

SUPREME COURT OF INDIA

Kashinath Mondal

Vs.

State of W.B.

Crl.A.No.1591 of 2007

(Surinder Singh Nijjar and Ranjana Prakash Desai JJ.)

31.07.2012

JUDGMENT

(SMT.) RANJANA PRAKASH DESAI, J.

1. The appellant – Kashinath Mondal was tried by the Additional Sessions Judge, Arambagh, Hooghly in S.T. Case No.66 of 2000 for offences punishable under Sections 376 and 302 of the Indian Penal Code (for short, “the IPC”). Learned Sessions Judge convicted the appellant under Sections 376 of the IPC and sentenced him to suffer RI for 10 years and to pay a fine of Rs.5,000/-, in default, to suffer further RI for one year. The appellant has also been convicted under Section 302 of the IPC and sentenced to suffer RI for life and to pay a fine of Rs.10,000/-, in default to suffer RI for two years. The substantive sentences are ordered to run concurrently.

2. According to the prosecution, on the night of 30/10/1997, complainant - Tarak Chandra Mondal was sleeping in his house. His house has ground plus one floor. There are two rooms on the first floor of the said house. Out of the two rooms, one room was under the occupation of the appellant, who is his brother. The adjacent northern room of the first floor was under the occupation of complainant’s daughters – Pampa and Sampa. The entire ground floor premises were occupied by members of the complainant’s family which includes his mother. The ground floor premises were enclosed by iron grills. On the night intervening 30/10/1997 and 31/10/1997, Sampa, the second daughter of the complainant had gone out to watch a video show, which was held very close to the complainant’s house to celebrate Kali Pooja. After departure of Sampa, the entrance gate was closed by putting padlock. One key each of the said padlock was retained by the complainant and his

brother. The eldest daughter of the complainant – Pampa was alone in her room on the first floor. The appellant was sleeping in his room. His wife had gone to her parent's house. It was not possible for anyone to enter or leave the house without unlocking the gate.

3. At about 2.45 a.m., Sampa returned from the video show. On hearing the call of Sampa, complainant's mother opened the gate. Sampa then straight away went to her room on the first floor. She saw her elder sister Pampa lying dead in a naked condition on the floor. She started shouting. On hearing her cries, the complainant and members of his family rushed to the upper floor. On seeing the dead body of Pampa, they also started shouting. At that time, the appellant came out from his room, which is situated adjacent to the room where the body of Pampa was lying. The neighbours of the complainant also came to the place of occurrence. Since at the relevant time, Pampa and the appellant were the only occupants of the first floor and since the exit doors of the house were locked from inside, the complainant firmly believed that the heinous crime of murder and rape had been committed only by the appellant. The complainant, then lodged a written complaint before O.C., Khanakul Police Station. In the complaint, the complainant disclosed that his relations with his brother Kashinath i.e. the appellant were strained on account of property dispute. He further stated that on a few occasions, quarrels had taken place between the appellant and his wife and daughters over domestic affairs and the appellant had threatened them of dire consequences.

4. On the basis of the said written complaint, police registered a case under sections 376 and 302 of the IPC against the appellant and, after completion of investigation, the appellant came to be charged as aforesaid. The appellant denied the prosecution case. He claimed to be tried. After completion of trial, learned Additional Sessions Judge, Hooghly convicted the appellant as aforesaid. The appeal preferred by the appellant was dismissed by the High Court. Hence, this appeal.

5. We have heard Mr. Ansar Ahmad Chaudhary, learned counsel appearing for the appellant and Mr. Raja Chatterjee, learned counsel appearing for the respondent.

6. Mr. Ansar Ahmad Choudhary submitted that learned Sessions Judge as well as the High Court fell into a serious error in convicting the appellant. Counsel submitted that the prosecution case rests on circumstantial evidence. However, the chain of circumstances, does not point unerringly to the guilt of the appellant. It cannot be said that no other hypothesis but that of the guilt of the appellant is possible on the basis of the evidence adduced by the prosecution. Counsel pointed

out that PW-2 Dr. Gokul Modak has, in his cross-examination, stated that it cannot be conclusively opined in the absence of any positive report of the chemical examiner that the victim was raped. Therefore, the factum of rape is not proved. Counsel pointed out that PW-5 Sri Kanta Khute, a friend of the deceased has stated in his deposition that friends of the deceased viz. he, Sanju Mondal and Subhankar used to visit the deceased and he had seen the deceased at the video show on the night of the murder. It is, therefore, possible that someone else entered the house of the deceased and murdered her. Counsel submitted that the conduct of the appellant militates against any possibility of his involvement in the crime. The appellant on hearing voices of people came to the spot of incident. If he was guilty of murder, he would have run away from there. Counsel submitted that the prosecution failed to obtain finger prints from the site of offence. In the absence of any clinching evidence, the appellant cannot be convicted for rape and murder. Counsel submitted that admittedly, the relations between the appellant and the family of the deceased were strained on account of land dispute. The possibility of the complainant involving the appellant in a false case, therefore, cannot be ruled out. Counsel submitted that in the circumstances, the appellant deserves to be acquitted. In any case, benefit of doubt must be given to him. Mr. Raja Chatterjee on the other hand supported the impugned judgment and order.

7. Evidence of PW-1 Tarak Chandra Mondal, the complainant, who is the father of the deceased is very relevant. According to him, on the ground floor of his house, there are two rooms. Similarly, on the first floor of his house, there are two rooms. He stated that on the night of the incident i.e. on 30/10/1997, he was sleeping in the room on southern side of the ground floor along with his wife PW-14 Kanan and youngest daughter Anita. The room on the northern side of the ground floor was occupied by his mother PW-18 Sagarika Mondal. He stated that the verandah on the eastern side of ground floor was enclosed by iron grill fencing. The said iron grill gate was locked on the night in question. According to him, verandah on the northern side of his house was enclosed by wall with an iron grill gate. There are two grill gates on the eastern verandah each fitted in front of the two rooms on the ground floor. These two gates were locked on the night in question. There is a similar verandah in front of the rooms on the first floor. Those rooms are also covered by grill fencing. The staircase on the northern side of the house leads to the first floor verandah. The northern room on the first floor was occupied by his two daughters viz. deceased Pampa and PW-17 Sampa. The southern room on the first floor was occupied by the appellant. The staircase landing on the first floor is situated near the northern room, which was occupied by his two daughters. The said staircase leads to the roof of the said house. At the landing of the staircase on the roof, there is one grill gate. The said grill gate was locked at the relevant time.

The situation of the house and the description of the locking arrangement deposed to by PW-1 Tarak Chandra Mondal is important because it establishes that at the relevant time, when the offence is stated to have been committed, all the gates of the house were locked from inside. It must be stated here that this case of PW-1 Tarak Mondal is supported by his wife PW-14 Kanan Mondal, his second daughter PW-17 Sampa and his mother PW-18 Sagarika Mondal. They have stood the test of cross-examination very well.

8. PW-1 Tarak Mondal further stated that in the night of 30/10/1997, the appellant alone was present in the southern room of the first floor. His wife had gone to her father's place. A video show was arranged on the occasion of Kalipuja near his house. His second daughter PW-17 Sampa had gone to the show and deceased Pampa was alone in her room situate on the northern side of the first floor. He further stated that all the members of his family had gone to bed at about 9.00 p.m. At that time, he saw the appellant going upstairs after locking the entrance gate. At about 12 O' clock in the night, his wife woke him up and told him that some unusual sound was coming from upstairs. He told her to ignore the same as that might be the sound of generator, which was used for screening the video show. According to him, at about 2.30 p.m. PW-17 Sampa returned from the video show. PW-18 Sagarika Mondal, the mother of the complainant opened the south-eastern gate. PW-17 Sampa went upstairs and raised a cry. He and his wife PW-14 Kanan and his mother PW-18 Sagarika rushed upstairs. He found deceased Pampa lying unconscious on her back on the floor of her room. There were no clothes on the lower part of her person. He found her gamchha beneath her neck. He also found marks of violence on her neck. According to him, he immediately went up and checked the gate on the roof. He found that the gate was locked. On hearing their cries, the appellant came out of his room. On being questioned, the appellant who was fumbling stated that he was not responsible for this mischief. PW-1 Tarak added that his relations with the appellant were strained on account of property dispute. He has been cross-examined at length. At the cost of repetition, it must be stated that his case that the house was locked from inside on the night in question has remained undented. Both the courts have recorded this finding and we find no difficulty in concurring with them.

9. As rightly held by both the courts, this is not a case where PW-1 Tarak can be accused of this ghastly crime. He was sleeping on the ground floor with his wife and he woke up only after Sampa arrived. Defence has also not come out with this case. Evidence on record establishes that, at the relevant time, apart from PW-1 Tarak and the appellant, there were no other males in the house and pertinently on the first floor of the house where Pampa was found raped and murdered only the

appellant was present. Once it is held that the deceased and the appellant were the only persons on the first floor of the house and there was no possibility of anyone else entering the house prior to PW-17 Sampa's arrival in the house, the only conclusion which can be drawn is that it is the appellant who was responsible for Pampa's murder. This conclusion is irresistible and is supported by the admitted strained relationship between the appellant and the complainant's family on account of property dispute. It is true that there is no eye-witness to the offence. But, what persuades us to agree with the courts below is the fact that PW-18 Sagarika, the mother of the appellant has deposed against him. No mother would ever falsely involve her son in such a ghastly crime.

10. Assuming that the deceased had gone for the video show as stated by PW-5 Sri Kanta Khute that has no relevance to the prosecution case. According to PW-5 Sri Kanta Khute, he had seen the deceased at the video show between 7.00 a.m. and 8.00 p.m. It is significant to note that except this witness no other witness has stated so. It is also significant to note that PW-1 Tarak's evidence indicates that on the fateful night, the family had dinner; that Pampa went upstairs after having dinner; that he saw the appellant going upstairs at about 9.00 p.m. and that all of them went to sleep at about 9.00 p.m. So Pampa was at home at 9.00 p.m. Moreover, the incident occurred late in the night. This is clear from the evidence of PW-1 Tarak Mondal and PW-14 Kanan. PW-14 Kanan has stated in her evidence that she heard some unusual sound from the upper floor and she woke up her husband who stated that the sound must be that of the generator. PW-1 Tarak Mondal has confirmed this. The incident, therefore, took place at about 12 O' clock in the night and, therefore, deceased Pampa being at the video show between 7.00 a.m. and 8.00 p.m., assuming it to be true, has no adverse impact on the prosecution case.

11. That death was homicidal is not denied. It was argued that the commission of rape is not proved. In this connection, it is necessary to have a look at the evidence of PW-2 Dr. Gokul Modak, who had conducted the postmortem of deceased Pampa. PW-2 Dr. Modak has stated that on examination, he found the following injuries:

- a) 3 Nos. bruises of " x " of the anterior aspect of front of the neck.
- b) Bruised discoloration over flank and back of neck.

c) Abrasions of multiple sizes and numbers over the dorsum of both hands and fingers.

On dissection, he found the following:

a) Collection of blood along with patches of hemorrhages over the hyoid cartilage and neck muscle

b) Hyoid bone fractured

c) Deep Synosis in the nails of toes and fingers

d) Lungs were congested accumulation of fluid and blood e) Hymen was rupture with bloody tinge.

PW-2 Dr. Modak stated that the death of the victim was caused by anti-mortem rape and strangulation. Death was homicidal in nature.

12. So far as charge of rape is concerned, PW-2 Dr. Modak's evidence and the finding recorded in the Post Mortem Notes which we have reproduced in the preceding paragraph establish that it is proved. It is true that in the cross-examination, PW-2 Dr. Modak has admitted that whether the rupture was old or of recent origin is not stated in the report and that the blood detected at the rupture site might have been menstrual blood. But, he has categorically stated that the dimensions of the vagina of the victim do not indicate that she was habituated to sexual intercourse. His opinion that there was rape is therefore correct and, in the circumstances, which we have noted hereinabove, no one but the appellant could have been responsible for the rape.

13. The appellant was arrested on 31/10/1997. His lungi was seized on the same day. Serological report (Ex-9) records that semen was found on the lungi. The report further states that no spermatozoon could be detected in the urethral swab of the appellant. This finding is not relevant because PW-6 Mr. Debasis Som, who has clinically examined the appellant, has stated that he examined the appellant on 5/12/1997 whereas the incident had taken place on 31/10/1997. Though the pubic hair and vaginal swab of the deceased were preserved and sent for chemical analysis, the report of the Serologist does not help the prosecution because the Serologist could not conduct analysis because of insufficiency of blood. PW-2 Dr. Modak has stated that the evidence of spermatozoon in vaginal swab conclusively indicates sexual intercourse, but he has also stated that the spermatozoon may not

be detected in vagina 10 hours after rape. Obviously, vaginal swab was chemically analyzed after a long lapse of time after the rape. We have no manner of doubt that had the Investigating Agency obtained the samples in a scientific manner and promptly sent them to the Serologist that would have lent further support to the prosecution. There is some substance in the grievance of learned counsel for the appellant that the Investigating Agency also did not obtain finger prints from the place of incident. But, it is well settled that remissness and inefficiency of the Investigating Agency should be no ground to acquit a person if there is enough evidence on record to establish his guilt beyond reasonable doubt. It is said by this court in a number of cases that irregularities or deficiencies in conducting investigation by prosecution is not always fatal to the prosecution case. If there is sufficient evidence to establish the substratum of the prosecution case, then irregularities which occur due to remissness of the Investigating Agency, which do not affect the substratum of the prosecution case, should not weigh with the court. As we have already noted the only male apart from PW- 1 Tarak, the father of the deceased, who was present on the fateful night with deceased Pampa in their house was the appellant. The house was locked from inside. Therefore, we have no hesitation in confirming the concurrent findings recorded by the trial court and the High Court on minute examination of the evidence that it is the appellant who was responsible for the rape and murder of deceased Pampa. It is argued that the conduct of the accused shows that he is innocent. The accused did not run away from the scene of offence. We find no substance in this submission. In the facts of this case, if the appellant had ran away, that would have, in fact, weakened his case and strengthened the prosecution case. The decision to remain at the spot appears to be a calculated one. In the circumstances, we are of the opinion that the prosecution has established its case beyond reasonable doubt. There is no merit in the case.

14. The appeal is dismissed.