

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

**The Hon'ble Justice Joymalya Bagchi
And
The Hon'ble Justice Moushumi Bhattacharya**

C.R.A. 217 of 2006

**Poulash @ Kangra Oraon
Vs.
State of West Bengal**

For the appellant : Mr. Arijit Bhusan Bagchi

For the State : Mr. Aniket Mitra

Heard on : 13.10.2020

Judgment on : 13.10.2020

Joymalya Bagchi, J. :

Appeal is directed against judgment and order dated 21.05.2005 convicting the appellant for commission of offence punishable under section 302 IPC and sentencing him to suffer imprisonment for life and to pay fine of Rs. 5,000/-, in default, to suffer imprisonment for one year.

Prosecution case, as alleged, against the appellant is to the effect that he was married to the deceased widow, Albina Kharia. There were frequent quarrels between the couple as appellant used to demand money from Albina. He also threatened to kill her when she refused to pay money. On 14.05.2002 at 6 p.m. Albina left with the appellant. She did not return during the night. Next day, her deadbody was found near the railway track. Post-mortem report revealed that she died due to strangulation. On the written complaint lodged by

the daughter of the deceased Pushpa Kharia, P.W. 1, first information report was registered against the appellant. Charge-sheet was filed and charge were framed against him under section 302 IPC.

In course of trial prosecution examined 8 witnesses and exhibited a number of documents.

Defence of the appellant was one of innocence and false implication. During examination under section 313 Cr.P.C. the appellant claimed that he was not present at the place of occurrence. He, however, did not examine any witness to prove his alibi.

In conclusion of trial, the trial judge by the impugned judgment and order dated 21.05.2005 convicted and sentenced the appellant, as aforesaid.

Mr. Bagchi, learned lawyer for the appellant argued there is no direct evidence that the appellant had murdered the deceased. Prosecution witnesses who claimed that the appellant was last seen with the victim are interested witnesses and their versions ought not be relied upon. Weapon of offence, that is, jute rope had not been seized in the course of investigation. Alibi of the appellant has also not been considered. Accordingly, the appeal is liable to be allowed.

Mr. Aniket Mitra, learned lawyer for the State argued that the evidence of P.W. 1 and P.W. 6, that is, the daughter and son-in-law of the deceased is corroborated by P.W. 2, an independent witness who saw the victim being dragged by the appellant towards the railway line. Post-mortem report reveals that the victim died due to strangulation. Appellant failed to probabalise his alibi. Hence, the appeal is liable to be dismissed.

P.W. 1 and P.W. 6 are the daughter and son-in-law of the deceased Albina. P.W. 1 deposed that the appellant was the second husband of Albina.

She had married him after her first husband had died. Relation between the appellant and Albina was not good. There was continuous quarrel between them. On 14.05.2002 P.W. 1 and P.W. 6 saw Albina accompany the appellant from her house. She did not return during the night. On the next morning, a lady informed P.W. 1 that her mother was lying dead near the railway line. She went to the place of occurrence and found her mother had been killed. There was a cloth tied round her neck. She lodged complaint. His evidence is corroborated by her husband P.W. 6 who made a statement before the Magistrate during investigation. Evidence of these witnesses have been criticized on the ground they are relations of Albina and hence, interested witnesses.

Mere relationship between the deceased and the witnesses is no ground to discard their version unless the same suffers from patent absurdity or improbabilities.

No such absurdity or improbability is evident from the depositions of P.W. 1 and P.W. 6. On the other hand, they were residing with the couple and are the most natural witnesses of the incident. In addition thereto, their evidence is corroborated by an independent witness, PW 2 who deposed that he had seen the appellant dragging Albina towards the railway line. His statement was also recorded during investigation before the Magistrate under section 164 Cr.P.C. He remained unshaken in course of cross-examination.

Accordingly, I am inclined to hold that the evidence of P.W. 1, P.W. 2 and P.W. 6 unequivocally establish that the deceased was last seen with the appellant near the railway line soon before the incident. On the next day, the deadbody of the deceased was recovered from the place of occurrence.

P.W. 3 PM doctor found the following injuries on the body of the deceased:-

“(1) Multiple abrasions around the neck, left and right hand, (2) marks of nail present over the anterior aspect of neck, (3) a circular ligature mark present around the neck which is continuous in nature.”

He opined that deceased suffered asphyxia due to strangulation which was homicidal and ante-mortem in nature.

No explanation is forthcoming from the appellant as to how his wife who had accompanied her from their residence in the night suffered such ghastly end. On the other hand, he tried to wriggle out of the situation by claiming that he was not present at the place of occurrence and was with another person. Such statement of the appellant under section 313 Cr.P.C. has not been proved by leading defence evidence.

Submission with regard to non-seizure of the ligature used for strangulation in my assessment is an act of remissness in the course of investigation and cannot shake the strong foundations of the prosecution case based on unimpeachable evidence on record.

In the light of the aforesaid circumstances, I am of the opinion that the circumstances relied on by the prosecution have not been proved beyond doubt and unerringly points to the guilt of the appellant.

Accordingly, the conviction and sentence of the appellant is upheld and the appeal is dismissed.

Period of detention suffered by the appellant during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon him in terms of 428 of the Code of Criminal Procedure.

Copy of the judgment along with L.C.R. be sent down to the trial court at once.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

I agree.

(Moushumi Bhattacharya, J.)

(Joymalya Bagchi, J.)