

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 521 of 2016

Paresh Bagdi

-Vs-

The State of West Bengal

For the Appellant : Mr. Subir Kumar Ganguly, Adv.
Mr. A. K. Paul, Adv.
Mr. Sumanta Ganguly, Adv.

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

Heard on : 03.08.2022 & 04.08.2022

Judgment on : 04.08.2022

Joymalya Bagchi, J. :-

Appeal is directed against judgment and order dated 22.06.2016 & 23.06.2016 passed by learned Sessions Judge, Birbhum, in Sessions Trial No. 1(12) of 2015 arising out of Sessions Case No. 117 of 2015 convicting the appellant for commission of offence punishable under Sections 302/201 of the Indian Penal Code and sentencing him to suffer imprisonment for life and to pay fine of Rs.10,000/-, in default, to suffer further imprisonment for six months more for the offence punishable

under Section 302 of the Indian Penal Code and to suffer imprisonment for five years and to pay fine of Rs.5,000/-, in default, to suffer further imprisonment for three months more for the offence punishable under Section 201 of the Indian Penal Code; both the sentences shall run concurrently.

Prosecution case as alleged against the appellant is as follows :-

Appellant had an illicit relationship with one Bardi Soren. On and from 20th day of Chaitra, 1421 BS i.e. 04.04.2015 she went missing. After few days her uncle (PW1) started searching for her. On 29.04.2015 he and other villagers noticed foul smell coming from the compound of the house of the appellant. Suspecting the appellant had murdered his niece, PW1 went to the police station and lodged written complaint against the appellant resulting in Md. Bazar Police Station Case No.74 of 2015 dated 29.04.2015 under Sections 302/201 IPC. Pursuant to registration of FIR, Investigating Officer (PW14) requisitioned the services of a Block Development Officer (PW4) and proceeded to the spot. At the spot i.e. on the western side of the eastern boundary wall of the house of the appellant, the body of Bardi Soren was found buried under the sand. Her body which was concealed in a black polythene cover was disinterred. Inquest was held over the body. Black polythene cover, sand with soil were seized from the place of occurrence. Body of the deceased was sent for post-mortem examination. PW15 conducted post-mortem examination over the body of the deceased. He opined the deceased had

died due to strangulation. Death had occurred 2-4 weeks prior to post-mortem examination. On the very day, appellant was arrested from the house of his father, Mahadev Bagdi which was 2/3 houses away from the place of occurrence. In conclusion of investigation, charge-sheet was filed against the appellant. Charges under Sections 302/201 IPC were framed. Appellant pleaded not guilty and claimed to be tried. In course of trial, prosecution examined 15 witnesses and exhibited a number of documents. In conclusion of trial, learned trial Judge by the impugned judgment and order dated 22.06.2016 & 23.06.2016 convicted and sentenced the appellant, as aforesaid.

Mr. Sumanta Ganguly, learned advocate for the appellant submits the prosecution case has not been proved beyond doubt. Circumstances relied upon by the prosecution do not form a complete chain irresistibly pointing to the guilt of the appellant. No evidence that the appellant was last seen with the deceased has been adduced. No investigation was done with regard to the ownership of the house where the body was recovered. Evidence pressed by the prosecution to prove appellant was the owner of the house is most sketchy. Place of recovery is also doubtful. PW2 stated the body was recovered from the southern side of the house while the sketch map shows place of occurrence adjacent to the eastern boundary wall. Time of inquest is not reflected in the inquest report. There is no mention of *gamcha* tied around the neck of the deceased in the inquest report but the same was noted by post-

mortem doctor (PW15). Executive Magistrate (PW6), who conducted magisterial enquiry, did not find wearing apparels on the body of the deceased. Motive of crime has not been proved. Articles which were seized at the place of occurrence as well as the videography made regarding the exhumation were not produced in court. Arrest memo of the appellant is not signed by any witness or near relation. Proper warning was not given to the appellant during his examination under Section 313 of the Code of Criminal Procedure. Accordingly, the appellant is entitled to an order of acquittal.

Mr. Parthapratim Das, learned advocate for the State submits PW1 stated appellant had illicit relationship with the deceased. PWs.1, 2, 3, 7 & 11 have proved dead body was recovered from the house of the appellant. PW5, a hostile witness also supported such version in his chief. Post-mortem doctor (PW15) proved the death was a homicidal one. Victim was missing from 04.04.2015 and her dead body was recovered on 29.04.2015. Post-mortem doctor (PW15) stated death had occurred within 2-4 weeks from the date of post-mortem examination which corroborated with the aforesaid circumstance that she had been murdered between 04.04.2015 and 29.04.2015. Hence, the prosecution case is proved beyond doubt.

PW1 (Mangla Tudu) is the uncle of Bardi Soren (the deceased). He deposed the appellant had illicit relationship with Bardi. Appellant used to come to their residence. Bardi Soren went missing. 4-5 days

later he started searching for her. He went to the house of the appellant but did not find him in the house. On 29.04.2015 he along with 5/6 *Gaunta* members went to the house of the appellant and found foul smell coming from the house. He informed the police. Police arrived at the spot and sent the body for post-mortem examination. He lodged written complaint which was scribed by PW2.

In cross-examination, he admitted he had not seen Bardi accompanying the appellant to his house.

PW2 (Ram Chandra Mardi) deposed he was present when the body of the victim disinterred from the house of the appellant. He signed on the inquest report. Investigating Officer seized the polythene cover and sand with soil from the place of occurrence. He signed on the seizure list.

In cross-examination, he admitted he did not visit Molpur frequently. On the day he had visited he came to know the house belonged to the appellant. He stated dead body was lying on the southern side of the house between banana tree and boundary wall.

PW3 (Ananda Mardi) and PW7 (Rabi Lal Marandi) were also present at the time when the body was disinterred from the house of the appellant. They proved their signatures on the inquest report as well as seizure list.

PW3, in cross-examination stated his house is 1½ kms. away from the house of the appellant.

PW7, in cross-examination stated he was a member of Kapista Gram Panchayat. His house was 8/10 miles from the place of occurrence. He did not visit Molpur regularly and cannot say the names of the owners of the houses at Molpur.

PW4 (Suman Biswas) is the Block Development Officer who was present when the body was disinterred. He proved his signature on the inquest report.

In cross-examination, he stated he had not collected documents with regard to ownership of the property where the dead body was recovered. He heard the property belongs to the appellant.

PW5 (Utpal Bagdi) and PW11 (Aparna Pal) are residents of village Molpur.

PW5 (Utpal Bagdi) was declared hostile. However, in-chief he stated dead body of Bardi was recovered from the house of the appellant. During cross-examination, prosecution confronted him with his earlier statement before police.

PW11 (Aparna Pal), another resident of village Molpur deposed dead body was recovered from the house of the appellant. He signed on the seizure list prepared by the police at the place of occurrence.

PW6 (Sudip Chakraborty) conducted magisterial enquiry over the body of Bardi Soren. He proved the inquest report (Ext.7).

PW15 (Dr. Debasis Sarkar) is the post-mortem doctor. He held post-mortem over the body and opined cause of death was due to

strangulation, ante mortem and homicidal in nature. He proved the post-mortem report (Ext.12).

In cross-examination, he stated death was 2-4 weeks prior to examination.

PW14 (SI Tanmoy Ghosh) is the Investigating Officer. He deposed he drew up the First Information Report (Ext.10). After taking over investigation he along with Block Development Officer (PW4) went to the house of the appellant around 18:48 hrs. The body was exhumed from the western side of the boundary wall. He held inquest over the body. He proved the inquest report. He seized a black polythene cover in which the body was concealed, earth mixed with sand from the place of occurrence under seizure lists. He sent the body for post-mortem examination. Appellant was arrested from the house of his father which was situated 2/3 houses away from the place of occurrence.

In cross-examination, he stated he did not make any attempt to verify the ownership of the house wherefrom the body was recovered.

From the aforesaid evidence particularly that of PW1 it appeared Bardi Soren (the deceased) had intimate relationship with the appellant. Appellant used to regularly visit the house of Bardi. They used to eat together. Bardi also visited the house of the appellant. PW1 is an uncle and close relation of the deceased. His version with regard to illicit relationship between the appellant and the deceased is reliable and

convincing. It is also corroborated by other witnesses who heard about such illicit relationship.

Intimate relationship and free mixing between the appellant and Bardi Soren probabilises the fact that she had gone to the house of the appellant where she had been murdered.

Bardi Soren was missing since 04.04.2015. After couple of days, PW1 started searching for her. He went to the house of the appellant but could not find her. On 29.04.2015 he along with others again went to the house of the appellant and found foul smell emitting from the compound of the house. This raised his suspicion and he informed the police resulting in registration of FIR. Thereupon, Investigating Officer (PW14) along with BDO (PW4) came to the house of the appellant. Body was exhumed from the courtyard of the house which was surrounded by a boundary wall.

Learned advocate for the appellant argued place of recovery of the body is unclear. I am unimpressed with such submission. Investigating Officer (PW14) who exhumed the body deposed dead body was recovered from the western side of the boundary wall. He prepared sketch map of the place of occurrence (Ext.11). From the sketch map it appears that place of recovery is beside the eastern boundary wall of the house which corroborates the deposition of PW14. PW2 claimed body was recovered from the compound of the house of the appellant between a banana tree and boundary wall. A stray observation is his deposition that the body

was lying on the southern side of the house would not demolish the consistent prosecution case that the dead body had been buried under the sand abutting the boundary wall of the house.

Mr. Ganguly further contended no effort was made to ascertain the ownership of the house where the body was recovered. PW5, a local villager did not support the prosecution case. PWs.1, 2, 3, 7 & 11 unequivocally stated the body of the deceased was recovered from the house of the appellant. PW1 is the uncle of the deceased. Appellant and the deceased were mixing freely and used to visit each others residences. Hence, PW1 was in a position to identify the house of the appellant. His deposition does not suffer from any improbability or inconsistency. Similarly, PW3 is a resident of a nearby village. Though he did not visit village Molpur frequently, he was present when the body of the deceased was recovered from the house of the appellant and identified the spot. PW7 is a member of a nearby Gram Panchayat. He was also present at the time when the body was exhumed and had been a witness to the inquest. In view of the fact that he was a member of a nearby Panchayat, his awareness with regard to the house of the appellant cannot be put to doubt on the ground that he is unable to name of all the owners of the houses of the said village. PWs.5 & 11 are co-villagers of the appellant. Though PW5 was declared hostile, PW11 supported the prosecution case and unequivocally stated the body was recovered from the house of the

appellant. Even the hostile witness in his chief stated that the body had been recovered from the house of the appellant.

The aforesaid overwhelming evidence of villagers clearly show that the appellant was occupying the house where the body of the deceased was buried. In this backdrop, failure to collect the documents of ownership of the house would not cause irreparable dent to the prosecution case. It is also apposite to note apart from bald denial that he was not living in the house, appellant had not come forward with a defence that the house belonged to another person. Hence, I hold prosecution has been able to prove that the appellant was occupying the house from where the body of the deceased was recovered.

Post-mortem doctor (PW15) deposed the victim had died due to strangulation. It is argued post-mortem doctor noted *gamcha* around the neck of the deceased which was not noted by PW14 in the inquest report. From the inquest report prepared by PW14 as well as Executive Magistrate (PW6) it appears that the body of the deceased was in a highly decomposed state. It is possible in order to preserve the body from further damage/decay, a *gamcha* was tied around her neck. Post-mortem doctor noted the injury was ante mortem in nature. Hence, tying of the *gamcha* after the dead body had been recovered could not have any adverse impact on the finding of the doctor who found ante mortem injuries on the body of the deceased.

Time of inquest has also been established. FIR was lodged around 17:25 hrs. and PW14 stated he arrived at the place of occurrence around 18:48 hrs. Thereafter, in presence of BDO body was exhumed and inquest report was prepared.

Evidence on record establishes recovery of the dead body of Bardi Soren beyond doubt. Under such circumstances, failure to produce the black plastic cover (concealing the body) or the compact discs recording the recovery are remissness on the part of investigating agency which does not affect the unfolding of the prosecution case. Similarly, arrest of the appellant from his father's house has not been challenged. No question was put to investigation officer why the arrest memo was not signed by any witnesses. During his examination under section 313 Cr.P.C. appellant did not make any self incriminating statement. Hence, failure to inform him that answers given by him may be used against him has not caused any prejudice or occasioned a mistrial in law.

In view of the aforesaid discussion, I am of the opinion the following circumstances have been proved beyond doubt:-

- (a) Appellant and Bardi Soren had an illicit relationship. They used to regularly visit each others residences.
- (b) On 04.04.2015, Bardi Soren went missing. After few days her uncle (PW1) started searching for her. He went to the house of the appellant but could not find him.

- (c) On 29.04.2015, during search PW1 and others found foul smell coming from the house of the appellant. They informed the police.
- (d) Police in presence of BDO exhumed the body of Bardi Soren inside the courtyard of the appellant.
- (e) Post-mortem doctor noted the victim had died due to strangulation.
- (f) No explanation was offered by the appellant with regard to the circumstances how the dead body of Bardi Soren was recovered from the house. On the other hand, he took an evasive plea that he did not live in the house.

These circumstances have been proved beyond doubt and unerringly point to the guilt of the appellant and rule out any probable hypothesis of innocence.

Hence, I am of the opinion conviction and sentence of the appellant is liable to be upheld.

Appeal is accordingly dismissed.

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.

Appellant is a middle-aged man having roots in society. He does not have criminal antecedents. From the circumstances of the case it

appears that the crime was one of passion and not a cold blooded one. Out of fear of detection the appellant had buried the dead body. In the event the appellant makes an application for remission of sentence under Section 432 of the Code of Criminal Procedure on completion of fourteen years of actual imprisonment, the appropriate authority may consider his prayer in the light of the aforesaid circumstances and other relevant factors including his conduct in correctional home.

Lower court records along with a copy of this judgment be sent down at once to the learned trial Court for necessary action.

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

I agree.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)