

Sanatan Ghorai vs State Of West Bengal on 6 February, 1969

Equivalent citations: 1969(I)UJ131(SC)

JUDGMENT

Hegde, J.

1. The appellant's conviction under Section 302 read with Section 34, Indian penal Code by the learned Additional Sessions Judge Midnapore has been affirmed by the High Court of Calcutta. For that offence he has been sentenced to death. In this appeal by special leave he challenges his conviction.

2. The appellant along with two others namely one Nagendra Nath Ghorai and his brother Jnan Ghorai were tried and convicted by the learned Additional Sessions Judge of Midnapore under Section 120(b) read with Section 302, Section 302/34 and Section 64/34 I.P.C. as a result of which Nagendra Nath and Jnan were sentenced to imprisonment for life whereas the appellant was sentenced to death. In appeal the learned judges of the High Court acquitted all the accused of the offence under Section 120(b) They also acquitted the appellant of the offence under Section 364. Nagendra Nath was acquitted of all the offences with which he was charged The conviction of the appellant and Jnan under Section 302, 34. I. P. C. and the sentences imposed on them on that charge were confirmed Jnan's conviction under Section 364 I P C was also affirmed but no separate sentence was awarded on That charge. The appellant submitted this appeal from jail. Jnan has not appealed.

3. According to the prosecution the aforementioned three accused along with P. W. I. Dibakar conspired to murder a young woman by name Madhuri and in pursuance of that conspiracy they murdered her at about 8.p.m. on March 22, 1966 in a field near Tejpur. Madhuri appears to have been much married woman. It is said that she was married as many as three times. Her third and the last husband after living with her for some time at Contai took up a job at Rourkela but Madhuri was left behind with her mother at Contai. It is said that she developed illicit intimacy with Nagendra as a result of which he sent away his wife to his native village Malikapore. He even stopped sending her any money. This circumstance infuriated both the relations of Nagendra as well as that of his wife. Some time before the murder of Madhuri her husband is said to have written to her informing that he would be coming to Contai soon to take her to Rourkela. At about that time Madhuri and her mother were not getting on well. On the receipt of her husband's letter Madhuri decided to go to Rourkela herself without waiting for her husband to come and take her. Nagendra though dissatisfied by the turn of events. All the same told Madhuri that he would take her to Rourkela. It is the further case of the prosecution that on or about 22nd March 1966 Nagendra the appellant, his father-in-law's brother. Jnan his brother and Dibakar (PW.I) his cousin, entered into a conspiracy to murder Madhuri. The appellant, Jnan and Dibakar came to Contai from Malikapore on March 22, 1966 and there at the house of Nagendra, the plans for the murder of Madhuri were

finalised. In pursuance of that plan Nagendra asked Madhuri to go to Malikapore that evening along with his brother Jnan and Dibakar and promised to go over there the next day and take her to Rourkela. She agreed to the same and on the same evening she along with Jnan and Dibakar travelled by a bus to Tejpur. From 1 here she was taken to a lonely place and at about 8 p.m. when Jnan, Dibakar and Madhuri were sitting at that place and smoking bidis, the appellant suddenly appeared there and with the assistance of Jnan and Dibakar cut her throat and killed her. This in brief is the prosecution case.

4. We shall take it that Madhuri was murdered at the place and the time mentioned in the charge. For our present purpose it is unnecessary to go into the correctness of the version put forward by the prosecution in that regard. We may also proceed on the basis that there was illicit intimacy between Nagendra and Madhuri and Nagendra was unhappy about Madhuri's going away to Rourkela. It is not the prosecution case that he made any attempt to dissuade her from going to Rourkela. The prosecution evidence does not disclose any motive for Nagendra to join in a conspiracy to murder Madhuri nor does it appear that any of the other accused had any strong motive to murder her.

5. The prosecution case primarily rests on the Testimony of PW-1 Dibakar. The trial Court and the High court thought that his evidence is Corroborated by some of the circumstances appearing in the case . It is the prosecution case that Dibakar was a party to the murder. He was arraigned as an accused in this case, He was arrested on April 13, 1966. His confession was recorded on April 19, 1966 and he was granted a pardon on January 2, 1967. Thereafter as far as the prosecution is concerned it had no doubt in its mind that he was a guilty party. As the prosecution's case primarily rests on his testimony the same has to be tested in a twofold manner. First we have to see whether that testimony is reliable, a test uniformly applicable to the evidence of all witnesses. If his testimony is found to be reliable then the same being that of an accomplice, we must next see whether it is corroborated in material particulars both as to the commission of the offence as well as to the participation of each of the accused in the crime. If Dibakar is held to be an unreliable witness then no amount of corroboration can bolster up his evidence. The prosecution case must fail on that ground alone but if the court comes to the conclusion that he is a reliable witness then we must see whether the circumstances relied on by the High Court are satisfactorily established and if so what is their evidentiary value. The legal principles enumerated above are firmly established by numerous decisions of this Court. In this connection we may refer to *Sarwan Singh v. The State of Punjab* (1) and *Bhiva Doulu Patil v. State of Maharashtra* (2).

6. We shall now proceed to examine the evidence of Dibakar in the light of those principles.

7. Dibakar's evidence is to the effect that on the day of the occurrence accused Jnan took him to Contai on the false pretext of showing him a cinema at Contai. When he was in the house of Nagendra at Contai. Nagendra, and the appellant had two Private meetings. He could hear them whispering to each other but he was not taken into their confidence although he was allowed to be near enough to see them talking in whispers. He further deposed that despite his protests accused Jnan would not get down at a point nearest to their native village but insisted on proceeding to Tejpur. Even at that place he took a round about and deserted pathway ignoring his protests.

According to him he knew nothing of the conspiracy. He happened to be with the other conspirators because of the deceit played on him by Jnan. He did not in the least know that Madhuri was going to be murdered. He was taken by surprise when the appellant came to the scene of occurrence. He did not take part in the murder willingly. He was a helpless witness to a brutal murder. He was compelled to catch hold the legs of the deceased because of the threats given to him by the appellant. His evidence is extremely artificial. It does not carry conviction. There is material divergence between the facts stated by him in his confessional statement and that deposed to by him in court. In his confessional statement he described the occurrence thus :

"We sat in a place about one poa off from the metalled road. It was about two hours in the night. At this time, Sanatan, I do not know where he was so long, came there and made Madhuri Didi fall flat on her back by means of pressing her with one hand on her for head and another hand on her neck below her cheek and Jnan, after taking out a napkin which was in the bag with me, pressed her mouth with it. After sometime holding the feet of Sanatan said "Please leave Madhuri Didi". But he pushed me away by kicking me and said "Sala" you just catch hold of the legs of Madhuri otherwise see this razor, I will send you also along with her". Then trembling violently, I attempted to catch hold of her legs but failed. Then Sanatan said, "Look here Jnan, catch hold of her tightly. Brood shall sprinkle." After sometime, Sanatan cut the throat of Madhuri Didi with the razor. Seeing such profuse blood, I became senseless. I do not know anything else. When I came to my senses, it was then 9/10 o'clock in the night."

In the confessional statement the learned magistrate has noted, the various stages when Dibakar gave vent to expressions like "I will go where my Didi has gone" and "Send me to my Didi" (meaning Madhuri).

8. The manner in which Dibakar gave his confessional statement indicates that he was trying to dramatise; He clearly over played his part. His attempt to proclaim his innocence and the way he was trying to exhibit his remorse were clearly preten-tions. His version is highly artificial. When he was examined in a court he had a somewhat different story to say. By that time someone had realised that his confessional statement does not make him out to be an accomplice." If what he stated therein is true then he was merely a witness and not an accomplice. If that is so, the prosecution was wrong in prosecuting him. Therefore Dibakar Conveniently changing his version in several respects. In court he deposed:

"At that time (when they were sitting in the field) accused Sanatan suddenly came and caught hold of the throat of Madhuri from behind and made her lie on her back. I then dropped the bag in my hand and began to tremble in fear. At that time accused Jnan took out the napkin from my bag and pressed the mouth of Madhuri with that Napkin after getting himself seated on the chest of Madhuri. Sanatan then left Madhuri and came to me and caught hold of me. I then cried aloud. Sanatan then took out a razor from the pocket of his Khaki shirt and threatened me with that razor if I would shout. I then fell to the feet of Sanatan and requested him to leave Madhuri

Didi. Sanatan then asked me to catch hold of the feet of Madhuri. I however did not catch hold of the feet of Madhuri, at his direction. He then gave me a kick. I then fell down. Sanatan insisted on my catching hold of the feet of Madhuri and he threatened me that he would also kill me with the razor if I would not catch hold of the feet of Madhuri. I then out of fear carried out the order of Sanatan and then caught hold of the feet of Madhuri. 'Sanatan then told accused Jnan to strongly catch hold of Madhuri otherwise the blood would gush out. So saying Sanatan struck the razor on the throat of Madhuri Didi and began to move it to and fro (Ghose Laglo). Blood then began to gush out from the body of Madhuri Didi. At the sight of the blood I fell down unconscious."

9. There are other contradictions between his confessional statement and the evidence given in the court. Dibakar does not appear to us to be a truthful witness. It is clear that he was prepared to swear to any fact to save his own skin. The trial court and the High Court failed to properly assess his evidence. His evidence has been accepted at its face value ignoring the various improbabilities and contradictions appearing from the record. Once we reject the testimony of Dibakar, as we do, the prosecution case must necessarily fail.

10. So far as the appellant is concerned the only corroboration put forward to connect him with the crime is the recovery of a red sari from his house. From the evidence on record we see nothing special about that sari. It appears to be common place one. The mother of Madhuri identified that sari as belonging to Madhuri. This evidence is wholly unconvincing. According to Madhuri's mother the sari in question was purchased six years prior to the death of Madhuri but that sari still bore the rubber stamp "Haroon Faiyaz., Fa.st colour, Handloom". This shows that the sari was a new one. It could not have been a sari which was being used during a period of six years. The explanation that it was occasionally used and was never given for a wash and therefore the rubber stamp remained is completely unbelievable. The most interesting part of it all i.e. that while the appellant was said to have been anxious to rob the deceased of her sari he did not care to take the necklace which was in her neck or the ring in her hand the circumstance in question is obviously a false link forged into the prosecution case. It is unfortunate that both the trial court as well as the High Court failed to focus their attention on the essentials and allowed themselves to be influenced by the various unnecessary details appearing in the case. We are convinced that there was no basis for the conviction of Jnan as well. Once we disbelieve the evidence of Dibakar the entire prosecution case falls to the ground. The only other witness put forward to corroborate the evidence of Dibakar was P.W. 12, Ramen Basu, the conductor of the bus in which the deceased appears to have travelled from Contai to Tejpur. The High Court was unable to accept his evidence in some respects. He did not identify Jnan in the identification parade but yet made bold to identify him in court, as one of the persons who had travelled alongwith Madhuri on the evening of 22nd March 1906. It is needless to say that his evidence is worthless. Possibly because of his poverty Jnan has not appealed. In our opinion his conviction is not justified on the basis of the evidence on record. We accordingly recommend to the Government to remit his sentence and set him free.

For the reasons mentioned above we allow this appeal and acquit the appellant. He shall be set at liberty forthwith. A copy of this judgment will be sent to the Chief Secretary to the Government of

West Bengal.