

BUDHADEV KARMASKAR
v.
STATE OF WEST BENGAL
(Criminal Appeal No. 135 of 2010)

FEBRUARY 14, 2011

[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

Penal Code, 1860 – s. 302 – Brutal murder of a sex worker – Conviction and sentence u/s. 302, by the courts below – Justification of – Held: Justified – Injuries show brutality of the crime – Head of the deceased was battered again and again in a hideous and barbaric manner – Testimony of the eye-witnesses corroborates the medical evidence – Accused having committed murder in a brutal manner of a helpless woman, deserves no sympathy – Thus, order of conviction upheld – Crime against women.

Constitution of India, 1950 – Article 21 – Sex workers/prostitutes – Right to live with dignity under Article 21 – Held: Sex workers/prostitutes are entitled to live with dignity under Article 21 – Since they are human beings, their problems need to be addressed – No one has right to assault or murder them – Direction to the Central and the State Governments to prepare schemes for giving technical/vocational training to sex workers and sexually abused women in all cities in India.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 135 of 2010.

From the Judgment & Order dated 25.7.2007 of the High Court at Calcutta in C.R.A. No. 487 of 2004.

Lajja Ram for the Appellant.

T.C. Sharma, Neelam Sharma for the Respondent.

A The following Order of the Court was delivered

O R D E R

Heard learned counsel for the appellant.

B This Appeal has been filed against the impugned judgment and order dated 25th July, 2007 passed by the High Court of Calcutta in C.R.A. No. 487 of 2004.

C The facts have been set out in the impugned judgment and hence we are not repeating the same here except wherever necessary.

D This is a case of brutal murder of a sex worker. Sex workers are also human beings and no one has a right to assault or murder them. A person becomes a prostitute not because she enjoys it but because of poverty. Society must have sympathy towards the sex workers and must not look down upon them. They are also entitled to a life of dignity in view of Article 21 of the Constitution.

E In the novels and stories of the great Bengali Writer Sharat Chand Chattopadhyaya, many prostitutes have been shown to be women of very high character, e.g., Rajyalakshmi in 'Shrikant', Chandramukhi in 'Devdas' etc. The plight of prostitutes has been depicted by the great Urdu poet Sahil Ludhianvi in his poem 'Chakle' which has been sung in the Hindi film Pyasa "Jineh Naaz Hai Hind Per wo kahan hain" (simplified version of the verse 'Sana Khwan- e-taqdees-e-Mashrik Kahan Hain').

F
G We may also refer to the character Sonya Marmelodov in Dostoyevsky's famous novel 'Crime and Punishment'. Sonya is depicted as a girl who sacrifices her body to earn some bread for her impoverished family.

H Reference may also be made to Amrapali, who was a contemporary of Lord Buddha.

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In the present case, the incident happened on 17th September, 1999 at about 9.15 p.m. The deceased Chayay Rani Pal alias Buri was living in a red light area and was a resident of Room No.8 of Premises No.19, Jogen Dutta Lane in Calcutta. She was evidently a sex worker. The appellant Budhadev kicked her with fists and legs, and she fell down on the floor. The appellant then caught her by her hair and banged her head against the floor and the wall several times which left the victim bleeding from her ear, nose and head. The incident was witnessed by four persons, Pw2-Abida, PW4- Maya, PW7-Asha and PW8-Parvati.

PW2-Abida has deposed that she saw the appellant-accused catching the victim by her hair and banging her head against the wall. The victim was profusely bleeding through her nose and mouth. On seeing this, Abida started shouting and then the accused pushed her and went down and fled away. PW8-Parvati saw the victim being mercilessly beaten by the accused-appellant, and the same is the evidence of PW7-Asha. In the post mortem, as many as 11 injuries on the body of the victim were found, eight of which were on various parts of the face and forehead.

The police was informed about the incident over the telephone as is evident from the testimony of PW2 Abida. After the police arrived on the spot, sample of the blood spilled from the body of the victim was collected and photographs taken. The victim was brought by Asha Khatoon and others to the hospital where she was found 'dead on arrival'. Blood was oozing out from her ear and nostril. There was swelling on the left eyeball and left eyebrow. Thus, the medical evidence corroborates the ocular testimony.

PW10-Dr. Amitava Das, the Medical Officer who held the post mortem examination of the dead body of deceased Chhaya Rani Pal found the following injuries on her person:

- A (1) Abrasion 1" x ½ " over the nose just below the nasal bridge.
- (2) Abrasion 1 " x ½ " over left side forehead ½ " above left eyebrow 3" left to midline.
- B (3) Abrasion ½ " x ½ " over left side of forehead just over the left eye brow 2" left mid line.
- (4) Bruise 2" x 1" over left upper eye lid.
- C (5) Bruise 2" x 1" over anterior aspect of mid part of nose.
- (6) Abrasion ½ " x ¼ " over right side of forehead 1" above right eye brow 2" right to mid line.
- D (7) Abrasion 2" x 1" over right side of face just below the right eye and just right to outer canthus of right eye.
- (8) Lacerated wound ½ " x ¼ " x scalp over left partial region 4 ½ " left to anterior mid line and 2" below left parietal eminence.
- E (9) Abrasion 3" x ½ " over posteriorateral aspect of right forehead 1" below right elbow.
- F (10) Abrasion 1" x ½ " over anterior medial aspect of lower part of right forearm 1" above right wrist.
- (11) Abrasion 4" x 3" over upper part of posterior aspect of right thigh 7" above right knee joint.
- G On dissection, the Doctor found the following injuries:
- (1) Heamatoma 3 ½ " x 2" in the scalp tissue over right frontal region.
- H (2) Heamatoma 3 ½ " x 2" in the scalp tissue over left frontal region.

- (3) Haematoma 3 ½ " x ½ " in the scalp tissue over left partial region. A
- (4) Fissured fracture 3" long more or less longitudinal over left parietal temporal bone.
- (5) Haematoma 2" x 1" in the scalp tissue over right parietal region. B
- (6) • Subdural hemorrhage present involving the right parietal and temporal lobe.
- (7) Lacerated wound ½ " (half) x ¼ " x substance over right parietal lobe of brain substance. The abrasions were non-scabbed and red in colour. The bruises were dark red in colour. The margins of the lacerated wounds were irregular and red in colour. All the injuries showed signs of vital reactions. No other injury except those described could be detected even on careful dissection and examination. C D

PW10 Dr. Amitava Das, Medical Officer of Mauza Burdwan Medical College, opined that the death was due to the effect of the injuries as noted anti-mortem in nature; that all the injuries as noted in the post mortem examination report might be caused if a person pushed against the wall and it may be homicidal in nature." E F

The injuries above-mentioned show the brutality of the crime. The head of the deceased was battered again and again in a hideous and barbaric manner.

The trial Court has rightly convicted the appellant under Section 302 IPC and sentenced him to life imprisonment and the High Court has not committed any error in upholding the conviction and sentence imposed by the trial Court. G

We find no reason to disbelieve the testimony of the eye H

A witnesses in this case, namely, PW2, PW7 and PW8 which corroborates the medical evidence. The appellant-accused has committed murder in a brutal manner of a helpless women and deserves no sympathy from this Court.

B For the reasons given above, this appeal is dismissed.

Although we have dismissed this Appeal, we strongly feel that the Central and the State Governments through Social Welfare Boards should prepare schemes for rehabilitation all over the country for physically and sexually abused women commonly known as prostitutes as we are of the view that the prostitutes also have a right to live with dignity under Article 21 of the Constitution of India since they are also human beings and their problems also need to be addressed.

D As already observed by us, a woman is compelled to indulge in prostitution not for pleasure but because of abject poverty. If such a woman is granted opportunity to avail some technical or vocational training, she would be able to earn her livelihood by such vocational training and skill instead of by selling her body.

E Hence, we direct the Central and the State Governments to prepare schemes for giving technical/vocational training to sex workers and sexually abused women in all cities in India. The schemes should mention in detail who will give the technical/vocational training and in what manner they can be rehabilitated and settled by offering them employment. For instance, if a technical training is for some craft like sewing garments, etc. then some arrangements should also be made for providing a market for such garments, otherwise they will remain unsold and unused, and consequently the women will not be able to feed herself.

H We propose to have the response of the Centre and the States in this regard and hence the case shall be listed before us again on 04.05.2011 to be taken up as first case on which

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date the first compliance report indicating therein the first steps taken by the Central and the State Governments in this regard shall be submitted. A

Issue notice to the Central Government and all the State Governments which will also file responses by the date fixed for hearing. B

N.J.

Appeal adjourned.