

SUPREME COURT OF INDIA

Chunda Murmu

Vs.

State of W.B.

Crl.A.No.1357 of 2008

(Swatanter Kumar and Ranjan Gogoi JJ.)

10.05.2012

JUDGEMENT

RANJAN GOGOI, J.

1. This appeal, by special leave, is directed against the judgment dated 10.04.2006 passed by the High Court of Calcutta affirming the conviction of the accused-appellant as recorded by the learned trial court under Sections 302, 364 and 201 of the Indian Penal Code (IPC). The accused-appellant, Chunda Murmu, has been sentenced to undergo rigorous imprisonment for life under Section 302 of IPC whereas under Sections 364 and 201 of IPC each, he has been sentenced to suffer rigorous imprisonment for seven years alongwith fine. All the sentences have been directed to run concurrently.

2. The case of the prosecution, in short, inter-alia, is that on 15.03.1990, one Anil Mardi, P.W.7, lodged a complaint in the Habibpur Police Station to the effect that his sister Kamla, who was married to the accused appellant for about six years, had been missing since 10.03.1990. It had been further stated, in the complaint filed, that though the complainant had searched for his sister, her whereabouts were not known and that the complainant suspected that she was murdered by her husband, namely, the accused-appellant.

3. On the basis of the aforesaid complaint, P.W.16 P.K. Dutta, Sub- Inspector of Police, filed the formal FIR Ex.6 on the basis of which Habibpur P.S. Case No. 17/90 was registered. In the course of investigation, the accused-appellant was arrested on 15.3.1990 at Palashdanga, whereafter, he was brought to Habibpur Police Station.

According to the prosecution, the accused-appellant, while in custody, had made a statement that he had murdered his wife and had kept the dead body concealed in the khuti ghar of his father at village Horegram.

Furthermore, according to the prosecution, on the basis of the aforesaid statement made by the accused, the dead body of deceased Kamla was recovered from the khuti ghar of one Charan Murmu, the father of the accused-appellant, in the presence of seven witnesses including the Block Development Officer, Shri Manas Kumar Mandal, P.W.15. Thereafter inquest was held on the dead body which was sent for postmortem examination. In the report of the post mortem, the cause of death was mentioned by the Doctor as homicidal throttling. In the course of investigation, the I.O. PW 16, also seized some mud stained hay from the Kuthi ghar, some earth etc. in the presence of witnesses vide Seizure List Ex.5. The wearing apparels of the deceased, i.e. mud stained green check saree, mud stained green petty coat, black blouse stained with mud were also seized in the presence of witnesses vide Seizure List Ex.3. Thereafter, at the conclusion of the investigation, chargesheet was submitted against the appellant-accused and his father Charan Murmu under Sections 302/364/201/34 of IPC. The father of accused-appellant died and charges under the aforesaid Sections of the IPC were framed against the accused appellant.

4. The accused-appellant pleaded not guilty to the charges framed and claimed to be tried. In the course of the trial, 16 witnesses were examined by the prosecution and none by the defence. However, the accused appellant was examined under Section 313 Cr.P.C. in the course of which he had stated that he had been falsely implicated in the case. Thereafter, at the conclusion of the trial, the accused-appellant had been convicted and sentenced as aforesaid.

5. We have been elaborately taken through the entire evidence on record by the learned counsel for the appellant. A consideration of the evidence of the prosecution witnesses examined in the case would go to show that there are no eye witnesses to the occurrence and the prosecution has sought to bring home the charges levelled on the basis of certain circumstances that have been unfolded by the witnesses examined. Having considered the evidence on record, we are of the view that in the present case the prosecution relies on the following circumstances to establish the guilt of the accused:

(1) The accused-appellant and the deceased were married for about 6 years and that there were frequent quarrels between the two.

(2) A salish (meeting) was held to resolve the disputes between the husband and the wife which, however, was not attended by the accused and his deceased father.

(3) The deceased had left the matrimonial home and went to reside with PW 6 Bishu Murmu.

(4) The accused had brought back his wife to his home from where she had gone missing from 10.03.1990.

(5) Despite a vigorous search to locate the deceased, her whereabouts could not be known.

(6) That the accused was arrested on 15.03.1990 from Palashdanga and while in police custody he had made a statement that he had killed his wife and kept the body hidden in the kuthi ghar of his father.

(7) On the basis of the aforesaid statement the dead body was recovered from the place pointed out by the accused in the presence of PW 15- Block Development Officer and other witnesses including PW 5 - Subhas Soren and PW 6 Bishu Murmu, who had dug out the dead body, as directed by the police.

6. The short question that needs to be answered is whether all or any of the aforesaid circumstances have been proved and established and if so whether on the basis of the said circumstances the conviction and sentence of the accused is tenable in law?

7. Learned counsel for the appellant has vehemently contended that the prosecution version that the accused was arrested on 15.03.1990 and that after his arrest he had made a statement leading to recovery of the dead body cannot be believed inasmuch as it is proved and established by the other materials on record that the appellant was produced before the Magistrate on 17.03.1990 following his arrest which is claimed to have been made on 15.03.1990. According to the learned counsel, the very fact that the accused appellant was produced before the Magistrate on 17.03.1990 would go to show that the prosecution version with regard to his arrest on 15th March and the alleged statements made by him on the

said date are extremely doubtful. It is further urged by the learned counsel that the alleged statement made by the accused was not in the presence of police officers but the same was made before the witnesses examined by the prosecution. It is also contended by the learned counsel that at the time of recovery of the dead body, PW 15- the Block Development Officer, could not identify the accused. Learned counsel had further pointed out that in the course of the examination of the accused under Section 313 Cr.P.C., the recovery of the dead body and other articles as made by the prosecution had not been put to the accused so as to enable him to explain the said circumstances appearing against him.

8. In reply, learned counsel appearing for the State has contended that all the proved circumstances give rise to a complete chain of events which unerringly point to only one direction, i.e., it is the accused and nobody else who had committed the crime. Learned counsel has also pointed out the evidence of PW 16 the Investigating Officer wherein the reasons for non production of the accused before the learned Magistrate at any time before 17.03.1990 have been explained. By referring to the evidence tendered by the same witness, i.e., the Investigating Officer (PW 16) it has been pointed out that the statement of accused leading to recovery of the dead body was made while the accused was in police custody and that the said statement was so made in the presence of the police officers and as well as the other witnesses examined by the prosecution. Insofar as the circumstances put to the accused in his examination under Section 313 Cr.P.C. is concerned, learned counsel has pointed out that the recovery of the dead body was put to the accused in the course of such examination and there is no lacuna in this regard, as contended on behalf of the appellant.

9. The fact that the accused and the deceased were married and that there were frequent quarrels between the two is not seriously disputed. It is also not in dispute that the deceased had left her husband and had been residing with PW 6 from whose house she was brought by the accused on 10.03.1990. Insofar as the issue with regard to the arrest of the accused on 15.03.1990 is concerned we find that, the evidence of PW 16 - the Investigating Officer of the case does contain an explanation for the production of the accused before the learned Magistrate on 17.03.1990 despite his arrest on 15th March. If the said evidence of PW 16 is to be reasonably read, the prosecution version of the arrest of the accused on 15th of March remains unaffected. From the evidence of Investigating Officer it is also clear that the statement of the accused leading to the recovery of dead body was made while he was in custody and the same was in the presence of police officers, though, at that time some other persons were also present in the police station. The recovery of the dead body, therefore, is a fact which is admissible in evidence

under Section 27 of the Evidence Act. The absence of identification of the accused by PW 15 at the time of recovery of the dead body, according to us, will not affect the core of the prosecution case. Insofar as the alleged defects in the examination of the accused under Section 313 Cr.P.C. is concerned, having perused the record, we find that all incriminating circumstances relevant to the case had been put to the accused and no material irregularity causing any prejudice to the accused can be attributed to the prosecution in this regard. All the circumstances relied upon by the prosecution, therefore, can be held to be proved beyond reasonable doubt. The said circumstances, in our considered view, are more than adequate to enable us to come to the conclusion that the conviction of the accused so far as the offences under Sections 302 and 201 IPC is concerned had been correctly made in the facts and circumstances of the present case. We therefore affirm the aforesaid part of the order of the High Court.

10. Insofar as the offence under Section 364 IPC is concerned, we have considered the materials on record on the basis of which the aforesaid offence has been held to be proved. According to us, the action of the accused in bringing back his wife to the matrimonial home from the house of PW 6 Bishu Murmu cannot attract the necessary ingredients of either the offence of kidnapping or abduction so as to attract Section 364 IPC.

11. Consequently this appeal is partly allowed. The conviction and sentence under Sections 302 and 201 IPC is maintained whereas the conviction under Section 364 IPC and the sentence imposed is set aside.