

KHOKAN GIRI @ MADHAB

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v.

STATE OF WEST BENGAL

(Criminal Appeal No. 1399 of 2007)

DECEMBER 01, 2016

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[A. K. SIKRI AND ABHAY MANOHAR SAPRE, JJ.]

Evidence Act, 1872 – ss.133/114 – Confessional statement of accomplice – Admissibility and appreciation of – Murder of elderly couple at their flat – Robbery – Conviction of appellant and three others u/ss.302/34/120B and s.394, IPC based upon the confessional statement of an accomplice (PW3) – PW3 gave confession soon after his arrest – Plea of appellant that High Court wrongly gave undue importance to the testimony of PW3 and based the conviction of appellant thereupon, in absence of independent corroborative evidence in material particulars – Held: As a matter of practice, the evidence of accomplice should not be accepted without corroboration in material particulars – Further, such corroboration must connect the accused with the crime and also this corroboration must be from an independent source – On facts, it is found that the trial court convicted the appellant along with other accused persons after finding that there was sufficient corroborative material on record – High Court did this exercise all over again discussing the said corroborative material and found that the statement of PW3 got full corroboration from different independent witnesses along with the circumstances established by those witnesses – Thus, no error found in the impugned judgment of High Court affirming the conviction of appellant – Penal code, 1860 – ss.302/34/120B and 394.

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Dismissing the appeal, the Court

HELD: 1.1 The prosecution heavily relied upon the confessional statement of PW3 (the accomplice) which was given soon after his arrest. It had also come on record that PW3 became approver. Though the manner in which he became approver was challenged before the Trial Court as well as the High Court, this contention of the appellant and other accused persons was

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Mrinal Kanti Mandal, Parijat Sinha, Advs. for the Respondent. A

The following Judgment of the Court was delivered

J U D G M E N T

1. The appellant herein, along with three other accused persons, was convicted under Sections 302, 34, 120B and 394 of the Indian Penal Code (IPC) by the Trial Court and was sentenced to suffer imprisonment for life for the offences punishable under Sections 302, 34 and 120B IPC and for 10 years rigorous imprisonment and in default to suffer rigorous imprisonment for six months for the offence punishable under Section 394 IPC, for the murder of an elderly couple Girish Navalkha and Bina Navalkha at their Flat No. 10C, 10th floor of Rameshwar Apartment at 19A Sarat Bose Road, Kolkata-20. B C

2. Brief facts involved in the instant appeal are as follows: -

A case was registered under Section 302/34 IPC against some unknown miscreants on the basis of the statement of one Jugal Kishore Khetwat at Bhabanjpur Police Station on 25th December, 1991. D

As per his statement, Mr. Khetwat was a family friend of the couple and used to visit their flat regularly in the morning and used to have his tea with them. It is further stated that on 24th December, 1991, at night both the husband and wife were to accompany him to a party at New Kelinworth Hotel, but due to indisposition of Girish Navalkha, the couple did not join him and he alone attended the party and returned to his flat at 10A, Rameshwar Apartment at dead hours of night. E

It is stated by Mr. Khetwat that in the morning of 25th December, 1991, as per his regular routine, when he came to the flat of Mr. Navalkha, he found the same locked and in spite of pushing the doorbell, no response came. Thereafter, when he found the servants of Navalkha family entering into the flat, he followed them and being attracted with the shouting of the servants and to his utter surprise, he found Bina Navalkha lying almost in naked condition on the bed with a sari tied around her neck by one end and the other end of the sari was tied with the rod of the ceiling fan. Mr.Khetwat also found Girish Navalkha lying dead on his chair in the study room with a shawl tied around his neck. Mr.Khetwat also noticed ransacking of the rooms of Navalkha family and, in his statement, he apprehended that the couple were killed, perhaps, for robbery. F G

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A At the early stage of investigation, the appellant, Khokan Giri, who happened to be a servant at the office of Mr. Khetwat located at the ground floor of the apartment, was taken into custody and, thereafter, one Raju Rao was arrested followed by the arrest of Bimala Khetwat, who was none else than the wife of Mr. Jugal Kishore Khetwat and, thereafter, Kamini Dey was arrested and lastly, one Jagadish Jadav was
B arrested from his Bihar residence.

According to prosecution, in the course of the investigation and soon after the arrest of Khokan and Raju, articles alleged to have been stolen from the flat of Navalkha family were recovered from the possession of Raju Rao and some incriminating articles were also
C recovered from the possession of Khokan.

Raju Rao, soon after his arrest, gave a confessional statement, which was recorded by a Magistrate and following that confessional statement of Raju Rao and at the instance of Raju Rao and Khokan, two
D Yashica cameras were also recovered.

Raju Rao, along with other accused persons, was chargesheeted after the completion of investigation and after commitment of the case before the Court of Sessions, Raju Rao, by filing an application, expressed his desire to become an approver and to give evidence disclosing the full particulars behind the murder of the Navalkha couple and from the
E evidence of Raju Rao along with his earlier confessional statement, the real mystery behind the murder of Nvalkha couple was revealed as per the prosecution.

From the confessional statement of Raju Rao, it was found that Mr. Khetwat, husband of Bimala Devi Khetwat, had an alleged illicit
F relationship with Bina Navalkha, wife of Girish Navalkha, and both Bina and Girish, exploiting the said relation prevailing between Mr. Khetwat and Bina Navalkha, allegedly plundered money from Mr.Khetwat. Bimala Devi Khetwat did not like this intimacy of Mr.Khetwat with Bina Navalkha and for that reason, sometime before murder of the Nvalkha couple, Bimala Khetwat engaged Khokan and Raju to kill both Girish
G and Bina Navalkha at some appropriate time in lieu of monetary consideration and, in fact, it was settled that Rs.1,00,000/- would be paid for the operation and as an advance Rs.40,000/- was paid and with that money Khokan and Raju purchased two Yashica cameras and Raju was also given Rs.5,000/- in cash.

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Raju, to facilitate their operation as desired by Bimala Khetwat, made contact with Kamini Dey who was also a driver by profession like Raju and resided in the same locality of Raju, to help them in the operation and subsequently Jagadish Jadav who was a sweeper at the office of Mr. Khetwat joined with them. A

Raju also met Bimala personally along with Khokan over the proposal of killing Navalkha couple and on 24th December, 1991 all the four persons met at the office of Mr. Khetwat sometime after evening and getting the last time clearance from Bimala Khetwat over intercom, all the four persons allegedly proceeded towards the flat of Navalkha after their servants had left the flat and, thereafter, pushing the doorbell, Khokan being an old acquaintance had his entry followed by the other three persons and, thereafter, all of them overpowered the Navalkha couple and killed them by manual strangulation. All the four, after killing the couple, also took away cash, ornaments and other valuable articles from the flat. B C

The investigating team of the Detective Department of Lalbazar after recording the statement of several witnesses, including several occupants of the different flats of the apartment, security guards and owners of the shop wherefrom cameras were purchased and where Khokan deposited his camera for servicing, persons with whom Jagadish Jadav deposited two table clocks allegedly stolen from the flat of Navalkha, different witnesses who were present at the time of search and seizure of different places shown by Raju and wherefrom recovery was made regarding the allegedly stolen articles of the flat and one camera allegedly purchased by Raju with the money given by Bimala Khetwat, witnesses who were present at the time of the seizure of chappals and bottle of water with finger impression from the flat, doctor who conducted post mortem examination, servants and maidservants of Navalkha family, son and daughter-in-law of Navalkha couple, doctor who examined Kamini Dey, hand writing expert and fingerprint expert and other police officers taking part in the investigation, ultimately found a prima facie case to support prosecution case that Bimala Khetwat hatched a conspiracy to kill the couple at an opportune moment and for that purpose, she hired the service of Khokan and Raju in lieu of monetary consideration and Khokan and Raju in their turn, took active help and support of Kamini and Jagadish and on 24th December, 1991 finding the elderly couple alone in their flat at Rameswar Apartment, killed the couple D E F G

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A and also removed cash and valuable articles from the flat and on such establishment of prosecution allegation from the available evidence collected during investigation, charge sheet was submitted against the appellant and other accused persons for their trial.

B The High Court upheld the conviction of the appellant and the other accused persons involved in the crime and the sentence awarded by the Trial Court. The appellant herein has challenged the aforesaid order in the instant appeal.

C 3. From the aforesaid facts, it is clear that the prosecution heavily relied upon the confessional statement of Raju Rao which was given soon after his arrest. It has also come on record that Raju Rao became approver. Though the manner in which he became approver was challenged before the Trial Court as well as the High Court, this contention of the appellant and other accused persons was negatived by the High Court. We may record that this aspect is not under challenge before us. In such circumstances, the statement of Raju Rao becomes admissible in evidence in view of the provisions contained in Section 133 and Section 114 of the Indian Evidence Act, 1872, (hereinafter referred to as 'Act') which reads as under:

E “133. Accomplice.—An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

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F 114. Court may presume existence of certain facts. — The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

G Illustrations

The Court may presume—

H (a) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(b) That an accomplice is unworthy of credit, unless he is corroborated in material particulars; A

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4. It was, however, argued by learned counsel appearing for the appellant that the High Court went wrong in giving undue importance to the testimony of Raju Rao and basing the conviction of the appellant thereupon in the absence of independent corroborative evidence in material particulars. He submitted that law in this respect is well entrenched in series of judgments. He referred to the judgment of this Court in 'Chandra Prakash v. State of Rajasthan' [2014 (8) SCC 340] wherein this Court had occasion to revisit the entire case law on the subject and the principle has been succinctly and lucidly stated therein. It is stated by the learned counsel for the appellant that Section 114 illustration (b) has to be read along with Section 133 of the Act, which deals with the statement of accomplice. It was his submission that, no doubt, as per the said provisions, an accomplice can be a competent witness against an accused person and the conviction also would not be treated as illegal merely because it proceeds upon the incorroborative testimony of the accomplice. However, at the same time, Section 114 illustration (b) also lays down that an accomplice is unworthy of credit unless he is corroborative in material particulars. It is for this reason, the Court restated the principle to the effect that though the accomplice would be competent to give evidence, it is a rule of practice that it would almost always be unsafe to convict upon his testimony alone. What is required is that, as a matter of practice, the evidence of the accomplice should not be accepted without corroboration in material particulars. Further, such corroboration must connect the accused with crime and also that this corroboration must be from an independent source, meaning thereby, one accomplice cannot corroborate another. B C D E F

5. There cannot be any dispute about the aforesaid principle of law. We have, therefore, examined the present case keeping in view the aforesaid legal principle, viz., whether there is corroborative evidence in material particulars substantiating the aforesaid confessional statement of Raju Rao and other material connecting the appellant with the crime. On going through the impugned judgment, we find that the Trial Court convicted the appellant along with other accused persons after finding that there was sufficient corroborative material on record as well. G

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A 6. The High Court has done this exercise all over again discussing the said corroborative material. Instead of discussing the said material, our purpose will be served by reproducing certain portions of the judgment of the High Court which has done this very exercise: -

B “From the charge sheet submitted against the appellants
and from the trend of prosecution evidence placed during
trial we find that according to prosecution case the allegations
against the appellants can be broadly divided into two parts,
first part being the hatching of conspiracy by Bimala
Khetwat with the sole purpose of annihilating Girish and
C Bina Navalkha on her cherishing a suspicion of illicit
relationship between her husband Mr. Khetwat and
deceased Bina Navalkha and also for the reason of her
belief of plundering Mr. Khetwat by both Girish and Bina
Navalkha taking advantage of the unusual weakness
developed by her husband towards Bina Navalkha and such
D conspiracy according to prosecution took place in between
Bimala Khetwat at one hand and Khokan Giri and Raju
Rao on the other hand and, in fact, Khokan Giri and Raju
Rao were given charge of commission of murder in lieu of
monetary consideration for which Rs.40,000/- was already
E paid and the balance 9“Criminal Appeal No. 1399/2007
60,000/- was to be paid after execution of the murder and
the second part of the prosecution allegation was that
pursuant to the conspiracy hatched by Bimala Khetwat,
Raju Rao engaged Kamini Dey also for consideration of
money and Jagadish Jadav of his own accord joined with
F them and on 24th December, 1991 finding Bina and Girish
Navalkha alone in the flat and one the last minute instruction
of Bimala Khetwat, all the four namely Raju Rao, Khokan
Giri, Jagadish Jadav and Kamini Dey entering into the flat
through Khokan Giri after overpowering the elderly couple
G committed their murder by strangulation and thereafter the
valuable articles including gold ornaments and also cash
were taken away by all the four appellants.

H From the trend of prosecution evidence both oral and
documentary and also from the materials exhibited during
trial we find that the sheet-anchor for the prosecution case

was approver Raju Rao since Raju Rao after grant of pardon and during his examination as P.W. 3 gave a full account of the entire occurrence including the conspiracy hatched by Bimala Khetwat and in such disclosure Raju Rao gave in detail the part played by each of the four persons who committed murder of Navalkha couple. We also find from the trend of prosecution evidence and different documents exhibited during trial that prosecution to corroborate the testimony of Raju Rao examined several witnesses of the flat which included different flat owners, servants and maidservants of Navalkha family, security guards of the apartment, different witnesses to the seizure of different incriminating articles at different stage of investigation, post mortem report, report of medical examination of Kamini Dey, handwriting expert's report, fingerprint expert's report, one diary of Girish Navalkha and other seizures etc.

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We find from the statement of P.W. 44 that Khokan Giri and Raju Rao purchased two cameras. It has been argued on behalf of the appellants that Raju Rao disclosed in his statement that he purchased the camera along with Khokan Giri from Fancy Market, but, the camera was actually purchased from Bijoy Market as it was evident from the testimony of P.W. 44 and this was a serious contradiction, but, in our view Bijoy Market being in the vicinity of Fancy Market, this discrepancy was not very serious so as to make statement of Raju Rao and P.W. 44 totally false. P.W. 45 son of Mr. Girish Navalkha and P.W. 46 daughter-in-law of Mr. Girish Navalkha during their evidence identified all the ornaments of Bina Navalkha and also other valuable household articles which were seized from the possession of Raju Rao. From P.W.23, we get that seven to ten days before the murder he found Khokan Giri, Jagadish Jadav and Raju Rao along with an unknown person present at the office of Mr. Khetwat where Khokan Giri was office peon and that unknown person was identified as Kamini Dey during T.I. parade participated by P.W. 23

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A and P.W. 49 another security guard deposed that on 24th December, 1991, at about 10.30 P.M. he found all the four above named persons to proceed towards the servant's lift of the apartment.

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B We find from record that FIR was recorded on 25th December, 1991 and on 26th December, 1991 itself officer of Bhabanipur P.S. who was in temporary charge of investigation before taking over by the Detective Department made several seizures from the place of occurrence including one pair of chappal, one bottle of water along with two buttons of a shirt and on 27th December, 1991 Khokan Giri was arrested and soon after his arrest one wooden planner and some keys were seized from the office of Mr. Khetwat and from P.W.16 an employee of Rameswar Transport, we find that Khokan Giri was office peon of Mr. Khetwat and he used to reside in the office room. From P.W. 23 we get that Raju Rao along with Jagadish Jadav and Kamini Dey was found present in the office of Mr. Khetwat along with Khokan Giri seven to ten days before the murder and P.W. 49 deposed that on 24th December, 1991, he found all the four to proceeded towards the servants' lift at the apartment at about 10.30 P.M. P.W. 16 in his statement disclosed that there was intercom in the office room of Mr. Khetwat at the ground floor of the apartment and from that intercom necessary contact could be made with the flat of Mr.Khetwat at 10th floor and P.W. 16 was categorical in his assertion that there was access from pantry room to the office room.

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G We find from the statement of P.W. 55 who seized Chappals and water bottle on 25th December, 1991 itself along with P.W. 43 the fingerprint expert and P.W. 54 that the bottle bore the mark of fingerprint impression which tallied with the fingerprint impression of Khokan Giri and from P.W. 40 and P.W. 47 we find that the chappals recovered on 25th December, 1991 itself belonged to

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Khokan Giri. Mr. Dastoor raised several points challenging the seizure of chappals and water bottle, but, on careful consideration of the statement of the witnesses over these seizures, we are not inclined to hold that investigating team in order to create evidence planted the chappals and the water bottle. A

From the report of doctor Marjit P.W. 36 who as forensic expert examined the place of occurrence we find that there was no mark of violence on the entrance door of the flat of Navalkha couple which lends support to the prosecution case that only a known person pushing the door bell got entry into the flat and Mr. Navalkha opened the door and only thereafter following Khokan Giri all the three others entered into the room and thereafter overpowered Mr. Navalkha and killed him by strangulation with the shawl twisting around his neck. B

P.W. 25 and P.W. 27 deposed about recovery of camera which was deposited by Khokan Giri for servicing and it was argued that the story of recovery of the camera and the purchase of camera itself was highly improbable, but, having regard to the receipt produced by prosecution and having regard to the evidence of P.W. 25 and P.W. 27, we do not find any reason to disbelieve the prosecution evidence in this regard. C

Thus, when we consider evidence of P.W. 4 Mr. Khetwat, P.W. 16, P.W.23 and P.W. 49 along with seizure of chappals, water bottle, wooden planner and also consider the report of the fingerprint expert, report of the footprint expert, report of the forensic expert along with report of the autopsy surgeon, we find that Khokan Giri took part in the commission of murder and also in the burglary and thus, the statement of Raju Rao as P.W. 3 gets full corroboration from different independent witnesses along with the circumstances established by those witnesses.” D

7. We, thus, do not find any error in the impugned judgment of the High Court affirming the conviction of the appellant herein. This appeal is, accordingly, dismissed. At this stage, learned counsel for the appellant E

- A submits that the appellant has already suffered incarceration for more than 25 years and, therefore, there should be remission in his further sentence. This is a power which can be exercised by the State. It would always be open to the appellant to make a necessary representation in this behalf before the competent authority which can be considered by it. We make it clear that as far as this Court is concerned, no view is taken thereupon either way.

Divya Pandey

Appeal dismissed.