

SUPREME COURT OF INDIA

Subhasish Mondal @ Bijoy

Vs.

State of West Bengal

Crl.ANo.1391 of 2008

(S.J.Mukhopadhaya and V.Gopala Gowda, JJ.)

21.11.2013

JUDGMENT

V. Gopala Gowda, J.

1. This appeal is filed by the appellant-Subhashish Mondal @ Bijoy, against the final judgment and order dated 29.09.2006, passed by the High Court at Calcutta in Criminal Appeal No. 398 of 2003, whereby the High Court dismissed the appeal of the appellant and upheld the verdict of the trial court convicting him under Section 302 of the Indian Penal Code (in short "IPC") on the charge of double murder of his brother and mother and sentencing him to imprisonment for life and to pay a fine of Rs.1,000/- and in default of payment of fine, to undergo further simple imprisonment for three months. The present appeal is filed urging certain grounds and legal contentions, praying to set aside the impugned judgment and order of the High Court and to reverse the conviction and sentence passed by the courts below.

2. The facts of the case are stated in brief. The appellant, Subhasis Mondal was charged with the murder of his elder brother, Debasis Mondal and his mother, Bithika Mondal at their house in Kharagpur town, based on the FIR filed by one Srinivas Rao who used to reside in the quarter beside the quarter of the victims. The trial court found him guilty for the double murder of his brother and mother and sentenced him to imprisonment for life under Section 302 of the IPC. Against the judgment and order of the trial court, the appellant filed an appeal before the High Court pleading innocence and lack of evidence and prayed for reversal of the conviction and sentence. The High Court dismissed the

appeal and upheld the verdict of the trial court. Being aggrieved by the judgment and order of the High Court, the appellant has filed the present appeal.

3. The prosecution case giving birth to the sessions trial was that the appellant, on the night of September 1, 2001, had allegedly killed both his elder brother and his mother at their railway quarter No.2 D/2, Old Settlement, Kharagpur Town and this fact of the gruesome murder of both the victims came to light when an FIR was lodged by one A. Srinivas Rao who was also a Railways Employee and who used to reside in the quarter just beside the quarter of the victims. Mr. Srinivasa Rao in his written complaint dated 1st September, 2001 alleged that he heard screaming sounds coming from the next door quarter and so he, along with his relatives and other neighbours went to quarter No.2 D/2 and found the dead body of Debasis, the brother of the appellant and his mother, Bithika in a precarious condition with serious injuries on her person. Bithika was subsequently taken to the hospital for treatment but she succumbed to her injuries. On getting this information, the police visited the place of occurrence and there, Mr. Rao presented his written complaint about the murder without any mention of the assailant as it was still unknown. On receipt of the written complaint, the case was investigated into and the police collected evidence from which it was reasonably felt that the appellant committed the murder of his mother and elder brother and thus, a charge sheet was submitted against the appellant under Section 302 of the IPC. The learned Additional Sessions Judge framed charge under Section 302, IPC against the appellant for murder of his mother and elder brother and the appellant pleaded not guilty to the charge and claimed trial.

4. The prosecution examined in all 12 witnesses which included A. Srinivas Rao and some of the people of the locality, P.W 2 - Rupali Sen, the sister of the appellant and his deceased elder brother and daughter of his deceased mother, the doctor who conducted the Post Mortem examination, the doctor who examined the appellant soon after his arrest by the Investigating Officer (I.O) and the I.O himself. The learned trial judge after considering the prosecution evidence, both oral and documentary, and after hearing the contentions of both the appellant and the State finally came to the conclusion that the appellant coming from Calcutta on 31st August, 2001 made his entry into the quarter of Debasis in the night of September 1, 2001 and finding his mother and brother defenseless, killed them both to take revenge since Debases got employment on compassionate ground on the death of his father and the appellant was deprived of an employment opportunity. The trial court reached this conclusion, mainly on the oral testimony of P.W.2 Rupali Sen, sister of the appellant and on several circumstances which was gathered from both oral and documentary evidence of the prosecution. The trial court on appreciation of evidence on record held the appellant guilty of the murder of his brother and mother under Section 302 of the IPC and sentenced him to life imprisonment.

5. The appellant appealed against the judgment of the trial court in the High Court pleading innocence, and submitted that there were no eye witnesses to depose against the appellant and that he should be acquitted. The High Court held that there was sufficient material on record to lend support to the conclusion of the trial court that the appellant,

feeling himself deprived of the job of his father held a deep grudge against his mother and elder brother and as he resided in Calcutta, he perhaps came on 31st August, 2001 and on 1st September, 2001, he entered into the room through the exit hole of the bathroom and thereafter again escaped through the said hole and this was corroborated by the oral testimony of P.W 2- Rupali Sen, and also from the circumstance that no article was stolen, the door of the room was closed from inside and the appellant himself received some injuries due to scuffling and finally, the silver chain of the appellant was recovered near the body of the victims. Thus, all these circumstances together clearly established the fact beyond any reasonable doubt that it was the appellant who killed his elder brother and mother on the night of 1st September, 2001. The High Court held that the prosecution with the help of circumstantial evidence, established a complete chain of events that there was no scope to hold otherwise than to lend support to the guilt of the appellant for the commission of the gruesome double murder. The appeal was accordingly dismissed and the orders of conviction and sentence passed against the appellant under Section 302 of the IPC by the trial court were confirmed.

6. The appellant had filed this appeal against the same and the matter has come before us. The amicus curiae appearing on behalf of the appellant, Mr. Rutwik Panda has contended that the order of dismissal of appeal and upholding the order of conviction as against the appellant is manifestly unjust and illegal as it is against the evidence on record and that the judgment and decision of both the courts below are based on surmises and conjectures and are liable to be set aside. It was further contended that the courts below ought considered that there were glaring discrepancies and contradictions in the evidence of the prosecution witnesses making them unreliable and unbelievable and their evidence was insufficient and untrue. It was also contended that this Court should acquit the appellant on benefit of doubt and the question of improbability of the involvement of the accused in the case on hand and further, that the sentence imposed upon the appellant is too severe.

7. The learned counsel for the respondent-State, Mr. Anip Sachtey has argued that although there were no eye-witnesses to prove the involvement of the appellant behind the gruesome double murder of his mother and elder brother, the circumstances taken as a whole would present only one hypothesis pointing out the guilt of the appellant. He has also contended that the door of the room where the victims were murdered was locked from inside and the murderer entered and exited through an exit hole of the bathroom, and it is clear that only a person having full knowledge of the quarter could have entered and exited that way. Further, not a single article was stolen and from the evidence of P.W.2, Rupali Sen, the sister of the appellant, it is clear that the appellant felt himself deprived of the job of his deceased father which went to his elder brother (the deceased) and so he held a longstanding grudge against both his mother and his elder brother. He contended that the appellant had the motive of vengeance in committing this gruesome double murder of his own mother and elder brother and the order of conviction and sentencing the appellant must be upheld and there is no ground to interfere with the order of conviction or sentence handed to the appellant.

8. We have heard the rival legal contentions and perused the evidence on record. We have to come to the conclusion that the guilt of the accused has been proved beyond reasonable doubt. The contention that the conviction is based entirely on circumstantial evidence with an incomplete chain of events is not tenable. We will examine the evidence on record. The evidence before us is that someone entered and exited the quarter of the deceased through an exit hole of the bathroom and the door of the room in which the brother and mother of accused was found, was closed from inside. The investigation also revealed that a silver chain was found at the scene of the crime, which the P.W.2 stated later on in her deposition that it belonged to her, and the accused had taken that silver chain with locket of Goddess Kali from her prior to the occurrence. She identified the silver necklace lying on the floor by the side of the dead body of Debases, her elder brother and also said that he put a locket of Shiva on the said chain later on. She further stated on record that her brother, the accused used to mix with antisocial elements and was addicted to wine and on account of this, their mother was not inclined to give the service of their deceased father to the accused but instead opined that the employment on compassionate ground be given to the elder brother, Debases and that if it is given to the accused, then he will be spoiled. The complainant, P.W 1, A. Srinivasa Rao has deposed stating that he found Debases in a pool of blood and his mother, Bithika in a pool of blood in the bathroom. He also stated that he found one 'shil' (iron slab), one silver chain with locket and one railway ticket, and four buttons.

9. The P.W 12, the Investigating Officer, Mr. Mallick, the S. I. of Police attached to Kharagpur Police Station deposed that he found the dead body of Debasis, the elder brother of the accused in a pool of blood and was informed that his injured mother was sent to the hospital. He seized one silver chain with lockets of Goddess Tara and God Shiva, and other articles like 'shil', 'nora', blood stained mat, chappal, button etc under a seizure list prepared and signed by him (marked as Exs. 2/2 and 3/1) . He further stated that he arrested the accused at Subhaspally on his way to his sister's house (P.W 2, Rupali Sen) and that he found some scratch marks and injuries on his body which was later examined by the doctor, P.W. 11, who opined that the injuries were caused due to scuffling with another person and could have been inflicted if the accused was an assailant and the victims tried to save themselves from his assault. Legature marks on the neck may be caused to the assailant if the victim had dragged the assailant after pulling the chain which was put on by him at his neck. P.W. 8, the Medical Officer who examined the body of Debasis, the elder brother of the accused stated in his evidence that the injuries may be caused by incriminating substance such as 'nora', which was recovered from the scene of the crime.

10. From the evidence of the witnesses discussed above, it is apparent that the accused had a clear motive to have committed the brutal murder of his elder brother and his mother and the circumstances point to the guilt of the accused. He held a strong grudge against his mother and elder brother as his mother had given the name of his brother for the job of his deceased father instead of his name. The motive of vengeance is established and in cases in which only circumstantial evidence is available, motive assumes a great

importance. In the case of *Bhagwan Dass vs. State (NCT of Delhi)*¹, this Court citing the case of *Wakkar vs. State of U.P.*², held that in cases of circumstantial evidence, motive is very important, unlike cases of direct evidence. In the case at hand, it is evident that the prosecution case that the motive of the accused in killing his elder brother and mother was out of vengeance has to be accepted. The trial court has stated that it was crystal clear that there was a family feud between the accused and the deceased over the service in the railway workshop on the death of their father.

11. The accused was arrested on the same day of the occurrence, when he was on his way to his sister's house. When charged with the offence under Section 302 of the IPC, the accused pleaded his innocence and made one solitary statement that everything is false. There was no attempt of explanation of circumstances or plea of alibi on the part of the accused. The counsel for the accused simply pleaded that the accused be acquitted on the principle of benefit of doubt and that there is no chain of circumstances that can lead to the hypothesis that the accused is guilty of the murder of his elder brother and mother. The judgment of this Court in the case of *Harivardan Babubhai Patel vs. State of Gujarat*³ speaks of this very aspect of a case wherein the accused has merely denied his guilt and failed to give any explanation under Section 313 of the CrPC of the incriminating circumstances against him. The relevant portion is extracted below,

"28. Another facet is required to be addressed to. Though all the incriminating circumstances which point to the guilt of the accused has been put to him, yet he chose not to give any explanation under S.313 of the CrPC except choosing the mode of denial. It is well settled in law that when the attention of the accused is drawn to the said circumstances that inculpated him in the crime and he fails to offer appropriate explanation or gives a false answer, the same can be counted as providing a missing link for building the chain of circumstances... In the case at hand, though a number of circumstances were put to the accused, yet he has made a bald denial and did not offer any explanation whatsoever. Thus, it is also a circumstance that goes against him."

12. In the present case too, the accused has simply entered a plea of innocence. No other explanation has been offered by the accused in spite of the incriminating circumstances that pointed to his guilt. It is our view that this is a suspicious facet of this case, the mere denial of guilt on the part of the accused. This, along with the fact that he was seen loitering around after the occurrence and the silver chain that he took from his sister, P.W. 2, was found at the site of the murder all point to the guilt of the accused. His motive of vengeance as he was angry at being denied his father's job led to him murdering his elder brother and mother. It is also on record that he was addicted to wine and mixed with anti-social elements. Further, a railway ticket was found by the complainant, P.W. 1, A. Srinivasa Rao for the date of 31st August, 2001 from Howrah which presumably belonged to the accused as he lived in Howrah and the murder happened in Kharagpur. All these circumstances which form a reliable chain of events proved the hypothesis that the accused is guilty of the gruesome murder of his family - his elder brother and his

mother.

13. For the aforesaid reasons we sustain the conviction of the appellant-accused under Section 302 of the IPC and sentencing him for life imprisonment as awarded by the trial court and upheld by the High Court. We do not find any merit in the appeal and it is hereby dismissed.

Judgment referred

¹2011(6) SCC 0396

²2011 (3) SCC 0306

³2013 (7) SCC 0045