

Sudama Roy @ Jadav & Anr.

Vs

State of West Bengal

(M. M. Punchhi, Sujata V. Manohar JJ)

24.10.1997

JUDGMENT

MRS.SUJATA V.MANOHAR,J.

1.This is an appeal from the judgment of the High Court of Calcutta upholding the conviction of the appellants by the Additional Sessions Judge, Burdwan under Section 302 of the Indian Penal Code and sentencing the appellants to imprisonment for life as also convicting the appellants under Section 201 of the Indian Penal Code and imposing a sentence of rigorous imprisonment for three years and fine of Rs.2,000/, in default to undergo further rigorous imprisonment for six months; the sentences to run concurrently.The first appellant is the father-in-law of the deceased and the third appellant is the husband of the deceased.The special leave petition from which this appeal arises was filed by three petitioners; the first petitioner being the father-in-law of the deceased, the second petitioner being the son of the first petitioner and brother of the third petitioner; and the third petitioner being the husband of the deceased.The special leave petition in respect of the second petitioner has been dismissed since he failed to surrender.

2.The prosecution case commenced on account of a complaint lodged by Aarti Ghosh (PW.1), the mother of the deceased, on 17th of August, 1983.The complainant alleged that she had given her 13 years' old daughter Saraswati in marriage to appellant No.3 in the month of February 1983.But for the last three or four months she could not find any trace of her daughter.On inquiring at Saraswati's in-laws' house she was told that her daughter had gone to witness a cinema and later, she was told that Saraswati had been sent to the appellants' native house at Arrah for delivery of a child which she was carrying.When she was unable to trace her daughter she finally complained to the police station Durgarpur on 17th of August, 1983.In the meanwhile, the three appellants had disappeared and the house was under lock and key.Ultimately, on 30th of August, 1983, the first appellant was arrested.It was at his instance that the spot where the dead body of Saraswati had been buried was identified and her dead body was exhumed.Medical examination showed ante-mortem injury on the head which was homicidal in nature.Ultimately, a charge-sheet was filed which led to the conviction of the accused by the Sessions Court which is upheld by the High Court.

3.The evidence is circumstantial.PW.8, Sadhu Singh, who is a friend and neighbour of appellant No.3 has given evidence to the effect that 2-3 months prior to the discovery of the dead body, appellant No.3 had come to his house and asked him to accompany appellant No.3 to his own house.When he went to the house of appellant No.3 he saw the dead body of the wife of appellant No.3 lying on a cot in the room. At the request of appellant No.3, he and the appellants as well as a maternal uncle of appellants 2 and 3 carried the dead body of Saraswati to a vacant field by the side of a drain towards the north-eastern side of the hut of the accused.He dug a ditch by the side of the drain.The dead body along with her wearing apparels was buried there.He has also said that two or three months thereafter the dead body was recovered in the presence of police officers and others on

the spot pointed out by the first appellant.PW.7 who is a resident of the same basti has also deposed that on being called by the police officer, he went to the side of a nallah near Tamala Bridge.The police officer asked the first appellant where the dead body was.The first appellant pointed out the place where PW.7 dug.A skeleton was recovered from that place in a decomposed state wearing a saree and bangles.The mother of the deceased came to the spot and identified the skeleton as the skeleton of her daughter.The mother of the deceased has also given evidence.She has stated that she identified the dead body of her daughter.

4.In defence, the appellants put up a story that the deceased Saraswati had not died two or three months prior to August, 1983.She was alive till August 1983 and was admitted at Arrah Hospital on 14.8.1983 for delivery of a child. They have produced a xerox copy of the hospital ticket and exhibit 5, seizure list dated 18.8.1983 y which a female indoor register of Sadar Hospital, Arrah was seized.In that register there is an entry that one Saraswati Roy wife of Paras Roy of Manichapara was admitted in the hospital on 12.8.1983 with full term pregnancy.Both the Sessions Court as well as the High Court have disbelieved this evidence for very cogent reasons.The doctor of the Arrah Hospital, PW.5, has given evidence that the lady patient who was admitted on 13.8.1983 was having a full term pregnancy.She was about 22 years' old.On the following day 3-4 persons including one advocate came to her and requested her to transfer the patient to the Patna Medical College Hospital for better facilities there.She handed over the original bed head ticket of the patient to them.4-5 days there after the lady who approached her for admission of the patient to Arrah Hospital came to her residence with exhibit 6 and requested her to make it afresh as original.In between, as the police had come to the hospital to enquire about the matter she became suspicious and seized exhibit 6 from the lady and handed it over to the police.The doctor has deposed that the age of the lady patient who was admitted was about 22 years while the deceased was aged about 14 or 15 years.According to the postmortem report the girl whose skeleton was examined was aged between 14 and 15 years.Also the patient who was admitted in the hospital was having full term pregnancy while, looking to the date when the marriage of the deceased took place, at the highest, she could have been pregnant from six months or less.Both the courts have, for cogent reasons, come to the conclusion that the deceased was never admitted either to Arrah Hospital or thereafter to Patna Medical College Hospital and that the entire evidence in this connection has been concocted for the purpose of defending the charges in the present trial.

5.The autopsy of the dead body has revealed that the death was on account of head injury which was anti mortem and homicidal in nature.The injury could have been caused by being struck upon the head by a hard, blunt object like an iron rod.

6.The appellants gave false and evasive replies to PW.1, the mother of the deceased when she repeatedly inquired about the whereabouts of her daughter. They have concocted evidence to falsely show that the deceased was alive in August 1983.The spot where the body was buried was pointed out by accused No.1.Looking to the circumstantial evidence which has been discussed in detail by the Sessions Court as also by the High Court both the courts have convicted these two appellants under Section 302 as also under Section 201 of the Indian Penal Code.We do not see any reason to take a different view.Hence the appeal is dismissed and the judgment and order of the High Court is upheld.