

Calcutta High Court

HON'BLE JUDGE(S): JOYMALYA BAGCHI, AJAY KUMAR GUPTA , JJ

PARIKSHIT KANDER ALIA KANDAR V. STATE OF WEST BENGAL

C.R.A. - 163 of 2016, decided on 24/11/2022

(A) Penal Code (45 of 1860) , S.364, S.302— Evidence Act (1 of 1872) , S.24— Kidnapping and murder - Extra-judicial confession - Reliability - Accused persons allegedly killed minor victim and threw body in pond - Accused persons allegedly confessed their crime in front of villagers - Accused persons were manhandled by villagers prior to confession - Confession so made cannot be said to be voluntary - FIR registered after three days of recovery of dead body - Informant claimed that he was present at time of recovery and had heard extra judicial confession, but said vital circumstance was absent in FIR - As per post-mortem report injuries were found on lips and head of deceased - Version of witnesses with regard to contents of confessions were contradictory - Credibility of extra-judicial confession, doubtful - Conviction and sentence set aside.

(Para 21)

(B) Evidence Act (1 of 1872) , S.27— Penal Code (45 of 1860) , S.364, S.302— Kidnapping and murder - Recovery evidence - Reliability - Accused persons allegedly killed minor victim and threw body in pond - Wearing apparels of victim recovered from house of accused persons - IO did not claim that said articles were recovered after accused showed them - Residence of accused persons were unoccupied and recovery was made three days after lodging of FIR - Possibility of planting wearing apparels behind back of accused persons in their abandoned houses cannot be ruled out - Other recoveries viz., jute bag, blanket and pillow were of innocuous nature and cannot be treated as incriminating circumstance to implicate accused persons - Conviction and sentence set aside.

(Para 22, 23)

Name of Advocates

Arindam Jana, Sumanta Das, soumajit Chatterjee, Arhan Sengupta, Ms. Manasi Ray for Petitioner; Sudip Ghosh, Bitasok Banerjee for Respondent.

1. **JUDGMENT** :-Appeal is directed against the judgment and order dated 09.02.2016 and 10.02.2016 passed by learned Additional District and Sessions Judge, Fast Track, 1 Court, Contain Sessions Trial No. 03/June/2013 convicting the appellants for commission of offence punishable under Sections 364/302/201/34 of the Indian Penal Code and sentencing them to suffer rigorous

imprisonment for ten years and payment of fine of Rs.20,000/- each, in default, to rigorous imprisonment for one year each for the offence punishable under Section 364 of the Indian Penal Code, sentencing them to suffer rigorous imprisonment for life and payment of fine of Rs.20,000/- each, in default, to rigorous imprisonment for one year each for the offence punishable under Section 302 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for three years and payment of fine of Rs.10,000/- each, in default, to rigorous imprisonment for one year each for the offence punishable under Section 201 of the Indian Penal Code, all the sentences to run concurrently.

Prosecution case:-

2. Prosecution case, as alleged, is to the effect that on 13.12.2002 at 07/7.30 p.m. son of the de- facto complainant (P.W. 1) went to his uncle's place. Thereafter, he went missing. P.W. 1 and others searched for the child but could not find him. When they went to the house of Parul Manna and Swapan Manna, they did not allow P.W. 1 and others to enter and search their house on the pretext that there was a deity in the house. P.W. 1 drained the adjacent pond but the child was not found. On the next day, i.e. 14.12.2012, a missing diary (Exbt.-10) was lodged. On 15.12.2012, P.W. 1 came to know dead body of his son was floating in the tank of one Bhutteswar Karan. He alongwith others went to the spot and found injuries on the head and lips of the child. As the appellants had behaved suspiciously and one of them, i.e. Parikhist Kander was involved in anti-social activities including child trafficking, P.W. 1 suspected their involvement in the crime.

3. On 18.12.2012, he lodged written complaint in the police station resulting in registration of Contai Police Station Case No. 365 of 2012 dated 18.12.2012 under Sections 364/302/201/34 of the Indian Penal Code against the appellants. It may be apposite to note that on 15.12.2012 appellants Parul Manna and Parikhist Kander had been physically assaulted and were admitted at Contai SD Hospital. After registration of F.I.R., Investigating Officer (P.W. 17) arrested them from the hospital. On 21.12.2012, the said appellants were released and wearing apparels of the boy was recovered from the house of Parul Manna. On showing of Parikshit Kander a torn jute bag, pillow and blanket were also recovered.

4. In conclusion of investigation, charge-sheet was filed against the appellants and charges were framed under Sections 364/302/201/34 of the Indian Penal Code. Appellants pleaded not guilty and claimed to be tried.

5. In the course of trial, prosecution examined 17 witnesses and exhibited a number of documents.

6. In conclusion of trial, learned trial Judge by the impugned judgment and order dated 09.02.2016 and 10.02.2016 convicted and sentenced the appellants, as aforesaid.

Evidence on record:-

7. P.W. 1 (Nemai Manna) is the de-facto complainant and father of the deceased. He deposed his son had gone missing from the evening of 13.12.2012. He had used to go to his uncle's place and the residence of the appellants. When he went to the residence of the appellants they did not permit him to search their house. On the next day, he lodged missing diary. On 15.12.2012 at 1.30 p.m. dead body of the victim was found floating in the pond of Bhutteswar Karan. After recovery they confronted the appellants, Parikshit Kander and Parul Manna. They stated that they killed his son and thrown him in the pond. He lodged written complaint which was scribed by P.W. 13. P.W. 1 alleged that he is also a signatory to the recoveries made by the investigating officer (P.W. 17) during investigation.

8. It is pertinent to note neither the fact that the minor child had gone to the residence of the appellants in the evening nor the purported extra-judicial confessions by Parikshit Kander and Parul Manna find place in the F.I.R. which was lodged three days after the recovery of the deadbody.

9. P.W. 3 (Smt. Kabita Manna) is the mother of the minor child. She has corroborated her husband (P.W. 1). With regard to the extra-judicial confession, she deposed Parikshit Kander and Parul Manna stated her that her child was killed and dead body was thrown into the pond of Bhutteswar Karan.

10. From the cross-examination of the investigating officer (P.W. 17), it appears her deposition is in contradiction to her earlier statement to the police wherein she stated Parul Manna alone made the extra-judicial confession.

11. P.W. 4 (Bimalendu Manna) is the uncle of the deceased boy. He has corroborated his brother (P.W. 1). He further stated Parul Manna confessed that she pressed the child to her chest for 15 to 20 minutes and as a result the child died. They kept the dead body in the gunny bag and kept it in the sun shade of the thakurghar.

P.W. 5 (Sarmila Jana) is the parental aunt of the victim. She deposed that Parikshit Kander and Parul Manna made extra-judicial confessions after the dead body of the child was recovered. However, she admitted that prior to the confessions the said appellants had been man-handled by local people.

12. P.W. 10 (Subhendu Manna), another uncle corroborated the prosecution

case. He stated that after recovery of dead body Parikshit Kander and Parul Manna admitted they killed the boy by assaulting on his head and dumped his dead body in the pond of Bhutteswar Karan.

13. P.W. 8 (Sk. Abdul Rasid) is a panchayet member. He deposed recovery of the dead body was made from the pond of Bhutteswar Karan. He further deposed after recovery of dead body, Parul Manna stated that she pressed the child on her chest and as a result the child expired. He is asignatory to the recovery of wearing apparels from the house of Parul Manna on 21.12.2012 aswell as jute bag, pillow and blanket on the showing of Parikshit Kander. He proved his signatureson the seizure lists.

14. P.W. 7 (Sk. Kased), a co-villager and P.W. 16 (Srimanta Jana), uncle of the deceased are the signatories to the inquest.

P.W. 11 (Gopal Patra) and P.W. 13 (Shit Sankar Mondal) are co-villagers who supplied pumps for pumping water from the pond of Bhutteswar Karan.

15. P.W. 15 (Dr. Samar Singha Das) is the post mortem doctor. He deposed he found the following injuries on the dead body of the victim:-

"1) Scalp haemotoma 2" x 2" placed over upper occipital region.

2) Lacerated wound ½" x ½" x muscle deep placed over upper lip, injuries showed evidence ofvital reactions."

16. He opined death was due to effects of drowning associated with injuries ante mortem in nature. He proved the post mortem report.

P.W. 17 (Abhijit Patra) is the investigating officer. He deposed on 15.12.2012 after the dead bodyof the boy was recovered one UD Case being no. 215 of 2012 dated 15.12.2012 was registered. He was the enquiry officer of the UD Case. He prepared inquest over the body of the deceased. He proved the inquest report marked as Exbt.- 4/4. The body was sent for post mortem examination. On 18.12.2012, PW1, father of the deceased lodged written complaint resulting in registration of FIR. PW17 took up investigation of the case. He found Parul Manna and Parikshit Kander alia Kandar were admitted at Contai S. D. Hospital. He gave requisition to the hospital to guard them.

On 21.12.2012 he seized the wearing apparels of the victim from the house of the appellant viz., Parul Manna. He seized jute bag, blanket and pillow on the showing of Parikshit Kander aiiia Kandar. He prepared seizure list. He submitted charge-sheet.

Analysis and findings:-

17. Analysis of the aforesaid evidence shows the sheet anchor of the prosecution case is the extra judicial confession of Parul Manna and Parikshit Kander alia Kandar. It is contended after the bodyof the victim was recovered from the pond

of Bhuteswar Karan, local people confronted them. Thereupon, they confessed they had killed the victim and dumped the body in the pond.

18. Mr. Arindam Jana and Mrs. Manasi Roy, learned Advocates for the appellants argued the prosecution case of extra judicial confession by the appellants is an afterthought and was belatedly manufactured by the Investigating Officer. It does not find place in the first information report lodged by PW1 three days after the recovery. Admittedly, PW1 was present at the time when the body of the child was recovered. Secondly, it is argued Bhuteswar Karan and appellants Parikshit Kander alia Kandar and Parul Manna were manhandled by the local people on the day of recovery. They suffered injuries and were admitted to the hospital from 15.12.2012 to 21.12.2012. In this backdrop, it cannot be said that the said appellants had voluntarily made extra-judicial confession. Thirdly, depositions of witnesses with regard to extra judicial confessions are contradictory to one another.

19. On the other hand, Mr. Ghosh submitted conduct of the appellants were most suspicious. On 13.12.2012 they did not allow their residence to be searched. When the body of the boy was recovered on 15.12.2012, his parents and other villagers confronted the appellants. Thereupon, Parul and Parikshit made extra-judicial confession.

Extra-judicial confession of Parul Manna Parikshit Kander alia Kandar are corroborated by the injuries found in the post mortem report. Hence, it cannot be said that they are untrue. Extra-judicial confessions, if voluntary and truthful, may be the foundation of conviction of an accused. But before a Court relies on such confession, it is incumbent to examine whether the confession is:-

- i) voluntary
- ii) truthful If it satisfies both the tests, the Court may rely on the confession to convict its maker.

20. As per prosecution case, PW5, aunt of the deceased was present at the time when the confession was made. She has candidly admitted the appellants were manhandled by the villagers prior to the confession. Her deposition receives corroboration from the evidence of the Investigating Officer, PW17 who deposed Parul Manna and Parikshit Kander alia Kandar (appellants who made the so called confession) were admitted at S. D. Contai Hospital on and from 15.12.2012. This clearly establishes that Parul Manna and Parikshit Kander alia Kandar had been physically assaulted on the suspicion they were involved in the murder of the child. A confession which is said to have been procured under such circumstances by no stretch of imagination can be said to be voluntary.

21. Coming to the credibility of extra-judicial confession, I note this vital circumstance is absent in the first information report lodged by PW1, father of the deceased. I am conscious a first information report need not be an encyclopedia of facts. However, in the present case the FIR came to be registered after three days of the recovery of the dead body. PW1 in his deposition claimed he was present at the time of recovery and had heard the extra judicial confession. In this backdrop, failure to disclose this vital incriminating fact in the first information report cannot be treated to as a casual omission but is a lacunae in the prosecution case which throws grave doubt on the credibility of the extra-judicial confession. Evidence of witnesses who have sought to prove the confession are inconsistent and contradictory to one another. PW3 in Court stated that the confession was made by Parikshit Kander alia Kandar and Parul Manna but before Investigating Officer she claimed that the confession was made by Parul alone. PWs.4 and 8 claimed that Parul Manna stated that the child was pressed against her chest for 15 to 20 minutes, as a result he died. On the other hand, PW10 gave a different version with regard to the so called confession. He claimed Parul Manna and Parikshit Kander alia Kandar stated that they had assaulted the deceased on the head and dumped the body in the pond. Witnesses need not reproduce the exact words of the confessor to prove a confession. But if the version of the witnesses with regard to the contents of the confessions are contradictory to one another, it would be difficult to persuade oneself that the confession has been proved. I am unable to accept such contradictory versions of the witnesses qua the extra-judicial confession on the plea that injuries were found on the lips and head of the deceased as per post mortem doctor.

22. Thus, I am of the opinion that the extra-judicial confession by Parul and Parikshit is a belated concoction to implicate the appellants and ought not be relied upon.

23. Coming to the issue of recovery of wearing apparels from the house of the appellant on the showing of appellant Parul Manna, I note no disclosure statement of Parul has been exhibited. Investigating Officer (PW17) also does not claim that the articles were recovered on the showing of the said appellant. FIR was registered on 18 December, 2012. Appellants Parul Manna and Parikshit Kander @ Kandar were in hospital since 15.12.2012 and the other appellants not being in the village could not be arrested.

24. Hence, the residence of the appellants were unoccupied and the recovery was made on 21.12.2012, i.e. three days after lodging of FIR. Possibility of planting

the wearing apparels behind the back of the appellants in their abandoned houses cannot be wholly ruled out. Other recoveries viz., jute bag, blanket and pillow are of innocuous nature and cannot be treated as an incriminating circumstance to implicate the appellants.

23. Conduct of the appellants to refuse PW1 and others from entering their house to search may give rise to some suspicion but in the absence of proof of the most incriminating circumstances viz., extra-judicial confession and serious doubt with regard to the credibility of belated recovery, I am of the opinion prosecution case has not been proved beyond reasonable doubt and the appellants are liable to be acquitted.

24. Conviction and sentence of the appellants are set aside. Accordingly, the appeal is allowed.

25. The appellant viz., Parikshit Kander @ Kandar shall be forthwith released from custody, if not wanted in any other case on executing a bond to the satisfaction of the learned Chief Judicial Magistrate, Purba Medinipur which shall remain in force for a period of six months in terms of Section 437A of the Code of Criminal Procedure.

26. Other appellants viz., Swapan Manna, Parul Manna, Jhantu Manna, Mantu Manna and Tapan Manna shall be discharge from their bail bonds after expiry of six months in terms of the aforesaid provision of law.

27. Let a copy of this judgment along with the lower court records be forthwith sent down to the trial Court at once.

28. Photostat certified copy of this judgment, if applied for, shall be made available to the appellant upon completion of all formalities.

I agree.

Appeal Allowed