

Form No. J(1)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi
&
The Hon'ble Justice Suvra Ghosh

C.R.A. 606 of 2007

Tasnahara Khatun
-vs-
The State of West Bengal

For the Appellant : Mr. Bivaswan Bhattacharya
Mr. Bitasok Banerjee

For the State : Mr. Prasun Dutta
Mr. Santanu DebRoy

Heard on : 18.09.2020

Judgment on : 18.09.2020

Joymalya Bagchi, J.:

The appeal is directed against the judgment and order dated 18.05.2006 and 19.05.2006 passed by the learned Additional District and Sessions Judge, Fast Track 3rd Court, Rampurhat, Birbhum in Sessions Trial No. 4(6) of 2005 convicting the appellant for commission of offences punishable under sections 302/201 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life with fine of Rs. 3,000/- in default of payment of fine to suffer rigorous imprisonment for six months more for the offence under Section 302 of the Indian Penal Code and to suffer rigorous imprisonment for a term of

2 years with a fine of Rs.500/- and in default of payment of fine to suffer rigorous imprisonment for one month more for the offence under Section 201 of the Indian Penal Code. Both the sentences of imprisonment do run concurrently.

On 15.08.2004 P.W.13, Madhu Das, a resident of Mouoza Bishnupur, P.S. Margram, noticed the dead body of an unknown woman lying by the side of a pucca road. Blood was oozing from her mouth and there was a blackspot on her neck and shoulder. The deceased was wearing a yellow coloured nighty. He suspected that the victim had been murdered and lodged written complaint at Margram Police Station. Inquest was held over the dead body by P.W. 15 in the presence of local witnesses i.e. P.Ws. 1 and 2. On the written complaint of P.W. 13 F.I.R. was drawn up and criminal law was set into motion. In the meantime, P.W. 3, Rosena Bibi, mother of the deceased, received information that an unknown dead body had been found lying at village Bishnupur. She identified the body of the deceased at Rampurhat Hospital and as that of her daughter Kulsun Khatun @ Rekha. P.W. 5, Milan Sk., a neighbour of the appellant, made statement before Magistrate that the appellant had searched the dead body at his residence and had removed it along with others from his residence on the night of 14.08.2004. Accordingly, the appellant and other accused persons viz. Hasib Sk, Mister Sk. Kamrul Sk. were arrested and charge-sheet was filed against them under Sections 302/201 of the Indian Penal Code with regard to the murder of Kulsun Khatun @ Rekha. To prove the aforesaid charges, prosecution examined 16 witnesses during trial. Defence of the accused persons was one of innocence and false implication. In conclusion of trial, trial Judge by judgment and order dated 18.05.2006 and 19.05.2006

convicted and sentenced the appellant, as aforesaid. However, by the self-same judgment and order the co-accuseds were acquitted of the charges levelled against them.

Mr. Bhattacharya, learned Counsel appearing for the appellant argued that there is no direct evidence connecting her with the crime. Evidence with regard to “last seen together” is weak and does not inspire confidence. Conduct of P.W 5 in remaining mum till the dead body of the victim was recovered on 15.08.2004 is most unnatural and the trial court erroneously relied on his version to bring home the guilt. Circumstances relied upon by the prosecution do not established the guilt of the appellant beyond doubt. Hence, the appellant is entitled to an order of acquittal.

Mr. Dutta, learned Additional Public Prosecutor along with Mr. Deb Roy, learned Counsel appearing for the State argued that the prosecution case, which is based on circumstantial evidence, has been proved to the hilt. Motive of crime has been established through the evidence of P.W. 3. P.W 3 and 10 saw the victim enter the house of the appellant and thereafter the victim was untraceable till her dead body was recovered two days later from village Bishnupur. Admittedly, the victim had suffered homicidal death and the appellant had given a false explanation that the victim had left with one Mokshed (PW14). P.W. 5 supplied the link evidence with regard to the role of the victim in secreting the dead body in his residence while he was absent and thereafter carrying it away along with other accused persons. Hence, the prosecution case has been established proved beyond doubt.

Analysis of the evidence on record shows that the prosecution case is based on circumstantial evidence.

In *Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 SCC*

116 the Apex Court held as follows:-

“The following conditions must be fulfilled before a case against an accused can be said to be fully established on circumstantial evidence:-

(1) the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely ‘may be’ fully established,

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

Hence, I have made an endeavour to assess the prosecution evidence in order to satisfy myself whether the aforesaid conditions have been met in this case or not.

With regard to the “last seen theory”, prosecution has relied on the following evidence:-

(i) P.W. 3 is the mother of the deceased. She deposed the appellant had a love affair with Mokshed and was opposed to the proposal of marriage between Moshed and the deceased Rekha. Accordingly she along with others committed murder. On the date of the incident appellant had come to her house along with Mohila Khatun to purchase meat. She sent Rekha to the house of the appellant along with meat. Rekha did not return. She went to the

house of the appellant and found the house under lock and key. She searched for her daughter but in vain. She went to the police station and the police requested her to lodge written complaint. On the next day appellant told her that her daughter had gone away with Mokshed. Two days later her dead body was found at Bishnupur village. She identified the dead body of the victim.

(ii) Another witness, Aimatun Bibi (P.W.10) deposed that her maternal uncle's son was building a house beside the house of the appellant. She was standing at the spot and had seen the victim enter the house of the appellant on the day of the incident.

Learned counsel appearing for the appellant has vehemently attacked the evidence of P.W. 3 and argued that the said witness could not have seen her daughter enter the house of the appellant. He drew my attention to the evidence of P.Ws 6 and 9 who unequivocally claimed that the house of the appellant was not visible from the house of P.W. 3. He also submitted that the evidence of P.W. 10 ought to be taken with a pinch of salt. The said witness appears to be a chance witness and the reason for her presence in front of the house of the appellant, namely, construction undertaken by her relation has neither been verified in the course of investigation nor any corroborative evidence has been adduced in court.

I find sufficient force in the submissions of the learned counsel appearing for the appellant. Although P.W 3 claimed that the house of the appellant was at a stone's throw from her residence, evidence of other witnesses namely PW 6 and 9 speak otherwise. They are the local people and have stated that the house of the appellant was situated at a considerable distance from that of the victim. One cannot see the house of the appellant from that of

P.W.3. It is true these witnesses have been declared hostile. However, evidence of a hostile witness cannot be rejected in toto unless such evidence stands wholly discredited in the backdrop of the factual matrix of the case. Court will shift such evidence with greater scrutiny and circumspection and rely only on such parts of the evidence which remains unimpeachable. Having undertaken such endeavour, I find no cross-examination of these witnesses with regard to their evidence regarding distance between the residence of appellant and PW 3. Hence, evidence of PW 6 and 9 in this regard remained unchallenged and casts a doubt on the version of PW 3. PW 10 is an out and out chance witness. She claimed she was present at the spot as her uncle's son was building a house. PW 10 is a lady. It is highly improbable that P.W. 10, a lady, would entrust with supervision of construction. No evidence is forthcoming with regard to identity of her relation on whose behalf she was supervising the construction. In the light of the aforesaid circumstances, I find it difficult to rely on the evidence of PWs 3 and 10 and accept they had seen the victim enter the house of the appellant.

The other evidence relied upon by the prosecution is that of PW. 5. He is a neighbour of the appellant and deposed that he had gone away to his in-law's house at Rampurhat on 13th August 2004. He admitted in cross examination that he had kept his house under lock and key. When he returned on the next day at 7 p.m he found a dead body in the first floor of his 'kachha' house. He informed his wife. Both of them raised alarm. Appellant and others came to the spot and admitted their guilt. Thereafter the appellant along with others removed the dead body and threatened him not to disclose the incident to anyone. On the next day, he disclosed the incident to PW 3 and the Panchayat

Pradhan. Evidence of PW 5 is most unnatural and has not been corroborated by PW 3. PW 3 is completely silent with regard to the so-called disclosure by P.W. 5. On the other hand, she claimed on the following day appellant told her that her daughter had gone away with Mukshed. This dichotomy in the prosecution case exposes its hollowness to the core. If PW 5 had disclosed the incident to PW 3 as claimed by him it is beyond imagination PW 3 would remain quiet and not approach the police. Panchayat pradhan has also not been examined to corroborate P.W. 5. Hence, post occurrence disclosure by PW 5 does not find corroboration from P.W. 3 or any other evidence on record. 2/3 days after registration of FIR he appears to have disclosed such fact to police. Thus, I find it difficult to rely on P.W. 5 with regard to the role of the appellant in hiding the dead body at his residence as he appears to have disclosed the fact only after registration of FIR. His evidence is woefully vogue and his conduct so unnatural that no man of ordinary prudence would rely on his version to come to the conclusion that it was the appellant who had kept the dead body of the deceased at his residence and had subsequently removed it after threatening him.

The aforesaid loose ends do not tie up and form a complete chain. Far less do they unerringly point to the guilt of the appellant. Even if appellant may have been unhappy with the matrimonial proposal between Mukshed and the deceased, it is difficult for me to translate such vague suspicion into concrete proof and come to a finding that it was the appellant and the appellant alone who had committed the murder of the victim.

In the light of the aforesaid discussion, I am inclined to extend the benefit of the doubt and acquit the appellant of the charges levelled against her.

Appellant Tasnahara Khatun shall be forthwith released from custody if not wanted in any other cases upon executing a bond to the satisfaction of the trial court for a period of six months in terms of section 437A of the Code of Criminal Procedure.

The appeal is, accordingly, allowed.

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.

(Suvra Ghosh, J.)

(Joymalya Bagchi, J.)