

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 137 of 2017

Jahander Sk. & Anr.

-Vs-

The State of West Bengal

For Appellant No. 1 : Mr. Arnab Chatterjee, Adv.
Ms. Dhanasree Biswas, Adv.

For Appellant No. 2 : Mr. Prabir Majumdar, Adv.

For the State : Mr. Partha Pratim Das, Adv.
Mrs. Manasi Roy, Adv.

Heard on : 13th December, 2022.

Judgment on : 13th December, 2022.

Joymalya Bagchi, J. :-

1. Appellants have assailed the judgment and order dated 06.01.2017 and 07.01.2017 passed by the learned Additional Sessions Judge, 2nd Court, Krishnagar, Nadia in Sessions Trial No.X(IX) of 2015 arising out of Sessions Case No.10(08) 2015 convicting the appellants for commission of offence punishable under Sections 302/34 of the Indian Penal Code and sentencing them to suffer imprisonment for life

and to pay fine of Rs. 25,000/-each, in default, to suffer rigorous imprisonment for one year more.

2. Appellants and one Chalim Sk. were made to stand trial on the charge that on 28.4.2015 at 7 p.m they committed the murder of Manchur Sk behind the cowshed of appellant no. 1, Jahander Sk.

3. To prove its case, prosecution examined 15 witnesses including the wife of Manchur Sk namely Aduri Bibi (PW1).

4. Aduri had lodged written complaint at Chapra P.S alleging on 28.4.2015 at 7 p.m appellant no. 1 (Jahander) had called her husband. A storm followed. After the storm subsided, her husband did not return.

5. She and her relations started searching for her husband. When they went to the house of Jahander he stated he did not know where her husband had gone. Thereafter, the appellants fled away from the village.

6. On the next day around 5.30 a.m., dead body of Manchur was found lying behind the cowshed of Jahander. A 'gamcha' was tied around his neck.

7. On the basis of written complaint of Aduri Bibi Chapra PS case no. 309/15 dated 29.4.2015 was registered for investigation.

8. In conclusion of investigation, charge-sheet was filed against the appellants and one Chalim Sk and charges were framed, as aforesaid.

9. In conclusion of trial, trial Judge by the impugned judgment and order convicted and sentenced the appellants. By the self-same judgment he acquitted Chalim Sk. of the charge levelled against him.

10. P.W 1 Aduri Bibi is the wife of the deceased and de facto complainant.

11. P.Ws 2 and 9 are the brothers of the deceased.

12. PW 3, 4, 5 and 7 are neighbours.

13. PW 14 Dr. Siddhartha Sarkar Saha is the post mortem doctor and PW 15 Laltu Ghosh is the Investigating Officer.

14. Analysis of their evidence would show no one saw the appellants had murdered Mansur Sk. PW 1, 2 and 9 claimed on 28.4.2015 around 7 p.m appellant had called Manchur from his residence. But PWs 2 and 9 were silent with regard to such fact before the investigating officer (PW15). Hence, their deposition in this regard appears to be an embellishment.

15. Learned counsel for the State argues PW 1 stated this fact at the earliest opportunity in the FIR. He also claims neighbours (PW 3, 4, 5 and 7) were told that appellant no. 1 had called Manchur from his residence.

16. Though I note in the FIR PW 9 mentioned Jahander had called Manchur from his residence, prosecution case that the neighbours were informed about such fact by the family members is stated for the first

time in Court. Hence, the 'last seen' theory solely rests on the deposition of the wife of the deceased PW 1.

17. Prosecution witnesses deposed there was prior enmity between Jahander and Manchur over fencing. Enmity is a double edged sword. While it may be the motive to commit the crime, it can also prompt family members of the deceased to falsely implicate an inimical adversary.

18. Even if one believes the version of PW 1 that Jahander had called Manchur on the fateful night, it is doubtful whether the other circumstances would form a complete chain to implicate the appellants in the murder.

19. One of the vital circumstances relied upon by the prosecution is the recovery of the dead body behind the cowshed of the appellants. This circumstance is equivocal and does not exclusively point to the guilt of the appellants for the following reasons. Inquest report prepared by the investigating officer (PW 15) shows the recovery of the dead body was from a ditch of one Nadu Sk. This also finds support in the rough sketch map prepared by PW 15 (Ext 7). Though the ditch of Nadu Sk. is adjoining the cowshed of appellant no. 1, the place of occurrence does not appear to be within the exclusive control and dominion of the appellants. Nobody saw the appellants take the victim to the place of occurrence. Hence, the alternative hypothesis that the victim had been done away with by any other person is not wholly ruled out.

20. Some suspicion may arise owing to the appellants hurriedly leaving on the night of occurrence. Abscondence of an accused may be for various reasons. Evidence has come on record PWs 1 and 6 had questioned appellant no. 1 with regard to the whereabouts of the deceased. Fearing false implication appellants may have fled the village. Hence, their abscondence by itself cannot establish the guilt of the appellants beyond doubt.

21. In the light of the aforesaid discussion, I am inclined to extend the benefit of doubt to the appellants.

22. Appellants are acquitted of the charges levelled against them and conviction and sentence of the appellants are set aside.

1. We are informed appellant no. 2 Madhu Bibi @ Madhumala Khatoon Bibi is on bail. Bail bond of Madhu Bibi @ Madhumala Khatoon Bibi shall be discharged after expiry of six months in terms of Section 437A of the Code of Criminal Procedure.

23. Appellant no. 1 Jahander Sk. shall be released from custody, if not wanted in any other case, upon execution of a bond to the satisfaction of the trial court which shall remain in force for a period of six months in terms of section 437A of the Code of Criminal Procedure.

24. The appeal is, accordingly, allowed.

25. In view of disposal of the appeal, connected application(s) if any, stands disposed of.

26. Let a copy of this judgment along with the lower court records be forthwith sent down to the trial Court at once.

27. Photostat certified copy of this judgment, if applied for, shall be made available to the appellants upon completion of all formalities.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)