such alleged confessions were rendered inadmissible as per provision of Section 25 of Evidence Act. As many as seven villagers including the Pradhan were examined. Nowhere it was suggested that the confession was extracted after the advent of the police personnel. The witnesses have not whispered anything about the presence of the police personnel at the time of the appellants making voluntary confession. The Pradhan through his letter apprised the local police station, expressing his apprehension that the appellants had perhaps engineered the death of an old lady. They approached the local police station after the appellants came out with the confessional statement. The mere fact that the letter did not mention anything about the appellants making confession thus cannot be a ground for assumption that it was the only after the arrival of police personnel that alleged confessions were made by the appellants. There is nothing on record to show to persons in authority held out threat, promise or inducement for extracting confessions from the appellants, nor there is any material to show that confession was made before the police personnel.

14. It is on record that acting on the statements of the appellants, the deadbody was recovered. The recovery was made in full view of the villagers and the police personnel. It reveals from the statements of the villagers that the appellants led to the spot where the deadbody was buried P.W.8 ASI M.M. Basak deposed to the effect that the deadbody was recovered from under the ground in presence of the Executive Magistrate and others. His statement has been corroborated by P.W.9 Bahadur Rabi Das. The deadbody was definitely hidden under the earth. The passersby could hardly have had an idea about the presence of the deadbody underneath the soil. The perpetrators of the crime and persons dumping the body under the earth had precisely knowledge of its existence. The appellants herein

duly identified the place whether the deadbody was dumped. The deadbody was then recovered from beneath the soil in presence of the co-villagers, police personnel and Executive Magistrate. The factum of recovery of the deadbody in pursuance of the statements of the appellants was also strong evidence that clinched the issue in favour of the prosecution.

15. The Trial Judge considered the issues pertaining to the disappearance of the old lady, the factum of the appellants making their confessional statement before the co-villagers and eventually the aspect of recovery of the deadbody of an old lady in pursuance of their statement. The deadbody had symptoms of asphyxia which made the doctor reason that it was an ante-mortem and homicidal in nature. The deadbody was kept under the earth. It was done by the persons doing the mischief. It further rules out any possibility of death being caused by an accident or in natural process. All these aspects had been fairly dealt with by the Trial Judge.

16. In the result, the Criminal Appeal being C.R.A. No.211 of 2001 is dismissed with the affirmation of the conviction and sentence under Section 302 IPC.

17. Send a copy of the judgment along with LCR to the Trial Court for information.

18. Let another copy of the judgment be sent down to the Superintendent of Jail/Correctional Home where the appellants are presently lodged for information.

Alok Kumar Basu, J.

19. I agree.

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