

Kamal Murmu & Anr.

Vs

State of West Bengal

(M.M.Punchhi, S.P.Kurdukar, M. Jagannadha Rao JJ)

08.09.1997

JUDGMENT

-
M.JAGANNADHA RAO, J.

1. This is an appeal by two of the accused Kamal Murmu and Lekhiram Murmu, against the judgment of the High Court of Calcutta in Criminal Appeal No.372 of 1980 dated 16.9.1987. In the Sessions Court there were in all four accused, namely, Rabi Murmu, the two appellants and Padmarani Murmu, the mother of Rabi Murmu. The Sessions Court convicted Rabi Murmu, and the two appellants under section 302/34 I.P.C. and awarded life imprisonment. The above-said three accused and Shrimati Padmarani Murmu, the mother of Rabi Murmu were also convicted under section 201/34 I.P.C. and each of them was sentenced to one year simple imprisonment. On appeal by the appellants as well as Rabi Murmu and Shrimati Padmarani Murmu. the judgment of the Sessions Court was affirmed by the High court. There is no appeal by Rabi Murmu and Shrimati Padmarani Murmu to this Court from the judgment of the High Court. Appeal is preferred only by Kamal Murmu and Lakhiram Murmu.

2. The deceased Chunaram Murmu was the brother of one Makur Murmu, husband of PW1. Rabi Murmu is accused No.1 and his mother Shrimati Padmarani Murmu is accused No.4. Rabi Murmu's house is said to be adjacent to the house of deceased Chunaram and the house of Chunaram and the house of informant Makur Murmu is one bigha away from the house of deceased Chunaram. The house of Kamal Murmu and Lakhiram Murmu (who are sons of one Nandlal) is stated to be near the house of the informant Nakur Murmu separated by a drain (Nala).

3. The prosecution case was that on 23/24-2-1983 at about 1 A.M. the informant Makur Murmu (who has since died) i.e. husband of PW 1 heard the alarm of Chunaram Murmu, the brother of Makur Murmu coming from the direction of the house of the accused Rabi Murmu. The informant and his wife (P.W.1) rushed to the house of the accused Rabi Murmu and found Chunaram being assaulted severely by Rabi Murmu and the two appellants Kamal Murmu and Lakhiram Murmu. It appeared to them that Chunaram was lying dead. All the three accused persons threatened P.W.1 and Makur Murmu not to shout. The informant and P.W.1 found Rabi Murmu and the appellants tying Chunaram's body with a rope to a wooden log. Thereafter the accused persons told the informant that they were going to throw away the body of Chunaram. In late hours during the night the informant and his wife informed the villagers and some of their relatives including, Rabi Murmu(PW 5), Rajuram Sirupati (PW 2), Manik Ghosh (PW 3) about the incident. Thereafter these witnesses went in a group to the house of the accused Rabi Murmu but they did not find the dead body. They saw accused mother Shrimati Padmarani wiping out some blood stains from the courtyard. These witnesses then went to the police station and lodged an FIR. Police took

cognizance of the offence and started investigation. Initially Rabi and his mother Padmarni were arrested. It is the prosecution case that Rabi made a confessional statement before the investigating officer leading to the recovery of the deadbody from the jungle of Chamtubundh. The investigating officer (PW 6) held inquest on the dead body and sent it for post mortem to PW 7. The further case of the prosecution was that the accused Rabi Murmu made a further confessional statement to PW 6 leading to the recovery of a spade and rope from the water of the Dumuria canal. After completion of the investigation, the police filed chargesheet against the four accused. The charges against Rabi Murmu, Kamal Murmu, Lakhiram Murmu were framed under section 302/34 I.P.C. and also under section 201/34 I.P.C. while charge against accused Padmarani Murmu was only under section 201/34 I.P.C. The accused persons pleaded not guilty. In their statements recorded under Section 313 Cr.P.C. they did not come forward with any specific defence.

4. The learned Sessions Judge on a consideration of the evidence came to the conclusion that the evidence of PWs 1 to 3 was sufficient to hold Rabi Murmu, Kamal Murmu and Lakhiram Murmu guilty of the offence of murder of Chunaram. The learned Sessions Judge also came to the conclusion that the above three accused and Rabi's mother Padmarani Murmu were guilty under section 201/34 I.P.C. The sentences were directed to run concurrently.

5. All the four accused filed appeal before the High Court of Calcutta. The High Court examined the evidence in greater detail. Inasmuch as the informant Makur Murmu died, his wife gave evidence as PW 1. The High Court referred to her evidence in details. She stated that the deceased Chunaram was the brother of her husband Makur Murmu and he was living at a distance of one bigha from her house. That on the night of the incident at about 1 a.m. she heard the cries of Chunaram and the sound of assaults. She and her husband Makur Murmu rushed to the house of the appellant Rabi Murmu and found Chunaram lying dead in the courtyard in a pool of blood. Though she did not see the actual assault of Chunaram, she stated that she saw the three appellants namely Rabi Murmu, Kamal Murmu and Lakhiram Murmu tying up the body of Chunaram to a log with some ropes. When she and her husband enquired about the incident, the accused threatened her and her husband and directed them not to shout. The accused also refused to hand over the body of the deceased Chunaram. She and her husband then came back to their house. At that time one Sukhlal who is relative of the accused came to their house and prevented them from going out. At dawn after Sukhlal left, PW 1's husband went to report the incident to the neighbours. Thereafter, he came back alongwith some of the neighbours and went to the police station to lodge the First Information Report. He added that when she and her husband had gone earlier to the house of Rabi Murmu, she found Rabi's mother Padmarani Murmu wiping out blood stains from the ground with a piece of wet cloth. The High Court then referred to the cross-examination of PW 1 and observed that she admitted that fact in her statement before PW 6, the investigating officer, she had not disclosed that she found Kamal Murmu and Lakhiram Murmu tying up the body of Chunaram with a rope. The High Court, therefore, held that her substantive evidence at the trial that she found these two appellants also tying up the body of Chunaram had to be excluded from consideration.

6. The High Court also considered the evidence of PW 2 the co- villager and that of PW3 a cousin of Makur Murmu and stated that part of their evidence as to what Makur Murmu told them in the morning namely that Rabi and the two appellants murdered the deceased, was also to be excluded as inadmissible. Finally, the High Court came to the conclusion that Chunaram was murdered, that there was no direct evidence in respect of the murder of Chunaram and that the case rested solely upon the circumstantial evidence inasmuch as none of the prosecution witnesses had seen the actual assault on the deceased. The High Court then set out thirteen circumstances as having been established by the prosecution. They are as follows:

- "i) On the night between February 23 and 24, 1983 at or about 1 A.M., the cries of Chunaram and the sound of assaults were heard from the direction of the house of appellant Rabi Murmu;
- ii) Immediately thereafter Dhani Murmu (PW 1) sister-in-law of Chunaram, went to Rabi's house with her husband and found Chunaram lying dead in a pool of blood in the courtyard of the house;
- iii) appellant Rabi Murmu was found tying up the body of Chunaram to a wooden pole with ropes and appellants Kamal Murmu and Lakhiram Murmu were standing by his side;
- iv) when she enquired about the matter she was threatened by all the three appellants and asked not to shout;
- v) when she and her husband demanded the dead body the appellants refused to accede to their demand;
- vi) when she came back home with her husband Sukhlal, a relative of the appellants, came with them and prevented them for leaving the house;
- vii) in the morning when the neighbours went to the house of appellant Rabi, they did not find the body of Chunaram(deceased);
- viii) on their asking, all the three appellants pleaded ignorance of any incident in their house;
- ix) on the night of occurrence as well as on the following morning Padmarani, mother of appellant Rabi, was found wiping off traces of blood from the courtyard;
- x) on 24.2.73 at 11.30 A.M. the Investigating Officer (PW 6) seized some blood stained earth and control earth and the branch of an encalyputs tree from the courtyard;
- xi) pursuant to the statement of appellant Rabi and being led by him, the Investigating Officer went to the Chamtubad forest on the same day at 16.05 hours where the dead body was kept concealed, covered by branches of a tree and dried leaves;
- xii) the dead body was pointed out to Investigating Officer by appellant Rabi;
- xiii) Rabi also brought out a spade and a number of ropes from the water of a canal inside the forest."

7. The High Court then held that the above circumstances together with the evidence of the medical officer (PW 7) would lead to the one and only conclusion that Rabi Murmu and the two appellants conjointly committed murder of Chunaram by brutally assaulting him with a spade and lathis and that they had also removed and concealed the dead body in the forest in order to keep it away.

8. It was urged for the two appellants, Kamal Murmu and Lakhiram Murmu in the High Court that

so far the appellants were concerned, all that could be said to have been established was that they were standing by the side of the dead body at 1 a.m. in the house of Rabi Murmu, and they were, at the most, waiting there to help the appellant Rabi Murmu in removing the dead body to the forest. That would mean that if at all they were present and helped in removing the dead body; they could be found guilty under section 201/34 IPC and not under section 302/34 I.P.C. This contention was rejected by the High Court by referring to the injuries which according to PW 7 showed that different weapons like a spade and a lathi must have been used and that, therefore, the offence could not have been committed by one person alone. The High Court also observed that the fact that the appellants had threatened PW 1 and her husband when they enquired about the incident and the fact that the accused told them not to shout and then refused to hand over the dead body and the further fact that these two appellants were arrested only on 28.2.1983 would show that they were absconding from the village before the arrival of the police and all these circumstances would lead to the inference that they had also taken part in the murder of Chunaram. The High Court also inferred from the evidence of PW 2 that the deceased must have been brought to the house of Rabi Murmu either by force or by deceitful means at that unearthly hour and this must have been preplanned by all the three accused, Rabi Murmu and the two appellants. The High Court further inferred from the evidence of PW 2 that the dead body was recovered from a place two miles away and it could not have been carried to such a long distance suspended to a wooden pole unless Rabi Murmu had the help of the two appellants.

9. It was on the above basis that the High Court affirmed the conviction and sentence of these two appellants.

10. In this appeal it is contended by the learned counsel for the appellants that the circumstantial evidence referred to by the High Court in its judgment is not sufficient to convict the appellants for committing the murder of Chunaram and the sentence under Section 302/34 I.P.C. is liable to be set aside. Learned counsel submits that there is no basis for the inference drawn by the High Court that the two appellants must have had a role to play in bringing Chunaram to the house of Rabi Murmu and there is no material to show any common intention on the part of the appellants and Rabi Murmu to commit the murder of Chunaram. Learned Counsel also submits that there is equally no evidence to show that as part of the said scheme the appellants must have participated in the murder of Chunaram at the residence of Rabi Murmu. The only evidence in the case is that of PW 1 and her evidence only shows that these two appellants were standing near the dead body of Chunaram at 1 a.m. at the residence of Rabi Murmu. That part of PW 1's evidence in the Sessions Court wherein she stated that the appellants were also found tying the body had been discarded by the High Court as being inadmissible.

11. We are of the view that the contention of the learned counsel for the appellants is liable to be accepted. In this context it is necessary to refer to the principles laid down by this Court in *Earabhadrapa alias Krishnappa Vs. State of Karnataka* [1982 (2) SCC 330] to the following effect:

"In a case in which the evidence is purely of a circumstantial nature, the facts and circumstances from which the conclusion of guilt of the accused is to be drawn must not only be fully established beyond reasonable doubt and the facts and circumstances should not only be consistent with the guilt of the accused but they must be in their effect entirely incompatible with the innocence of the accused and must exclude every reasonable hypothesis consistent with his innocence."

12. Examining the thirteen pieces of circumstantial evidence listed out in the judgment of the High

Court which we have already set out - it will be noticed that circumstance Nos. (iii), (iv), (v) and (viii) only are relevant so far as the appellants are concerned. Circumstance No. (iii) merely states that the appellants were found standing by the side of Rabi Murmu. Circumstance No. (iv) states that the appellants and Rabi Murmu threatened PW 1 and asked her not to shout. Circumstance No. (v) states that the appellants and Rabi Murmu refused to accede to the demand of PW 1 and her husband to handover the dead body. Circumstance No. (viii) states that when the appellants and Rabi Murmu were asked by the neighbours they pleaded ignorance of the incident.

13. In our view, from the aforesaid circumstances, it is not possible to infer any common intention on the part of the appellants for committing the murder of Chunaram or in the actual act of killing him.

14. The High Court no doubt referred to the evidence of the medical officer, PW 7 to show that the nature of injuries revealed that more than one weapon must have been used namely a spade and a lathi. In our view, from that fact alone, it is not possible to presume or infer the participation of the appellants in the crime.

15. For the aforesaid reasons, this appeal is allowed and the judgment of the High Court is set aside so far as the appellants conviction and sentence under Section 302 I.P.C. read with 34 is concerned. As the appellants have already undergone the sentence of one year for conviction under Section 201 read with Section 34, they shall be released.