

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1370 OF 2007

ROOPSENA KHATUN

...APPELLANT

VERSUS

STATE OF WEST BENGAL

...RESPONDENT

J U D G M E N T

SIRPURKAR, J.

1. This appeal is filed by an unfortunate orphan girl against the concurrent judgments of the Sessions Court as also the High Court whereby she stands convicted for the offence punishable under Section 302 IPC as also under Section 379 IPC for committing theft of a silver chain from the body of deceased.

2. The prosecution case is that accused Roopsena Khatun committed murder of a child called Baby Khatun by drowning her in a pond and also removed the silver chain from her person. It is alleged that on 29.7.1999, Baby Khatun left her house for her grand-mother house and thereafter, there was no trace of the girl. PW3 Abdul Quddus told the father of the deceased that he had seen Baby Khatun following the accused on the previous day at 10 a.m. A search was started for her and ultimately, the accused was apprehended by the villagers on the next day at about 12 noon in the jute field. On being asked, the accused is supposed to have confessed that she committed

the murder of Baby Khatun by drowning her in the pond and had also removed the silver chain from her person. The matter was reported to the police. At about 4.45/5 p.m., the police arrived at the scene of occurrence and is stated to have seized the silver chain from the accused.

3. The prosecution relied on the following circumstances.

- i) The disclosure made by the accused that she had committed the murder and pointed out the body of the deceased from the pond;
- ii) The extra-judicial confession allegedly made to the witnesses including the father PW1 and some other witnesses;
- iii) The recovery of silver chain from the accused.
- iv) Baby Khatun was seen following the accused at 10 A.M. on the earlier day.

4. Insofar as the first circumstance relating to the disclosure of the accused having committed the murder and pointing out the corpus delicti is concerned, both the courts below have held that circumstance as a proof against the accused on the basis of the evidence of the witnesses. It is a common knowledge that the body could not have

remained under the water for 24 hours. The body was bound to be floating. At least from the post-mortem report, it is clear that the body was decomposed. Under such

circumstances, we do not think that the body could have ever remained underneath the water level for 24 hours. It was certainly expected to be floating. In that case, it could be seen by anybody. Therefore, such circumstance loses its significance.

5. The second circumstance is about the extra-judicial confession. We can imagine the plight of a poor orphan girl who is described as a frock wearing girl by some of the witnesses and was at the mercy of her grand-mother with whom she was living. The evidence of the extra-judicial confession is of extremely weak kind. In this case, the exact words of the accused have not been uttered by any of the witnesses. Again, if there was any suspicion against the accused, the whole village would have pounced upon her and cursed her of having committed the murder. Under such circumstances, the so called extra-judicial confession made to the witnesses even if they were more than three, would be of no consequence and we would not consider that as an incriminating evidence against the accused.

6. The circumstance of the recovery of the silver

chain from the accused is extremely strange. We have seen the seizure memo which does not suggest the place from where the silver chain from the accused was seized. Under such circumstances, it is very difficult for us to hold that the accused was carrying the silver chain on her person. The absence of any detail in the seizure memo

regarding the place from where the silver chain was seized or also the oral evidence puts the seizure in extreme suspicion. At any rate, we are not prepared to accept this circumstance particularly because the said silver chain has also not been identified by the PW 1 - father of the deceased. There was no identification parade held regarding the aforesaid silver chain which was an extremely common ornament. Therefore, even that circumstance loses its significance.

7. The last circumstance "last seen" if at all can be used against the accused as a circumstance should have been connected with the time of death. Here is the case when the deceased was seen following the accused at about 10 a.m. on the earlier day whereas the body was found on the next day at about 2.30 p.m.. The prosecution has not fixed the time of the death also. Therefore, there is no proximity between the time when the deceased and the accused were last seen together and the time of the death

of the deceased. At least, the prosecution has not been able to establish the same. Therefore, even if that circumstance is viewed as an incriminating evidence, it would be of no significance.

8. The depth of the pond is not shown. In what manner could a small girl like accused have drowned the deceased is also not shown. Considering the short distance between the house of the deceased and the pond, the possibility of the death being accidental cannot be ruled out.

9. The least we feel is that the prosecution has not been able to prove the case of murder against the accused or even for the theft of the silver chain from the person of the deceased.

10. Before we part with this case, we must observe that the accused in her appeal before us has mentioned that she was 15 years of age on the date of incident. At least, three witnesses have described the girl as frock wearing girl. If she was a frock wearing Mohamedan girl, then, obviously, she could not have been a major on the relevant date. In our opinion, the Sessions Judge should have used its discretion which he was supposed to exercise in law and should have sent the accused for medical examination to ascertain her exact age. The Sessions Judge has failed in his duty. The High Court has not adverted to this

aspect.

11. Under the circumstances, we do not affirm the judgments of the courts below. We, accordingly, set-aside the judgments of the courts below and allow this appeal. The accused be released from the jail forthwith if she is not required in any other case.

.....J.
[V.S. SIRPURKAR]

.....J.
[T.S. THAKUR]

NEW DELHI
APRIL 28, 2011.

