

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

C.R.A. 61 OF 2020

Jalaluddin

VS.

The State of West Bengal

For the appellant : Mr. Bikash Ranjan Bhattacharyya, Ld. Sr. Advocate
Mr. Partha Sarathi Bhattacharyya
Mr. Debangon Bhattacharjee
Ms. Swarnali Saha

For the State : Mr. Saibal Bapuli, Ld. APP
Ms. Arani Bhattacharyya

Heard on : November 29, 2022, November 30, 2022 and
December 1, 2022

Judgment on : December 1, 2022

DEBANGSU BASAK, J.:-

1. The appeal is directed against a judgment of conviction dated December 18, 2019 and an order of sentence dated December 19, 2019 passed by the learned Additional Sessions Judge, Special Court (I.E Act), Berhampore, Murshidabad in S.SI. No.19/1998 convicting the appellant under Section 302 of the Indian Penal Code, 1860.

2. By the impugned order of sentence, the learned Judge convicted the appellant with a sentence for imprisonment for

life out of which, the appellant was directed to undergo rigorous imprisonment for a period of five years and the rest to be simple imprisonment. Learned Judge justified the award of simple imprisonment on the grounds that, the case was pending before the Court for more than 25 years and that, the conduct of the appellant was not bad. The learned Judge did not award any kind of fine in the case.

3. The police complaint was lodged on October 2, 1991 with regard to murder of one Najimuddin on October 1, 1991 at about 6 p.m. in the evening. It is stated in the police complaint that on October 1, 1991 at about 6 p.m., some persons caught hold of the victim on the way beside one culvert near Airmari Primary School. Suddenly, the appellant fired one pipe gun on the body of the victim who fell down and died on the spot at once. The complainant identified some people who were said to be eye-witnesses to the incident.

4. On the basis of such police complaint, a First Information Report was registered being Raninagar Police Station Case No.107/91 dated October 2, 1991 under Sections 341/302/34 of the Indian Penal Code and Sections 25/27

Arms Act. The police on conclusion of the investigations submitted a charge sheet. The Court framed charges as against four persons on May 15, 1998. All the four accuseds were charged with murder of the victim. The four accuseds were tried. At the trial, the prosecution examined 11 witnesses. The prosecution tendered documentary and material evidence which were marked as Exhibits. The defence tendered four witnesses.

5. Learned Senior Advocate appearing for the appellant submits that the prosecution failed to establish the case beyond reasonable doubt. He contends that the prosecution did not establish the motives for the murder. It is unlikely that some persons would catch hold of the victim and one person will shoot him without any motive being there.

6. Learned Senior Advocate appearing for the appellant submits that, there are discrepancies in the evidences of the prosecution witnesses. He submits that out of three so-called eye-witnesses, one eye-witness claimed that the victim was shot from the front while two others claimed that he was shot from the back.

7. Learned Senior Advocate appearing for the appellant submits that, although the so-called eye-witnesses claimed that the victim was shot at point blank range but the medical evidence particularly the post-mortem report does not support such claim. Moreover, neither the bullet nor the pipe gun was recovered.

8. Learned Senior Advocate appearing for the appellant submits that the prosecution witness nos.5 and 6 did not make any statement with regard to the involvement of the appellant before the Investigating Officer at the material point of time. He refers to the deposition of prosecution witness nos.5 and 6 as also the deposition of the Investigating Officer being prosecution witness No.11. He draws the attention of the Court to the deposition of prosecution witness no.11 made in cross-examination.

9. Relying upon ***AIR 1989 Supreme Court 1762 (Shivaji Dayanu Patil v. State of Maharashtra)***, learned Senior Advocate appearing for the appellant submits that, in view of the so-called eye-witnesses not recording their statements before the Investigating Officer, their testimonies ought not to

be relied upon to convict the appellant. Moreover, all the other co-accuseds were acquitted. As against one of the co-accuseds the case was filed.

10. Learned Senior Advocate appearing for the appellant relies upon **2022 CRI.L.J. 1561 (Radhey Shyam & Ors. v. State)** and **2022 CRI. L.J. 1740 (Selvakumar alias Selvam v. State)** in support of his contentions with regard to failure to establish motive by the prosecution.

11. Learned Advocate appearing for the State submits that there are cogent evidences establishing the involvement of the appellant in the murder of the victim. He submits that, the eye-witnesses saw the appellant fire the firearms. He refers to the deposition of the doctor conducting the post-mortem of the victim, being P.W. 8. He submits that, the victim died out of one gunshot injury. The wounds are of such a nature that the bullet entered from the back of the victim and exited the victim from the front. No bullet was recovered from the body of the victim. He submits that the post-mortem doctor opined that the victim was shot from a close distance from the backside.

12. Relying upon **(2010) 12 SCC 91 (Bipin Kumar Mondal vs. State of West Bengal)**, learned advocate appearing for the State submits that, motive is of no consequence and pales into insignificance when direct evidence establishes the crime. In the facts of the present case, he submits that there are valid and cogent, corroborative evidences to establish the crime being committed by the appellant. Consequently, the prosecution need not establish motive at the trial.

13. Relying upon **2013 Cri LJ 4827 (Chhedilal & Ors. Vs. State of Madhya Pradesh)**, learned advocate appearing for the State submits that the relation of the witnesses with the victim is not a factor to effect the credibility of a witness. In the facts and circumstances of the case, no relation between the eye-witness and the victim was established at the trial.

14. Relying on the judgement and order dated August 29, 2022 passed in CRA 49 of 2021 by the Co-ordinate Bench, learned advocate appearing for the State submits that, the Court can act on the basis of a single witness, if the testimony of such witness is found to be credible. In the facts of the present case, out of the three eye-witnesses, at least one of

them is credible without admitting that none of the other two eye-witnesses are credible. Therefore, on the basis of such credible testimony, the conviction of the appellant should be upheld.

15. As noted above, the prosecution examined 11 witnesses at the trial.

16. P.W. 1 is a person who was present at the time of the inquest and signed on it. He says that, he knew the victim was murdered. P.W. 2 is the police official who signed the seizure list.

17. P.W. 3 is the maker of the complaint. P.W. 3 states that, he is the younger brother of the victim. He was accompanying his elder brother, the victim, when suddenly, 4 persons caught hold of the victim and the appellant opened fire aiming at him a pipe gun as a result of which, the victim fell down in the road and succumbed to his injuries on the spot. He names four other persons who were eye-witnesses to the incident. He identified the written complaint lodged with the police.

18. In cross-examination, P.W. 3 stated that, he narrated the incident to the police at the time of inquest. He acknowledged

the fact that of the 5 accused persons, 4 embraced the victim. Out of 5 miscreants, 2 caught hold of the hands of the victim, one caught hold of the hair and one embraced him touching his shoulder.

19. P.W. 4 is a witness to the murder. He in his testimony says that, the incident took place on a road which is adjacent to a primary school. At the relevant point of time, he was returning to his village after searching for labourers along with P.W. 6, D.W. 1, P.W. 5 and the victim. When the victim reached the culvert road, at that time four persons caught hold of the victim and the appellant opened fire aiming at the victim, as a result of which the victim fell down on the road and succumbed to his injuries. He states that, he was at a distance of 15/20 cubits from the spot, at that time. He identified the appellant and two of the victims in Court.

20. In cross-examination, P.W. 4 states that, on October 1, 1991, he was examined by the police officer and a statement recorded.

21. P.W. 5 is another eye-witness, who states that the victim was murdered on October 1, 1991 at the side of the

culvert near a primary school which was 6 P.M. then. At that time, P.W 5 along with the victim and P.W. 6, P.W. 4 and D.W. 1 had gone to Uttarpara in search of labourers. The incident took place while they were returning from Uttarpara. He states that, four persons caught hold of the victim and the appellant opened fire on the back of side of the victim, as a result of which the victim died due to gun shot injuries on his back. Thereafter, the accused persons fled away towards the Northern side of the village. He identified the appellant and two other persons in the Court.

22. In cross-examination, P.W. 5 states that, at that relevant point of time, they were returning to their respective houses. He reiterates in cross-examination that the appellant opened fire aiming at the victim on his back. However, he claims that the accused persons did not embrace the appellant at the relevant time.

23. P.W. 6 is another eye-witnesses to the incident. He states that at the relevant date and time, he was about 20/22 cubit behind the victim. He states, P.W. 4, D.W. 1 and P.W. 5 were with him. Four accuseds caught hold of the deceased

who was proceeding in front of him at a distance of 20/22 cubit. Thereafter, the appellant opened fire on his back from a point blank range and fled away. The victim fell down on the road and died.

24. A person knowing the victim deposed as P.W. 7. He did not add much substance to the case of the prosecution.

25. The doctor conducting the post-mortem on the victim deposed as P.W. 8. He stated that, on October 2, 1991 he conducted the post-mortem on the victim. On examination he found one gun shot wound of entry to be present below the scapula and wound of exit to be present over left side of chest just below the left clavity. He did not find any bullet in the body. He found one fracture on second rib. He found other injuries on the deceased. He opined that the death was due to severe shock and haemorrhage and gun shot wound. The death was ante-mortem and homicidal in nature. The postmortem examination report was tendered in evidence and marked as Exhibit-3. He stated that, the gun shot injury was caused from short distance from back side. In cross-examination he explained what he meant by close range and

stated that, it may be caused from point blank range to one foot.

26. The police official who registered the complaint as a first information report deposed as P.W. 9. The police constable who got the dead body of the victim for post-mortem deposed as P.W. 10.

27. P.W. 11 is the Investigating Officer. He stated that he took up the investigation of the case. He held inquest on the dead body of the victim and prepared an inquest report in presence of witnesses. The inquest report was tendered and marked as Exhibit-2. He prepared a rough sketch map of the place of occurrence with index which was tendered in evidence and marked as Exhibit-7. He stated that, he seized blood stain from the place of occurrence under seizure list which was tendered and marked as Exhibit-8. He stated that he sent the dead body through P.W. 9. He examined available witnesses and recorded their statements under Section 161 of the Code of Criminal Procedure. He searched for the accused persons. After conclusion of the investigation he submitted charge-sheet against the accused persons on August 12, 1992

under Sections 341/302/34 of the Indian Penal Code showing the accused persons are absconders. He collected the post-mortem report of the deceased and seized wearing apparels of the deceased. He stated that in course of investigation, he recorded the statement of P.W. 7.

28. In cross-examination, P.W. 11 stated that, he received information about the murder on October 1, 1991 at about 21.55 hours. On receiving such information he went to the place of occurrence. He held the inquest of the dead body in presence of witnesses. He stated that in course of examination, he examined P.Ws. 5 and 6. P.Ws. 5 and 6 did not state to him that, the appellant opened fired aiming at the victim from point blank range touching his back.

29. The appellant was examined under Section 313 of the Code of Criminal Procedure, where he claimed to be innocent. He desired to produce defence witnesses. In fact four defence witnesses were examined at the trial on behalf of the defence.

30. D.W. 1 is a person which P.Ws. 4 and 5 stated to be present along with them at the time of occurrence. However, in his deposition, D.W. 1 stated that he was taking tea in a tea

stall. After that, he returned to the house. On returning to his house he heard a hue and cry. Hearing such hue and cry, he reached the place of occurrence. He found the dead body of the victim lying and the local people assembled there. He claimed that he knew nothing more about the incident.

31. The brother of D.W. 1 deposed as D.W. 2. He claimed in his testimony that on the date of the incident, the victim did not go with him for engaging labour. He did not meet the victim on that day.

32. D.W. 3 is an acquaintance of the victim. He stated that he heard hue and cry. On his way to the mosque he noticed the victim to be lying dead. He stayed at the place of occurrence for about 10 to 15 minutes. Thereafter he went to the mosque. He claimed that there was no enmity between him and the victim during the lifetime of the victim.

33. D.W. 4 is another villager who claimed to visit the place of occurrence after the incident. He claimed that he was acquainted with the victim. He stated that since it was dark it was not possible to speak specifically as to whether anybody else was also present at the place of occurrence or not.

34. At the trial, the prosecution evidences, particularly the evidence of the post-mortem doctor and the post-mortem report of the victim established that the victim died due to gun shot injury which the victim received at the back. The post-mortem report as well as the testimony of the post-mortem report by the doctor conducting the post-mortem on the victim establishes the exit of the bullet from body. No bullet was recovered from the body of the victim. The police could not recover the bullet used. The fire arm used was not seized by the police. The non-seizure of the bullet or the firearm, in the facts of the present case, is not fatal to case of the prosecution. The body of the victim contains a gun shot injury with a bullet entering into his body from the back and exiting from the front.

35. The factum of death by gun shot is clearly established by the prosecution. In the opinion of the doctor, the death was due to gun shot injury, and ante-mortem and homicidal in nature. Therefore, it can be said that the prosecution established that the victim was murdered by bullet injury emanating from a fire arm.

36. P.Ws. 4, 5 and 6 stated in their depositions that they saw the appellant to shoot the bullet from the firearm. The deposition of P.Ws. 4, 5 and 6 with regard to the incident is consistent. They are consistent on the fact that the appellant shot the firearm on the victim by reason of which the victim suffered gun shot injury and succumbed to his injuries at the spot.

37. It is contended on behalf of the appellant that, since it is claimed by the prosecution witnesses that some persons embraced the victim, the question of the victim being shot from the back does not arise. With the deepest of respect, such contention is belied by the medical evidence on record and the oral testimonies which corroborate each other. The victim suffered gun shot injury with the bullet entering from the back of the victim and exiting from the front of the victim. P.W. 4, 5 and 6 saw the appellant to shoot the firearm. Therefore, on the conspectus of the facts established at the trial, it can be said with certainty that the appellant shot the firearm on the victim who received gun shot injury at his back and the bullet exited the body from the front.

38. It is contended on behalf of the appellant that P.Ws. 5 and 6 did not make any statement to the Investigating Officer during the investigation and that such witnesses made the statement for the first time in Court. P.W. 4 stated about the presence of P.Ws. 5 and 6 at the place of occurrence and, therefore, there is nothing to disbelieve the oral testimony of P.Ws. 5 and 6, although, they were apparently not examined by the Investigating Officer during the course of investigation.

39. With regard to the relevance and significance of motive in a criminal trial **Bipin Kumar Mondal** (Supra) is of the following view:

“22. In fact, motive is a thing which is primarily known to the accused himself and it may not be possible for the prosecution to explain what actually prompted or excited him to commit a particular crime.

23. In Shivji Genu Mohite v. State of Maharashtra [(1973) 3 SCC 219 : 1973 SCC (Cri) 214 : AIR 1973 SC 55] this Court held that in case the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eyewitness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not

be so in cases where there are eyewitnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eyewitness is rendered untrustworthy.

24. *It is settled legal proposition that even if the absence of motive as alleged is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, the motive part loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance. (Vide Hari Shanker v. State of U.P. , Bikau Pandey v. State of Bihar and Abu Thakir v. State of T.N. [(2010) 5 SCC 91 : (2010) 2 SCC (Cri) 1258])*

25. *In a case relating to circumstantial evidence, motive does assume great importance, but to say that the absence of motive would dislodge the entire prosecution story is giving this one factor an importance which is not due. Motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy. (Vide Ujjagar Singh v. State of Punjab)*

26. *While dealing with a similar issue, this Court in State of U.P. v. Kishanpal [(2008) 16 SCC 73] held as under: (SCC p. 88, para 39)*

“39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction.”

40. In **Radhey Shyam** (supra), the Court in the facts and circumstances of that case disbelieved the prosecution witnesses on several grounds pointed out therein. Such is not the facts and circumstances of the present case.

41. Similarly, in **Selvakumar alias Selvam** (supra), the Court found the testimony of prosecution witnesses not to be reliable. Again the facts of the present case are not the similar.

42. In the facts of the present case, there are evidence of eye witnesses implicating the appellant in the murder of the

victim. The prosecution witnesses nos. 4, 5 and 6 vividly describe the incident and the involvement of the appellant in their oral testimonies which stands corroborated by the medical evidence.

43. The prosecution witnesses examined at the trial were accompanying the victim at the time of occurrence. There is no direct relationship shown between the prosecution witnesses and the victim. In any event, the relationship is not a factor which affects the credibility of a witness. Reference can be made to **Chhedilal** (supra) in this regard.

44. As a general rule, the Court can and may act on a testimony of single witness provided it is fully reliable. This was observed in **Dayamoy Mondal** (supra). In the facts of the present case, there are at least three witnesses as prosecution witnesses being P.W. nos. 4, 5 and 6 who are wholly reliable. Even for the sake of argument, if the testimonies of prosecution witness nos. 5 and 6 are overlooked on the grounds canvassed on behalf of the appellant, then also the evidence of P.W. 4 can not be discarded. On the basis of the evidence of P.W. 4, which is corroborated by the medical

evidence produced by the prosecution at the trial, the conviction of the appellant for murder of the victim can and should be upheld.

45. Four defence witnesses were examined at the trial. None of the four defence witnesses set up any defence of alibi for the appellant. In fact, no effort was made to take the defence of alibi. None of the defence witnesses supported of the case of the appellant. None of the defence witnesses claimed themselves to be an eye witness to the incident. None of the defence witnesses said that the appellant was not involved in the incident.

46. In such circumstances, we find no reason to interfere with the judgment and order of conviction and the order of sentence appealed against.

47. Accordingly, Conviction and sentence imposed upon the appellant are upheld.

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

49. C.R.A. 61 of 2020 is dismissed accordingly.

50. Trial Court records along with a copy of this judgement be sent down at once to the learned trial Court for necessary action.

51. Photostat certified copy of this order, if applied for, be given to the part parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

52. I agree.

(Md. Shabbar Rashidi, J.)