

**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. 159 of 2012

With

CRAN 1 of 2012 (Old CRAN 1108 of 2012)

Tapan Roy @ Bhagne Tapan

-Vs-

The State of West Bengal

With

C.R.A. 567 of 2016

Uttam Das

-Vs-

The State of West Bengal

For the Appellant

In CRA 567 of 2016 : Mr. Amit Ranjan Pati
Ms. Afreen Begum
Ms. Anjana Mehabub
Mr. Ashok Halder
Mr. Rounak Majumdar
Ms. Shipra Majumdar.

For the Appellant

In CRA 159 of 2012 : Mrs. Manasi Roy

For the State

: Mr. Nequive Ahmed, Id. A.P.P.,
Mrs. Trina Mitra.

Heard on

: 27.04.2022 & 02.05.2022.

Judgment on

: 02.05.2022

Joymalya Bagchi, J. :-

Appeals are directed against the judgment and order dated 22.12.2011 and 23.12.2011 passed by the learned Additional District & Sessions Judge, 1st Fast Track Court, Bongaon, North 24-Paraganas in Sessions Trial Case No.3(9)2006 arising out of Sessions Case No.21(9)2005 convicting the appellants for commission of offence punishable under Sections 302/34 & 364/34 of the Indian Penal Code and sentencing them to suffer imprisonment for life and to pay a fine of Rs.5,000/- each, in default, to suffer rigorous imprisonment for six months more for the commission of offence punishable under Sections 302/34 of the Indian Penal Code & to suffer rigorous imprisonment for eight years and to pay a fine of Rs.5,000/- each, in default, to suffer rigorous imprisonment six months more for the offence punishable under Sections 364/34 of the Indian Penal Code; both the sentences to run concurrently.

Prosecution case against the appellants is to the effect that on 16.5.2005 around 7.30 P.M. appellants along with many others came to the residence of the victim viz, Puspendu Biswas @ Pintu. Puspendu, who was wearing a sky colour trouser and a napkin around his shoulder left with the appellants. As he did not return, Kanika, wife of the victim (P.W.1) searched for her husband along with local people. She informed the police station and police came

and searched but could not trace out Puspendu. On the next day at around 8.00 A.M., she received information that the dead body of Puspendu was lying in the agricultural field of one Kailash Biswas (P.W. 7) at Kheda Para with bullet injury. She alleged deceased used to take heroin and the appellant viz., Uttam Das and his sister Jharna used to supply her husband with heroin.

On the basis of the written complaint lodged by Kanika (P.W.1), Bongaon P.S. Case No.175 dated 17.5.2005 under Sections 302/34 of the Indian Penal Code and under Sections 25/27 of the Arms Act was registered against the appellants. Appellants were arrested and charge sheet was filed. Charges were framed against them under Sections 302/34 and 364/34 of the Indian Penal Code. Appellants pleaded not guilty and claimed to be tried. In course of trial, prosecution examined 14 witnesses including the Investigating Officer as P.W.14. However, P.W.14 after being examined in chief, was not available for cross-examination. Defence of the appellants was one of innocence and false implication. In conclusion of trial, learned trial Judge by the impugned judgment and order dated 22.12.2011 and 23.12.2011 convicted and sentenced the appellants, as aforesaid.

Mr. Amit Ranjan Pati with Ms. Afreen Begum, learned Advocates appearing for the appellant viz., Uttam Das in CRA 567 of 2016 submits there is no direct evidence connecting the

appellant with the crime. Apart from P.W.1 none of the witnesses has implicated the appellant. P.W.1 is an unreliable witness. In fact, P.W.11, father of the deceased, has insinuated P.W. 1 had assisted others to murder her husband. Her deposition in court is at variance with the FIR. Identification of the appellants by P.W.1 is doubtful as she claimed she came to know of the appellants for the first time on the date of occurrence. The sole circumstance namely, last seen together is, therefore, founded on the shaky evidence of P.W.1 and cannot form the basis of conviction. He relies on **Kanhaiya Lal Vs. State of Rajasthan**¹ in support of his submission.

Nobody appears for the appellant in CRA 159 of 2012. Mrs. Roy, learned advocate empanelled with the High Court Legal Services Authority is requested to appear on behalf of the appellant viz., Tapan Roy @ Bhagne Tapan in CRA 159 of 2012. Secretary, High Court Legal Services Authority is requested to regularise her appointment. Mrs. Roy adopts the submissions of Mr. Pati and prays for acquittal.

Mr. Ahmed, learned Additional Public Prosecutor submits P.W.1 is a reliable witness. Her presence at the place of occurrence is corroborated by the father of the deceased, P.W.11. P.W.11 had inimical relationship with his son and P.W.1. Hence, he turned

¹ (2014) 4 SCC 715

hostile and implicated P.W.1. Names of the appellants had transpired at the earliest opportunity in the First Information Report. Appellant Uttam Das used to supply illicit drug to the deceased. Appellants had taken away the victim on the fateful night and next morning he was found murdered in a nearby field. Chain of circumstances has, therefore, been established beyond doubt.

From the evidence on record and the rival submissions at the Bar it appears the case is based on circumstantial evidence.

P.W.1(Kanika Biswas) wife of the deceased is the most vital witness. She deposed on 16.5.2005 appellants came to their house and enquired about her husband. PW1 was in the ground floor while her husband was in the first floor of the house at the material point of time. She told the appellants her husband was available in the house and called him. Her husband left along with the appellants. When her husband did not return home, she informed her father-in-law. Her father-in-law informed local people. On the next day at 7 A.M. she was informed by a neighbour that the dead body of her husband was lying in a nearby field. She went to the spot and found her husband with his legs and hands tied. She lodged written complaint which was scribed by P.W.12.

In cross-examination, she stated four to five persons had come to the house on that day. Those persons took her husband from the house. She was unaware of the identity of the said persons except the appellants. She admitted she had seen the appellants for the first time on that day. She denied the suggestion she was involved in heroin business. She admitted there was inimical relationship with her mother-in-law. Prior to the incident, she had lodged a civil suit and on 12.05.2005 had obtained an order of injunction restraining her and her husband from disturbing the peaceful possession of the property.

The other witness, who claimed to be present at the residence when the incident occurred, is the father of the deceased namely P.W.11 (Bijay Biswas). He turned hostile and implicated P.W. 1 in the murder. In chief, he deposed four to five persons had come to the house and had taken away his son. On the next day, his dead body was recovered from a nearby field. In cross, he implicated P.W. 1 (Kanika Biswas) and stated she had assisted the unknown persons to take away his son. He also admitted he had filed a civil suit against P.W. 1.

Other witnesses have deposed with regard to recovery of the dead body of the deceased from the field of P.W. 7.

P.W. 2 and 3 (Santosh Das and Sanjib Pramanik) are the signatories to the inquest report prepared by the investigating officer, P.W. 14 (S.I. Sudip Bandhu Dey).

P.W. 6 (Amit Mondal) is a signatory to the blood stained soil seized from the place of occurrence.

P.W. 7 (Kailash Biswas) is the owner of the plot of the land where the body of the deceased was recovered. He is also a signatory to the seizure list regarding seizure of blood stained earth from the place of occurrence by the investigating officer. He along with P.Ws 5 and 8 (Tapan Mondal) and (Susanta Biswas) were declared hostile and were cross-examined by the prosecution.

P.W. 13 (Subrata Chowdhury) was also declared hostile and was cross-examined with regard to his previous statement that the appellants who were close associates of the deceased were seen together on the fateful night.

P.W. 9 (Dr. Dipak Maitra) is the postmortem doctor who noted gunshot injuries on the body of the deceased and opined that the death was due to above mentioned injuries ante mortem and homicidal in nature. He proved the post mortem report.

From the analysis of the aforesaid evidence on record it appears the prosecution has sought to rely on the following circumstances :-

(a) Deceased was a heroin addicted. Appellant, Uttam Das, was on visiting terms with the deceased and used to supply heroin to him;

(b) On 16.05.2005 around 7:30 P.M. deceased had left the residence along with appellants.

(c) On the next morning around 8:00 A.M. his body was found in a nearby field belonging to P.W. 7.

(d) Post mortem report showed the deceased had died due to gunshot injury.

The most vital circumstance relied by the prosecution is that on the fateful night the deceased was last seen with the appellants comes from the mouth of P.W. 1 only. Other witnesses have not supported the prosecution case in that regard.

It is therefore most essential to assess the evidence of PW 1 and come to a firm conclusion that she is a reliable witness. Mr. Pati has scathingly criticized PW 1 as an inconsistent witness. In the FIR, PW 1 claimed appellants and many others had come to their house on the fateful night. Her husband left with them. However in chief, she changed her version and stated only the appellants had come and enquired about her husband. In cross, she again reverted back to her earlier stance and claimed 4/5 anti-socials including the appellants had come to the spot.

Assessing her evidence in the backdrop of such variations, it is unclear how many persons had come to the house on the fateful night and had taken away her husband. That apart, version of P.W. 1 with regard to identity of the persons who had come to their residence that night is equally inconsistent. In FIR, she stated appellant Uttam Das used to supply heroin to her husband and that the appellants along with many others had come to their residence. However, in court the witness stated she was not aware of the identity of the appellants including appellant, Uttam Das from before. She had come to know of them only on the fateful night. She also stated she was unaware of the identity or names of the companions of the appellants. In view of her deposition in Court, it is unclear how PW 1 came to know of the identity of the appellants whom she had met for the first time on the fateful night.

Even her conduct after the disappearance of her husband is dichotomous. In FIR she claimed she searched for her husband along with local people. She contacted police on the very night who arrived at the spot. However, in court she gave a completely different picture. She contended she informed only her father in law who had informed the local people. She is completely silent with regard to any effort to search out her husband on the night of occurrence.

Version of PW 1 is, therefore, riddled with various contradictions and inconsistencies which go to the heart of the prosecution case. How P.W. 1 came to know of the names of the appellants whom she fleetingly met for the first time on the fateful night when they came to her residence with other unknown persons is unclear. Even if her version with regard to presence of appellants in her house is believed, it appears they were accompanied by other unknown persons. Victim had voluntarily left with all of them. Hence, it cannot be said that the appellants alone were last seen with the victim which would lead to the irresistible conclusion that it was none but the appellants who murdered the victim.

In view of the aforesaid facts, I am constrained to hold evidence of PW 1 with regard to most vital circumstance that the appellants alone were last seen with the deceased prior to the incident has not been proved beyond doubt. As this most vital circumstance on which the prosecution case stands is sketchy and unreliable, I am of the opinion the chain of circumstances has not been proved beyond doubt and the appellants are entitled to the benefit of doubt.

Conviction and sentence of the appellants are therefore set aside.

Appellants namely Tapan Roy @ Bhagne Tapan and Uttam Das shall be forthwith released from custody, if not wanted in any other case upon executing 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 Cr.P.C.

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

Photostat certified copy of this judgment, if applied for, shall be made available to the appellants within a week from the date of putting in the requisites.

I agree

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)

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