

14.12.2022
S/L. 47

Court No.12
Suvayan/
Sourav

GA 4 of 2005

In the matter of: **State of West Bengal**

....Appellant.

Mr. Saswata Gopal Mukherjee, Ld. PP
Ms. Zareen N. Khan
Mr. Ashok Das
Mr. Md. Kutubuddin

...for the appellant.

Mr. Prabir Majumdar
Mr. Snehansu Majumder
Ms. Songeeta Chakraborty

...for the respondent.

1. Heard Mr. Ashok Das, learned Counsel for the appellant and Mr. Prabir Majumdar, learned Counsel for the respondent.
2. This is an appeal by the State against the order of acquittal recorded by learned Additional Sessions Judge, Fast Track Court 1, Krishnanagar, Nadia in Sessions Case No.12(6) 2002.
3. All the acquitted persons were charged under Section 304 IPC read with Section 34 thereof. Total number of accused persons were four.
4. The occurrence happened at about 11.00 p.m. on 07.06.1996. Preceding the occurrence time, Samser Ali (deceased), uncle of informant (PW 1) was returning home from mosque after offering prayer. He found three persons drinking liquor near his house along with one Liaquat Ali (not an accused). Samser Ali (deceased) asked them to leave the place. Verbal altercation followed by scuffle among there. As Liaquat Ali was drunk, he could not keep his balance and dashed his head against the wall. At this stage, Para people came to the scene and separated the parties. All of a sudden, thereafter, all the accused persons, who are brothers and nephew of aforesaid Liaquat Ali came to the house of Samser Ali and assaulted him with a 'lathi' on his head. It is specifically alleged that Ershad

Ali assaulted deceased Samser Ali on his head with a 'lathi' being present behind his back. So far as other three acquitted persons are concerned though there is no specific allegation regarding assault, they have been implicated by aid of Section 34 IPC. Samser Ali was taken to nearby Santipur hospital in injured condition and he was declared brought dead by the medical officer present there.

5. On receipt of information from P.W. 1, P.W. 13 registered the F.I.R. took up investigation, examined all the witnesses, made incriminating seizures and after substantial part of investigation was over, he handed over charge of investigation to another officer who ultimately filed the charge-sheet. The second I.O., however, has not been examined in this case. Medical officer has also not been examined though postmortem report has been marked as Exhibit 7 at the instance of the first I.O. P.W. 13.
6. Prosecution has examined 13 witnesses to prove the charge against the acquitted persons out of whom P.W.s 2, 5, 7, 9 and 10 are the eye witnesses. P.W. 1 is the informant and P.W. 13 is I.O.
7. Defence plea is one of complete denial and false implication. No evidence has, however, been adduced by the defence.
8. Learned Trial Court on thorough examination of the evidence on record has disbelieved the eye witness account in its totality on the following grounds:
 1. The evidence adduced by the eye witnesses is not consistent.

2. The eyewitnesses have contradicted themselves inter se in their versions.
 3. Some of the eyewitnesses account tendered by eye witnesses have been belied by other eyewitnesses.
 4. The P.M. report is not indicative of the death as suggested by the eyewitnesses.
9. Mr. Ashok Das, learned Counsel for the State submits that while appreciating the evidence of the eyewitnesses, learned Court below has travelled more on surmises and conjectures than on the settled principles of Evidence Act. Further it is submitted by him that if there is variance between the ocular testimony and medical evidence, then precedence should be given to the ocular testimony eschewing the medical evidence. Mr. Das, lastly submits that it is a fit case where the accused persons should have been convicted.
 10. Mr. Majumder, learned Counsel for the respondent on the other hand submits that a bare reading of the impugned judgment itself would show that not only the witnesses have contradicted the facts narrated by each other but they have successfully being contradicted under Section 157 of Evidence Act if the evidence of the eyewitnesses is read in consonance with the evidence of I.O., P.W. 13. Further it is submitted by Mr. Majumder that the I.O. is not at all competent to tender the P.M. report in evidence, he being not the expert on the subject and without examination of the medical officer the P.M. report should not have been marked as an exhibit. It is further submitted by him that if contradictions discussed by

learned Trial Court are taken into consideration there is no room for any other conclusion than what has been reached by learned Trial Court.

11. After hearing the learned Counsel for the parties, we perused the evidence of all the witnesses who are stated to be the eyewitnesses, i.e., P.W.s 2, 5, 7, 9 and 10. When the evidence adduced by the aforesaid witnesses are taken into consideration in conjunction with the impugned judgment we find that learned Trial Court has taken into consideration the evidence of the witnesses in its totality and has come to specific findings regarding the contradictions in the evidence of eyewitnesses inter se and the contradictions in the evidence of the eyewitnesses under Section 157 of the Evidence Act.
12. For the sake of brevity, we are not discussing the contradictions as alleged by learned Counsel for the respondent in detail as those have been described in detail by learned Trial Court in Pages 3, 10, 11, 12, 13 and 14 of the impugned judgment and we are one with learned Trial Court.
13. From the perusal of the evidence, we find that there is also evidence of oral dying declaration by deceased Samser Ali before his widow, P.W. 9 and others when he was being taken to the hospital but such evidence has been contradicted under Section 157 of the Evidence Act inasmuch as, P.W. 9 herself *ipse dixit* has testified that she was examined by the I.O. but she did not state to him that while her husband was being taken to the hospital, he disclosed with pain on being asked that Liaquat Karigar and his associates were drinking liquor

and when he protested he was met with such consequences. She (P.W. 9) further testify in her cross-examination that deceased Samser Ali could not speak after he fell down after receiving the assault.

14. On thorough reading of the evidence of the witnesses and the impugned judgment, we are of firm view that the witnesses have contradicted themselves inter se to the level of impeaching their credit and from the joint reading of evidence of the eyewitnesses and the cross-examination of the I.O. we found that P.W.s 5, 6, 7 and 9 have been contradicted under Section 157 of the Evidence Act in material particular striking at the root of the prosecution case.
15. This being an appeal against acquittal, we have very limited scope of interference. When the ocular testimony has been razed to the grounds, no question arises regarding variance between the ocular testimony and medical evidence. The non-examination of the Medical Officer, who conducted the postmortem examination also stares at the face of the prosecution.
16. Taking into consideration the totality of the facts and circumstances, we do not find any merit in the appeal and the same is accordingly dismissed.
17. Accordingly, GA 4 of 2005 is dismissed.
18. The L.C.R. be sent down to the Trial Court immediately.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)

