

**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. 341 of 2019

Raju Dubey

-Vs-

State of West Bengal

With

C.R.A. 342 of 2019

Chandan Dubey

-Vs-

State of West Bengal

For the Appellants : Mr. Sekhar Kumar Basu, Id. Sr. Adv.,
Mr. Angshuman Chakraborty, Adv.
Mr. S. S. Saha, Adv.

For the State : Mr. Saswata Gopal Mukherjee, Id. P.P.,
Mr. Ranabir Roy Chowdhury, Adv.
Mr. Partha Pratim Das, Adv.
Ms. Manasi Roy, Adv.

Heard on : 12.09.2022

Judgment on: 12.09.2022

Joymalya Bagchi, J.:-

Appeals are directed against the judgment and order dated 25.4.2019 and 30.5.2019 passed by the learned Additional Sessions Judge, 1st Court, Bankura in Sessions Trial No.01(08)2018 arising

out of Sessions Case No.212 of 2018 convicting the appellants for commission of offence punishable under Sections 364/302/201 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for life and to pay a fine of Rs.50,000/- each, in default, to suffer further rigorous imprisonment for six months more for the offence punishable under Section 302 IPC; to suffer rigorous imprisonment for ten years and to pay a fine of Rs.50,000/- each, in default, to suffer further rigorous imprisonment for six months more for the offence punishable under Section 364 IPC and to suffer rigorous imprisonment for five years and to pay a fine of Rs.10,000/- each, in default, to suffer further rigorous imprisonment for three months more for the offence punishable under Section 201 IPC; all the sentences to run concurrently.

Prosecution case:-

Prosecution case as alleged against the appellants is to the effect that on 09.03.2018 around 1.30 A.M. in the night 5/6 people knocked at the door of one Pappu Singh (the deceased) and called him stating they had come from Mejia Police Station. As soon as the door was opened, they rushed into the house, dragged out the victim, beat him and pushed him into a black and white Scorpio car and left the place threatening that they will finish him. Sonali Singh @ Chakraborty (wife of the deceased) (PW 1) went to the police station and lodged a written complaint against the appellants and

others resulting in registration of Mejia Police Station Case No.14 of 2018 dated 9.3.2018 under Section 364 IPC.

On that day around 8.30 A.M. Sujoy Patar (PW7) while going to Malandhigi through the moram road of Bhar forest saw a gathering of people. He went to the spot and found an unknown dead body. Seeing this he lodged written complaint at Kanksa Police Station resulting in registration of Kanksa Police Station Case No.74 of 2018 dated 9.3.2018 under Sections 302/201 IPC against unknown miscreants. Inquest was conducted over the dead body and the body was sent for post mortem examination. On receipt of electronic mail from Kanksa Police Station with regard to recovery of the dead body, investigating officer (PW12) of Majia PS Case No. 14 of 2018 took Sonali Singh, wife of the victim to Kanksa Police Station where she identified the photograph of the dead body as that of her husband. In course of investigation, Raju Dubey was arrested from a guest house in Salt Lake. Subsequently, Chandan Dubey was arrested and on his leading statement three used cartridges were recovered. Other accused persons were arrested. On the showing of co-accused Pappu Singh, Scorpio vehicle was recovered.

Proceedings before the trial Court:-

In conclusion of investigation, charge sheet was filed against the appellants and co-accuseds viz., Sourav Bose, Utpal Das, Karna

Kumar Singh and Pappu Singh. Charges were framed under Sections 364/302/120B/201 IPC against the accused persons. To prove its case, prosecution examined 18 witnesses and exhibited a number of documents. Defence of the accused persons was one of innocence and false implication.

In conclusion of trial, trial Judge by the judgment and order convicted and sentenced the appellants, as aforesaid. By the self-same judgment and order, co-accuseds viz., Sourav Bose, Utpal Das, Karna Kumar Singh and Pappu Singh were acquitted. Hence, the present appeals.

Arguments at the Bar:-

Learned Counsel for the appellants submits prosecution case has not been proved beyond doubt. PW1 is an unreliable witness. FIR lodged by her is a manufactured one. She was unaware of the father's name of the appellants but such information finds place in the FIR. She admitted no vehicle could reach their house. She was unaware of the make of various vehicles but she referred to a Scorpio vehicle which was used to abduct her husband. During cross-examination, she admitted she did not identify the photograph of her husband. PWs, 2, 3, 4 and 6 also do not inspire confidence. PW2 named the presence of Karna Kumar Singh along with the appellants as the abductors. Karna Singh has been acquitted. Evidence of PW3 is at variance to his previous

statement before Magistrate. Before Magistrate PW3 stated PW1 came to her and told her husband had been taken away by police. She did not disclose appellants had abducted him. PW4 stated about the abduction for the first time in court. PW6 had not named Chandan Dubey in her statement before Magistrate. Identification of dead body is doubtful. Post mortem doctor (PW10) wrote the name of the deceased as Kanai Lal Chowdhury @ Pappu of Sarama, Banjora of Police Station Mejia. There is nothing on record to show the deceased was known as Kanai Lal Chowdhury also. A single bullet injury was found on the body of the deceased but two bullets had been handed over to PW3, constable attached to Kanksa Police Station. Recovery of empty cartridges from the place of abduction on the showing of Chandan Dubey is improbable. None of the witnesses stated the miscreants had fired shots at the time of abduction. No label was put on the seized cartridges. No weapon of offence was recovered. No FSL report was also obtained. Co-accuseds who were named by PW1 and others as the abductors including Pappu Singh on whose showing allegedly Scorpio vehicle was recovered had been acquitted. Hence, the appellant ought to be acquitted of the charges levelled against them.

Learned Public Prosecutor submits PWs.1, 2, 4 and 6 saw the appellants abduct the victim from his residence. PW3 saw them standing in front of the house of the victim. Their evidence prove

beyond doubt that the victim was abducted by the appellant with the intention to murder him. Within seven hours of his abduction, dead body of the victim with bullet injury was found near Bhar jungle. Post mortem doctor opined death was due to gun shot injury. PW1 identified the dead body. Her version is corroborated by PWs.12 and 14, investigating officers attached to Mejia Police Station and Kanksa Police Station respectively. These circumstances prove beyond doubt appellants had murdered the deceased and disposed of his body in the jungle. They do not stand on the same footing with co-accuseds who were acquitted. None of co-accuseds were named by PW1 in the FIR. Apart from Karna Kumar Singh, none of the co-accuseds were implicated by PWs.2, 3, 4 and 6 in their evidence in Court. Hence, acquittal of co-accuseds would not enure to the benefit of the appellants against whom prosecution case has been proved beyond doubt.

Last seen together:-

Prosecution has sought to prove this circumstance through the evidence of PWs1, 2, 3 and 6. PW1 is the wife of the deceased. She stated on 9.3.2018 at around 1.30 hrs. the appellants and others came to her house and knocked on the door stating they were police personnel. When they opened the door, appellants and others came inside and forcibly took her husband in a black and white car. She tried to save her husband but failed. The appellants

exhorted they will kill the victim. They threatened PW1 with dire consequences. In the morning she went to Mejia Police Station and lodged written complaint. The complaint was typed by PW18. She made statement before Magistrate.

PW6 (Smt. Gayetri Chakraborty) is the mother of PW1. She was also sleeping in the room. She heard someone knocking at the door. PW1 opened the door. Appellants entered the house and took away her son-in-law. She and her daughter (PW1) tried to save him but failed. Appellants threatened them with dire consequences. When they came out they saw the vehicle moving away. They cried for help. Local witnesses have also proved the aforesaid circumstances.

PW2 (Prasenjit Bauri) is a co-villager. In the night he heard some sound from the house of Pappu Singh. He proceeded towards the house and saw the appellants and Karna Kumar Singh take him away. They were beating him. They took him away in a Scorpio vehicle. He made statement before Magistrate.

PW3, Kishore Bauri deposed his house is about 100 cubics from the house of Pappu Singh. On that night he saw the appellants and 4/5 others standing in front of the house of Pappu Singh. On the next day, wife of Pappu Singh (PW1) told him they had taken away Pappu. He accompanied her to Mejia Police Station and lodged FIR. He made statement before Magistrate.

PW4, Abhijit Bauri, another co-villager deposed hearing hue and cry, he came out of the house and saw the appellants taking away Pappu Singh.

Learned Advocate for the appellants had assailed the credibility of the aforesaid witnesses on various scores. He contends PW1 could not have seen the appellants taking away the victim in a Scorpio vehicle nor could she disclose their father's name in the FIR. He contends she had embellished her version in court and implicated the other co-accuseds who were not named in the FIR.

Having analysed the evidence of PW1, I find little substance in such submission. PW1 was sleeping in the house with her husband. Some people knocked at the door and claimed they were police. When the door was opened, appellants and other miscreants dragged out the victim. She saw the appellants in the light of the room. She and her mother (PW6) tried to stop them but failed. This shows they had followed the miscreants and had seen them take away the victim in a Scorpio vehicle. Appellants are co-villagers and were known to the victim. She had disclosed their names to other co-villagers prior to lodging FIR. Hence, she came to know of their father's name. Under such circumstances, disclosure of the father's name or make of the vehicle in the FIR does not improbabilise her version. On other hand, evidence of co-villagers, namely, PWs.2, 3 and 4 corroborate the version of the relations. PW2 stated he had

seen the appellants and others take away the victim from his house. His deposition is consistent with his statement before Magistrate and remained unshaken during cross-examination. Similarly, PW3, another co-villager saw the appellants and others standing in front of the house of the victim. On the next day, PW1 disclosed to him, appellants and others had taken away her husband. He accompanied her to the police station to lodge FIR. Failure on the part of PW3 to state before Magistrate that PW1 had disclosed appellants had taken away her husband is a minor omission and does not militate against his substantive evidence that he had seen the appellants and others standing in front of the house of the victim prior to the incident. PW4, another co-villager had corroborated the depositions of PWs1 and 3 with regard to the abduction of the victim by the appellants and unknown others.

Learned Advocate assailed PW6, mother of PW1 on the ground she failed to disclose the name of Chandan Dubey in her statement before Magistrate. Reading the evidence of PW6 as a whole, I am of the opinion her presence at the place of occurrence is established and her deposition substantially corroborates her daughter, PW1.

Hence, prosecution has been able to prove beyond doubt that the appellants had abducted the victim at 1.30 AM in the night of 9.3.2018 from his residence.

Recovery of the dead body:-

On that day, at 8.30 AM PW7 was going to Malandighi through the moram road beside Bhar forest. He saw a gathering. He went to the spot and found the dead body of a man with bleeding injuries. Deceased was wearing a shirt and underwear. He lodged written complaint at Kanksa Police Station.

PW14, SI, Rajib Bhattacharya attached to Kanksa Police Station held inquest over the dead body being UD Case No.35 of 2018, marked as Ext.7/3. He took photographs of the dead body and the place of occurrence. He sent the dead body for post mortem examination through Constable viz., Joydev Dutta (PW13). He seized two blood stained plastic carry bags, blood stained earth and controlled earth from the place of occurrence under a seizure list. He prepared rough sketch map with index.

PW5, Sk. Sultan and PW8, Harisadhan Gorai are the signatories to the inquest. PW5 is also a signatory to the seizure list.

Cause of death:-

PW10 (Dr. Satinath Banerjee) held post mortem examination over the dead body which had been forwarded to him by P W 13, Constable Joydeb Dutta. He opined death was due to gunshot injury, homicidal in nature. He proved the report.

From the evidence of PW10 it is clear that the dead body recovered by PW14 (S.I. Rajib Bhattacharya) had suffered homicidal death due to gunshot injury.

Identification of the dead body:-

On 10.03.1998 PW1 deposed she went to Kanksa Police Station and was shown the photograph of the dead body. From the photograph she identified the dead body as that of her husband.

Referring to the cross-examination of PW1, learned defence Counsel argues she failed to identify the dead body. He also states post mortem doctor (PW 10) was informed that the dead body belonged to one Kanailal Chowdhury @ Pappu Singh, son of Motilal Chowdhury of Ondal Gram, PS- Ondal, District- Paschim Bardhaman at present village Sarama Banjora, Police Station -Mejia and not that of the victim. Hence, body has not been proved to be that of the victim Pappu Singh.

Identification of the dead body by PW 1 is corroborated by PW12 (Sri S. Roy) (Investigating officer of Mejia Police Station) and PW14 (Investigating officer of Kanksa Police Station). PW12 was assigned the investigation of the case. He deposed he received e-mail message from Kanksa Police Station that an unknown body was found in their jurisdiction. He went to the Kanksa Police Station and met S.I. Rajib Bhattacharya, investigating officer of the Kanksa Police Station Case No. 74 of 2018. PW1 was shown the

photograph of the dead body and she identified the same as her husband. Pursuant to the order of the learned Additional Chief Judicial Magistrate, Durgapur, both the cases were amalgamated and he continued the investigation. Upon his transfer investigation was concluded by PW16 (U.K. Das) who submitted charge-sheet.

S.I. Rajib Bhattacharya (PW 14) deposed on receipt of telephonic information regarding recovery of unknown body at Garh jungle he had gone to the place of occurrence, seized articles and despatched the body of the victim for post mortem examination. He had also taken photograph of the dead body and place of occurrence. He further deposed on 10.03.2018. PW1 came to Kanksa Police Station and identified the photograph of the dead body as that of her husband. The evidence of the investigating officers corroborates PW 1 that she had come to Kanksa Police Station and identified photograph of the dead body as that of her husband. PW 1's evidence is to be read as a whole and in the backdrop of the other evidence on record. Assessing her evidence from such perspective, a stray sentence in her cross-examination that she failed to identify the photograph in the police station would not militate against the prosecution case that the dead body recovered at Garh jungle was not that of her husband.

I am also unimpressed by the submission that the name of the deceased forwarded to the post mortem doctor (PW10) is not of

the victim. PW10 stated he had received intimation on 10.03.2018 that the body belonged to Kanailal Chowdhury @ Pappu Singh of village – Sarama Banjora, Police Station – Mejia. The aforesaid endorsement tallies with the name and present address of the victim. In the requisition to the doctor it appears in addition to the name and present address of the victim, his proper name, i.e. Kanailal Chowdhury along with his permanent address was also quoted. No question was put to any of the prosecution witnesses including PWs. 1 and 6 that the proper name of the victim was not Kanailal Chowdhury or that his permanent address was not the one cited in the requisition to the doctor.

In view of the aforesaid, I have no doubt in my mind that the dead body recovered at Garh jungle was that of the victim Pappu Singh of Village Sarama Banjara PS Mejia.

Incriminating circumstances:-

Analysing the evidence on record, I hold that the prosecution has been able to prove following circumstances:-

- (a) On 9.3.2018 at 1.35 a.m appellants came to the residence of the victim Pappu Singh. They knocked at the door claiming that they were members of police force. When the door was opened, they dragged the victim and took him away in a white and black Scorpio. They exhorted to kill him and threatened his wife (PW1) and mother-in-law (PW6) with dire consequences.

- (b) At 10:25 A.M., PW 1 wife of the deceased lodged written complaint at Mejia PS naming the appellants as miscreants who had abducted her husband with the intention to kill him.
- (c) Within seven hours of abduction, unknown dead body containing blood stains was recovered near Garh jungle within Kanksa PS.
- (d) A separate criminal case being Kanksa P.S Case No. 74 of 2018 dated 09.03.2018 was lodged at Kanksa PS. In the course of investigation of Kanksa PS P.W 14, Investigating Officer took photographs of the dead body and sent the body for post mortem examination.
- (e) PW10 (doctor) opined death was due to gun-shot injury, homicidal in nature.
- (f) On 10.3.2018 PW 1 came to Kanksa PS with PW 12 (investigating officer of Majia PS Case No. 14/2018) identified the photograph of the deceased as that of her husband. PW14 (investigating officer Kanksa P.S. Case No. 74/2018) has corroborated their evidence.
- (g) Apart from bare denial, no explanation is forthcoming from the appellants with regard to circumstances how the victim suffered gunshot injury and died.

Incriminating circumstances form a complete chain: Charges proved

The aforesaid circumstances have been proved beyond doubt. A time gap of barely seven hours separates the time when the appellants had abducted the victim and the recovery of his dead body near Garh jungle. This clearly establishes the live link between to the two circumstances and shifts the onus on the appellants to

explain how the victim suffered homicidal death. Appellants have miserably failed to discharge such onus which leads to an adverse inference against them. Vague suggestions that the victim had other enemies is not sufficient to discharge such onus. Only a reasonable doubt etched out from facts proved and not a fanciful one would render the prosecution vulnerable.

In the case of *State of W.B. v. Mir Mohammad Omar*¹, the Apex Court interpreted the reverse burden in section 106 of the Evidence Act held as follows:-

“39. In the present case, the facts which the prosecution proved including the proclaimed intention of the accused, when considered in the light of the proximity of time within which the victim sustained fatal injuries and the proximity of the place within which the dead body was found are enough to draw an inference that victim's death was caused by the same abductors. If any deviation from the aforesaid course would have been factually correct only the abductors would know about it, because such deviation would have been especially within their knowledge. As they refused to state such facts, the inference would stand undisturbed.”

In the case at hand, conduct of the abductors in beating the victim and threatening his family members with dire consequences clearly expose their sinister intention to do away with the victim. The latter's body is found within seven hours of his abduction in a jungle with gunshot injury which gives rise to the irresistible inference that the abductors had murdered him. They disposed of his dead body in the jungle to destroy incriminating evidence. Thus, charges against

¹ (2000) 8 SCC 382

the appellants under sections 364/302/201 IPC have been proved beyond doubt.

Acquittal of co-accuseds:-

Acquittal of the co-accuseds do not enure to the benefit of the appellants. Evidence of PWs 1, 2, 3, 4 and 6 prove beyond doubt the appellants had abducted the victim from his residence barely some hours before his homicidal death. Co-accuseds were not named in the FIR. Apart from Karna Kumar Singh, none of them were named by PWs. 2, 3, 4 and 6. Evidence against them was too weak and scanty and they do not stand on the same footing with the appellants. Trial Judge rightly appreciated the evidence on record and acquitted them while convicting the appellants.

Conclusion:-

In the light of the aforesaid discussion, I uphold the conviction and sentence of the appellants.

The appeal is, accordingly, dismissed.

Period of detention suffered by the appellants during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon the appellants in terms of Section 428 of the Code of Criminal Procedure.

Lower court records along with copies of this judgment be sent down at once to the learned trial Court as well as the Superintendent of Correctional Home for necessary compliance.

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

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

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