

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

C.R.A. 280 of 2005

With

CRAN 1 of 2005 (Old No. CRAN 797 of 2005)

Sankar Prasad Show @ Yadav

-Vs-

State of West Bengal

For the Appellant : Mr. Prosenjit Mukherjee, Adv.
Mr. Saptarshi Chakraborty, Adv.
Mr. Arghya Kamal Dey, Adv.

For the State : Mr. Naryan Prasad Agarwala, Adv.
Mr. Saryati Dutta, Adv.

Heard on : 21st March, 2022

Judgment on : 21st March, 2022.

Joymalya Bagchi, J. :-

The appeal is directed against the judgment and order dated 17.01.2005 & 18.01.2005 passed by learned Additional District & Sessions Judge, Fast Track 3rd Court, Rampurhat, Birbhum, in Sessions Trial No. 1(3)/2004 arising out of Sessions Case No. 14/2004 convicting the appellant for commission of offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life and to pay a fine of Rs. 5,000/-, in default to suffer rigorous imprisonment for six months more.

Prosecution case as alleged against the appellant is to the effect that on 08.11.2003 the appellant had checked into room No. 21 of “Manashi lodge” at Tarapith along with one lady Deepa, the deceased. He introduced the lady as his wife and signed on the admission register Exhibit-22 as the head of the family. On the next day, they went to visit the temple and returned around 12 noon. They had lunched in the room at 2 p.m. Around 3 p.m., the appellant was seen by the employees of the hotel including one Sentu Let (P.W. 1) going out of the lodge. Sentu and his colleagues enquired where he was going. Appellant replied he was going to a nearby lodge and his wife was in the room and proceeded out of the lodge. At that time, an employee, namely, Mithun (P.W. 4) checked the room and found it was under lock and key. The employees rushed and caught the appellant at the main gate of the hotel and brought him back. Upon opening the room, the lady was not found there. Appellant stated his wife was in the bath room. They did not hear any sound of water. Out of suspicion, they knocked on the door which automatically opened. They found the victim lying with a cut injury on her neck in the bathroom. They detained the appellant in the office room and intimated the police. Officer-in-Charge of Rampurhat police station (P.W. 12) along with P.W. 15 came to the hotel and recorded the statement of aforesaid Sentu Let (P.W. 1) which was treated as First Information Report. Appellant was arrested. On his disclosure statement offending weapon was seized from the cornice of the room under a seizure list. Upon conclusion of investigation, charge-sheet was filed and charge was framed under

Section 302 of the Indian Penal Code against the appellant. Prosecution examined 15 witnesses and exhibited a number of documents. The appellant pleaded not guilty and claimed to be tried.

In conclusion of trial, the Trial Judge by the impugned judgment and order dated 17.01.2005 & 18.01.2005 convicted and sentenced the appellant, as aforesaid.

Mr. Mukherjee, appearing for the appellant submits evidence of the employees of the lodge are unreliable. No document was furnished to show they were attached to the said hotel at the time of occurrence. None of the occupants of the hotel had been examined to prove the prosecution case. No opinion of hand writing expert was obtained to prove the signature of the appellant in the register of the hotel. Hence, prosecution has failed to prove that the appellant had checked into room 21 of the hotel along with the deceased. No forensic examination was conducted with regard to the seized weapon. Earlier telephonic communication to the police station was not recorded as First Information Report. Thus, the prosecution case has not been proved beyond reasonable doubt and the appellant is entitled to an order of an acquittal.

Mr. Agarwal, learned Advocate appearing for the State submits the employees of the hotel have proved the appellant was alone with the victim lady who was found murdered in the room. He admitted his signature in the hotel register, Exhibit-22 in the course of his examination under Section 313 of the Code of Criminal Procedure but claimed the owner had compelled him to sign the register. Admittedly, P.W. 9, Manager of the

hotel was not present on the day of occurrence and the plea of compulsion to sign on the register appears to be patently absurd. Post Mortem Doctor, P.W. 11 has proved that the death was due to a cut throat injury which was ante mortem and homicidal in nature. No explanation is forthcoming from the appellant as to how his companion have been murdered in the hotel room.

From the evidence on record it appears that the prosecution has relied on the following circumstances to prove its case;

- a) On 08.11.2003 appellant along with his companion Dipa Show had checked into room No. 21 of Manashi Lodge at Tarapith; Appellant had signed in the admission register of the hotel, Exhibit-22 as head of the family (Exhibit-7).
- b) On the next day i.e. on 09.11.2003 they went to the temple and returned around 12 noon. They had lunched together;
- c) Around 3.00 p.m., appellant was seen going out of the hotel, on query he stated he was going to Sonar Bangla Lodge to meet his friend. However, one of the employees, P.W. 4 found that the room was under lock and key.
- d) Out of suspicion the employees requested the appellant to accompany them to the room and upon opening the room they did not find the lady. Appellant stated that she was having her bath in the bath room;

- e) No sound of water was heard from the bath room and upon opening the door of the bath room, body of the lady was found with a cut injury in her throat;
- f) Post Mortem Doctor, P.W. 11 opined victim had died due to cut throat wound which was ante mortem and homicidal in nature;
- g) Appellant was apprehended and on his leading statement, a knife was recovered from the cornice of the room.

Prosecution has primarily relied upon the evidence of P.Ws. 1, 3, 4 and 7 employees of the lodge to prove the vital circumstances, enumerated as (a) to (e) and (g) above.

P.W. 1, Sentu Let is the de-facto complainant. He deposed on 08.11.2003 appellant along with one Dipa Show had checked into room No. 21 claiming that they are husband and wife. On the next day, they went for worship and returned to the lodge at 12.00 noon. They had lunched together. Around 3.00 p.m., P.W. 1 and other workers were watching T.V. in the office. They saw the appellant going out from the lodge. He stated that his wife is in the room. Mithun Das, P.W.4 went up stairs and checked the room. He found the room was under lock and key. They immediately apprehended the appellant and brought him to the room. Upon opening the room they found it empty. Appellant stated his wife was in the bath room. They did not hear any sound of water. Out of suspicion, they knocked on the door which automatically opened. They found the lady lying with a cut injury. They suspected that she had died. They detained the appellant and informed their Manager, Subir Banerjee.

Police came to the lodge. P.W. 1 lodged written complaint with the police. He proved his signature on the written complaint. He signed on the inquest report. Police seized various articles from the room.

Deposition of P.W. 1 is corroborated by the other employees of the hotel viz., Sri Partha Let, P.W. 3, Sri Mithun Das, P.W. 4 and Amjad Khan, P.W. 7. Their depositions in Court, in spite of extensive cross-examination, remained unshaken. Mr. Mukherjee criticised the depositions of the aforesaid witnesses primarily on the ground that they were unable to produce their appointment letters as employees of the lodge. From the depositions of the witnesses, it appears that they are from the unorganised labour sector. It is common knowledge such employees are ordinarily appointed through oral arrangements and not issued formal appointment letters. Admittedly, the witnesses did not have any enmity with the appellant. Hence, I am not inclined to disbelieve their versions implicating the appellant on the mere ground they were unable to produce appointment letters.

The evidence of the aforesaid witnesses find corroboration from the Manager of the lodge viz., P.W. 9. He identified the hotel register, Exhibit-22. He deposed appellant had signed on the register Exhibit-7. He also deposed the register had been seized by the police under a seizure list which was signed by him as well as Sentu Let, P.W. 1.

In cross-examination, he stated entry 19 which is related to the appellant was filled up by Dipa Show and the appellant signed as head of

the family. Admittedly, he was not present at the lodge when the appellant and the lady entered the lodge.

Mr. Mukherjee has strenuously argued P.W. 9 was not present when the appellant and the victim allegedly came to the lodge on 08.11.2003. He was not acquainted with the hand writing of Dipa Show nor the signature of the appellant. The aforesaid persons had also not signed in his presence. Thus, he could not be a competent person to prove entry No. 19. I would have otherwise found substance in the aforesaid submission but for the admission made by the appellant during his examination under Section 313 of the Code of Criminal Procedure. Responding to question No. 59, the appellant replied as follows;

“Q.59. He has further stated that on last 08.11.2003, you along with your wife- Dipa had come to Manasi Lodge and hired a room in the Lodge bearing Room No. 21, by signing on the “Hotel Register” What have you got to say?

Ans. The owner of the Hotel had compelled me to sign on such Register.”

From the aforesaid reply, it appears that the appellant has admitted his signature on the register but claimed that the owner of the hotel had compelled him to sign the register. Neither the owner nor the Manager was present at the time when the appellant had checked into the hotel. It is relevant to note none of the prosecution witnesses including P.W. 9 was given a suggestion that the appellant was compelled to sign on the register. Hence, the plea of the appellant that he was compelled to sign the register by the owner is a desperate one which was raised by the

appellant for the first time in the course of his examination under Section 313 of the Code of Criminal Procedure.

Thus, I am of the opinion the oral evidence of P.Ws. 1, 3, 4 and 7 that the appellant along with the victim lady had checked into the room No. 21 of the lodge on 08.11.2003 is corroborated by the documentary evidence viz., his signature in Entry-19 in the hotel register, Exhibit-22, as aforesaid. Evidence on record also proves on the next day, the appellant was seen leaving the room around 3.00 p.m. by the employees of the hotel. Upon query, he gave false and evasive answers and finally the said employees found the victim with a cut throat injury in the bath room attached to said room.

Post Mortem Doctor, P.W. 11 held post mortem over the victim and found the following injuries;

- “1. Cut throat wound over front of neck below thyroid cartilage cutting muscles, trachea and carotid -2 ½ “X1”X 1 ¾”with plenty of blood and blood clot around the wound.
2. One defence wound over dorsum of little finger- oblique- 1”X ½” X ¼”.
3. Both lungs full of blood, uterous gravid for 12 weeks approx. with no external injury.”

He opined death was due to shock and haemorrhage arising from the above noted injuries which was ante mortem and homicidal in nature. Thus, the murder of the victim in the bath room of Room No. 21 at Manashi Lodge which was occupied by the appellant and the said victim between 2 to 3 p.m. on 09.11.2003 is clearly proved.

In addition thereto, P.W. 15 the Investigating Officer deposed on the leading statement of the appellant, the weapon of offence was recovered from the cornice of the room where the incident occurred. P.W. 15 who was the Investigating Officer recorded the confessional statement and recovered the weapon of offence. He prepared a seizure list which was signed by P.W. 3 and P.W. 9. Appellant also signed on the seizure list. He also identified the weapon of offence i.e. knife in Court. From the cross-examination of the said witness, it appears no challenge is thrown to the seizure of the knife as aforesaid.

Nature of injury found on the deceased also corresponds to the offending weapon i.e. knife seized on the leading statement of the appellant.

The circumstances relied on by the prosecution are, therefore, proved beyond doubt by the evidence on record and unerringly point to the guilt of the appellant. Failure to send the seized knife for forensic examination is a remissness in investigation which, however, does not cause a dent to the prosecution case which is otherwise established through convincing and reliable evidence.

In view of the aforesaid reasons, conviction and sentence of the appellant is upheld and the appeal is liable to be 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 section 428 of the Code of Criminal Procedure.

In view of disposal of the appeal, connected application being CRAN 1 of 2005 (Old CRAN No. 797 of 2005), is disposed of.

Lower court records along with copies of this judgment be sent down at once to the learned trial Court.

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

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)

cm/as/PA (Sohel)