

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. 547 of 2012

Sabina Sabnam @ Rumi

-Vs-

State of West Bengal

With

C.R.A. 666 of 2012

Wahid Ali & Another

-Vs-

State of West Bengal

For the Appellants :

Mr. Milon Mukherjee, Sr. Adv.,

Mr. B Manna, Adv.

Mr. Dattatreya Dutta, Adv.

... in C.R.A. 547/2012

Mr. Uday Sankar Chattopadhyay, Adv.

Mr. S S Chattopadhyay, Adv.

Mr. Santanu Majhi, Adv.

Mr. R Jah, Adv.

Ms. Trisha Rakshit, Adv.

... for appellant No. 2 in C.R.A. 666/2012

Mr. Partha Pratim Das, Adv.

... for appellant No. 1 in C.R.A. 666/2012

For the State :

Mr. Saibal Bapuli, Adv.

Mr. Bibaswan Bhattacharya, Adv.

Heard on : 29.11.2022, 05.12.2022, 06.12.2022
12.12.2022, 15.12.2022

Judgment on: 22.12.2022

Joymalya Bagchi, J.:-

1. Appeals are directed against the judgment and order dated 28.08.2012 and 29.08.2012 passed by learned Additional Sessions Judge, Fast Track, 3rd Court, Burdwan in Sessions Trial No. 19/2011 arising out of Sessions Case No. 85/2011 convicting the appellants for commission of offence punishable under sections 302/120B/201 of the Indian Penal Code.

Prosecution case:-

2. Prosecution case against the appellants runs as follows:-

On 10.02.2011 at 10:45 p.m. a telephonic information was received at Memari Police Station that a dead body was found inside a Tata Sumo, (Spacio car) bearing No. WB-26C-8692 (hereinafter referred to as 'the car'). The information was diarized by A.S.I. Bhola Nath Mal (P.W. 2). P.W. 1 Seo Kumar Sing attached to Palsit Outpost also received similar information over telephone. He proceeded to the spot with P.W. 3 Constable Champak Das. Arriving at Rasulpur Rail Gate, they saw the car stranded near the rail gate. They found a dead body inside the car. They also found Wahid Ali (1st appellant in Criminal Appeal No. 666 of

2012) sitting in the car. On interrogation Wahid stated he along with Sabina Sabnam @ Rumi and Selima Khatun had murdered the person.

3. P.W. 1 Seo Kumar Sing lodged written complaint at Memari Police Station resulting in registration of Memari Police Station Case No. 36/11 dated 11.02.2011 under sections 302/201/120B I.P.C. against the appellants.

4. P.W. 25 Pranab Kumar Banerjee was entrusted with the investigation. He proceeded to the spot. He found the car. He saw Wahid Ali sitting in the car. On interrogation Wahid stated that he along with his associates Sabina Sabnam @ Rumi and Selima Khatun had murdered the victim. He held inquest over the body of the deceased. The car and other documents were seized. In the meantime, owner of the vehicle Upananda Koley (P.W. 21) and the driver Palash Mondal (P.W.7) came to the spot. Palash made statement before P.W. 25. Thereafter, P.W. 25 went to the residence of Sabina Sabnam @ Rumi and arrested her and Selima Khatun. Mobile phones were seized from their possession. P.W. 7 identified Sabnam and Selima in the course of test identification parade. On the leading statement of Wahid Ali, handkerchief used to throttle the victim was recovered.

Proceedings before the trial Court:-

5. Charge-sheet was filed against the appellants. Charges were framed under sections 302, 201 and 120B I.P.C. Appellants pleaded not guilty and claimed to be tried.

6. In the course of trial, prosecution examined 25 witnesses and exhibited a number of documents. Defence of the appellants was one of innocence and false implication.

7. In conclusion of trial, trial Judge by the impugned judgment and order dated 28.08.2012 and 29.08.2012 convicted the appellants, as aforesaid.

Analysis of evidence on record:-

8. P.W. 1 Seo Kumar Sing and P.W. 3, Champak Das are police officers attached to Palsit Outpost under Memari Police Station. On receiving telephonic information they had proceeded to Rasulpur Rail Gate. They found a car stranded. A dead body was lying below the middle seat. They also found Wahid Ali sitting in the vehicle. Wahid stated he and other appellants committed the murder. P.W. 1 lodged written complaint which was received by P.W. 24, Sanjib Ghosh attached to Memari Police Station. P.W. 2, Bhola Nath Mal attached to Memari Police Station proved the telephonic communication that a dead body was found in the car which was diarized as G.D. Entry No. 617 dated 10.02.2011 (Exhibit 4).

9. P.W. 4 Sk. Jianul Islam is the owner of the shop near Rasulpur Rail Gate. P.W. 5 Ruidas Barui is a vegetable vendor near the rail gate. P.W. 6 Amit Sarkar has his residence near the rail gate. All the witnesses corroborated the police witnesses with regard to the recovery of the dead body from the car stranded near the rail gate. They also stated a man

was inside the car. They were unable to identify the said person as they had seen him only once for a short time.

10. P.W. 7 Palash Mondal is the star witness. He is the driver of the car. He deposed in the morning of 10.02.2011, his owner P.W. 21 instructed him to go to Reora and meet one Wahid who had taken the car on hire. P.W. 7 proceeded towards Reora and met Wahid. The latter asked him to go to Memari. Thereafter, two women boarded the vehicle. Then they went to Bolpur and reached Santiniketan. At Santiniketan, the two women got down from the vehicle. P.W. 7 and Wahid went to a hotel. They had lunch and rested. At 5:00 p.m. they again proceeded to the spot where the women had alighted. The said women along with the victim boarded the car. Wahid sat in the front seat while women took the middle seat. Victim was seated between them. The car had a seating arrangement in three rows. After sometime, Wahid went to the backseat to rest. When the car reached Bardhaman Rathtala victim suddenly cried out. Upon enquiry by P.W. 7, he was told victim was a patient of epilepsy and that he should continue driving. He was asked to raise the volume of the tape recorder. From the rear view mirror P.W. 7 saw Wahid strangulating the victim with a handkerchief while the two ladies held his hands. Seeing the incident he became frightened. He realized that the miscreants would throw the dead body and thereafter they might also kill him. He told the appellants that police may check the vehicle at toll plaza on Durgapur Express Way. Hearing this, appellants told him to

follow Memari Road. He tried to flee away from the vehicle during refueling of the car but failed. When the car arrived at Rasulpur Rail Gate, they found the rail gate closed. Taking advantage he got out of the vehicle on the pretext of buying a cigarette and fled away. He informed his owner. He went to his father-in-law's place. Then both of them returned to the place of occurrence. He made statement before police and Magistrate. He identified the female accuseds during T.I. parade as well as in Court. He was extensively cross-examined.

11. P.Ws. 10 to 13 are the relations of the deceased. P.W. 10, Sabina Akhtar Siddique is the wife. She deposed Rumi is the sister of one of her sister-in-laws. She had an intimate relationship with her husband. She was at her aunt's house at Suri at the time of occurrence. In the morning her husband told her over telephone that he was going to Calcutta for medical treatment and would come to Suri on the next day to take her back. At night she was informed that her husband had been murdered. P.Ws. 11 and 12 are the brothers of the deceased. They corroborated his wife, P.W. 10 deposed that the deceased left in the morning of 10.02.2011 stating he is going to Calcutta for medical treatment. P.W. 12 further deposed there was an intimate relationship between the deceased and Rumi. P.W. 13, Golap Mia is the maternal uncle of the deceased. On 10.02.2011, he heard the incident. He identified the dead body of the deceased at Memari Police Station.

12. P.W. 7 is corroborated by the owner of the car, Upananda Koley P.W. 21.

13. On 22.02.2011, P.W. 23 S.K. Dhar, Judicial Magistrate conducted T.I. parade. P.W. 7 identified Sabina Sabnam @ Rumi and Selima Khatun in the course of T.I. parade.

14. P.W. 25 Pranab Kumar Banerjee took over investigation of the case. He proceeded to the place of occurrence. He held inquest over the dead body. He interrogated Wahid. He recorded the statement of P.W. 7. He went to the residence of Sabina Sabnam @ Rumi. He arrested Sabnam and Selima Khatun from Rumi's residence. P.W. 9, Mala Panja, Member, National Volunteer Force and P.W. 8, Tulika Mondal, a lady constable accompanied P.W. 25 during the raid. Two mobile phones bearing Nos. 8348322435 and 8145580693 were recovered from them. 8348322435 stood in the name of Tapan Hansda and was in the possession of Selima Khatun while 8145580693 standing in the name of Selima Khatun and was in the possession of Sabina Sabnam @ Rumi.

15. P.W. 19, Tapan Hansda deposed he had two SIM cards and one of which had been handed over to Sabina Sabnam @ Rumi on her demand. CAFs, CDRs and Call Subscriber Details of the aforesaid mobile phones as well as that of the deceased bearing No. 9732620125 were collected. CDRs of the aforesaid mobile phones were exhibited as Exhibit 25 collectively.

16. On 12.02.2011 on the identification of Wahid, he recovered handkerchief used for committing the murder. Recovery was made in the presence of P.Ws. 14, 15 and 18. They proved their signatures on the seizure list. P.W. 18, Sk. Nur Ahmed Khokan, a photographer was present. He took photographs of the accused lifting the handkerchief. Two CDs containing the photographs were produced in Court.

17. Body of the victim was sent for post mortem examination. P.W. 22 conducted post mortem over the body. P.W. 22 found continuous ligature mark around the neck along with other injuries over head and neck. He deposed death was due to strangulation by ligature, ante mortem and homicidal in nature.

Arguments at the Bar:-

18. Mr. Mukherjee for Sabina Sabnam @ Rumi argued P.W. 7 is a wholly unreliable witness. Narration of the incident, as per P.W. 7 bristles with absurdities and improbabilities. P.W. 7 contended he saw the incident while driving through rear view mirror. This is most improbable. There was no light inside the vehicle. Though he went to the petrol pump to refuel the car he did not inform anyone or make any attempt to run away. According to P.W. 21 (owner of the car), P.W. 7 was supposed to return by afternoon. Though he did not return till 10:00 p.m. P.W. 21 did not make enquiry. As per prosecution case, incident occurred at Bardhaman Rathtala but the vehicle was found stranded at Rasulpur Rail Gate which was barely 5 kilometres away from the

residence of Sabina Sabnam @ Rumi. Telephonic information received at Palsit Outpost has not been exhibited. Handkerchief was not sent for forensic examination. Motive of the crime has not been established. Recovery of the dead body from the vehicle is also shrouded in mystery. In the inquest report, P.W. 25 noted dead body was found below the front seat but in the F.I.R. it is claimed body was lying below the middle seat of the vehicle. Age of the two girls present in the car as per inquest report was about 10-11 years. Sabnam @ Rumi and Selima Khatun are in their twenties. P.Ws. 4, 5 and 6 are the local witnesses. They failed to identify Wahid. Sabnam and Selima were not found at the place of occurrence. Their identification by P.W. 7 suffers from various improbabilities. P.W. 22 admitted he was not the registered owner of the car. Accordingly, he prayed for acquittal.

19. Mr. Chattopadhyay for Selima Khatun adopted the submission of Mr. Mukherjee. In addition, he submitted there was a delay of ten days in holding T.I. parade.

20. Mr. Das for Wahid Ali also adopted the submission of Mr. Mukherjee. In addition, he contended presence of Wahid at the place of occurrence is most unnatural. It is unlikely a murderer would patiently wait at the spot to be arrested. He had no motive to commit the crime. No nexus with co-accuseds has been established. P.Ws. 4 to 6 had not identified him at the place of occurrence. Recovery of handkerchief is not proved. P.Ws. 14 and 15 did not depose on the showing of Wahid

handkerchief was recovered. Even, P.W. 19, photographer appears to have come to the place of occurrence after the recovery. Handkerchief was not shown to post mortem doctor to prove it could be used as ligature. He also prayed for acquittal.

21. Mr. Bhattacharya for the State argued P.W. 7 was the driver of the car. He is the most natural witness. He has withstood extensive cross-examination. His deposition is corroborated by the presence of Wahid in the car. He identified co-accused Sabnam and Selima. CDRs show phone calls were made from mobile phones in the control of the two female accuseds to the deceased. They had enticed him to come to Santiniketan and board the vehicle. Thereafter, they murdered him. When prosecution case is established through the convincing evidence of eye-witness and other materials on record, failure to prove motive is of little consequence.

22. Analysis of the evidence on record in the backdrop of the arguments at the Bar shows prosecution case primarily rests on the shoulder of P.W. 7, sole eye-witness. Let me see whether he is reliable or not.

Discussion and findings:-

23. P.W. 7 is the driver of the car. His driving licence was seized and corroborates his claim. He was told by his employer to take the car to Reora and meet one Wahid, the hirer. He did so. Thereafter, Sabnam @ Rumi and Selima boarded the vehicle. They went to Santiniketan. At

Santinikentan, Sabnam and Selima got down from the vehicle. P.W. 7 and Wahid had lunch and rested. In the evening, he proceeded with Wahid. Sabnam and Selima again boarded with the victim. Thereafter, at Bardhaman Rathtala he heard a cry. The two women told him victim suffered from epilepsy and he should continue driving. He was also told to raise the volume of the tape recorder. P.W. 7 continued to drive. From the rear view mirror he saw Wahid throttle the victim with handkerchief while the two women held his hands.

24. It is contended under the aforesaid circumstances and as there was no light in the car, P.W. 7 could not have seen the incident. I am unable to agree to such submission. P.W. 7 is an experienced driver. He was driving down a national highway which is not a deserted road. Number of vehicles ply down the road with headlights switched on. Incident occurred at Bardhaman Rathtala which is not a deserted area. Hence, there was ample ambient light at the place where the incident occurred. After the incident, P.W. 7 became nervous. He was apprehensive that the appellants would murder him after disposing the dead body. He tried to flee away when they went to refuel the car but was unable to do so. Hence, it cannot be said that P.W. 7 had not attempted to flee earlier. Finally, when the vehicle stopped at Rasulpur Rail Gate he left the vehicle on the excuse of buying a cigarette and ran away. The aforesaid conduct of P.W. 7 cannot be said to be so unnatural to improbabilise his version in Court.

25. On the other hand, P.W. 7's version is corroborated by other witnesses. On receipt of telephonic information at Palsit Outpost as well as Memari Police Station, P.Ws. 1 and 3, police officers attached to Palsit Outpost went to the place of occurrence. They found Wahid sitting in the car with the dead body. P.Ws. 4, 5 and 6 are local witnesses. They deposed a body was found inside the car. A boy was sitting in the car. They were unable to identify Wahid in Court as they have seen him only once for a short period. But the owner of the vehicle (P.W. 21) and the investigating officer (P.W. 25) deposed Wahid was present in the car and identified him in Court. Presence of Wahid at the place of occurrence is established. It is contended no explanation is forthcoming why Wahid did not run away and remained at the spot. From the evidence on record it appears Wahid in collusion with the female accuseds, namely, Sabnam and Selima committed the murder. After P.W. 7 had escaped, the female accuseds also left the spot. It is possible they may have assured Wahid to remain at the spot and keep watch on the dead body before they returned with assistance to dispose the same.

26. It is argued no document endorsing receipt of telephonic information at Palsit Outpost was produced. From the evidence of P.W. 1 it appears though he received telephonic information at the Palsit Outpost he had not diarized it. On the other hand, the information received at Memari Police Station was diarized and P.W. 2 produced the General Diary (Exhibit 4).

27. It is also argued there is lack of clarity where the dead body was found. On receipt of information, P.Ws. 1 and 3 proceeded to the spot. They found the body of the victim lying below the middle seat of the car. This is stated in the F.I.R. lodged by P.W. 1. This corroborates the manner in which the victim was murdered while sitting on the middle seat between Sabnam and Selima. It is strenuously argued inquest report records body was placed below the front seat of the car. Apparently, this is at variance with the F.I.R. But a deeper scrutiny of the evidence of the witnesses would show the body had been removed prior to the holding of inquest. Hence, noting in the inquest report with regard to the place where the body was found is of little consequence.

28. Counsels for the appellants also argued P.W. 21 is not the registered owner of the vehicle. During cross-examination, P.W. 21 clarified that the vehicle had been handed over to him by the registered owner and he had control and dominion over the vehicle at the time of the incident.

29. Presence of Sabnam and Selima at the place of occurrence is also proved. P.W. 7 identified them during T.I. parade as well as in Court. I have gone through the evidence of P.W. 23, the Magistrate who conducted T.I. parade. He deposed on 22.02.2011 he conducted T.I. parade. T.I. parade was conducted within ten days of arrest of the two female accuseds. All safeguards had been taken during T.I. parade. The said appellants had been in the vehicle throughout the day. P.W. 7 had

ample opportunity to see them. Hence, their identification during T.I. parade and in Court is most probable. This proves their presence and participation in the crime beyond doubt.

30. Role of the female appellants in the incident is further fortified through the evidence of P.Ws. 10 and 12, wife and brother of the deceased. The witnesses stated one of the female appellants, i.e., Sabnam had intimate relationship with the deceased. In the morning of 10.02.2011, deceased left his residence telling a lie. He claimed he was going to Calcutta for medical treatment. But he went to Santiniketan to meet Sabnam and Selima. CDRs (Exhibit 25) show telephonic exchanges between the mobile number of the deceased, i.e., 9732620125 and Sabnam, i.e., 83483224345 which was in possession of Selima Khatun. Soon after the incident, Sabnam and Selima were found together and were arrested by P.W. 25. These circumstances corroborate P.W. 7 with regard to the role of Sabnam and Selima in the murder.

31. P.W. 22, post mortem doctor deposed victim suffered death due to strangulation. He found ligature mark around the neck. He deposed victim died due to throttling.

32. It is argued though Sabnam and Selima held the hands of the victim but no injuries were found on the hands. Victim was known to Sabnam. He had an intimate relationship with her. He had been lured into the trap by the said appellant. Owing to his close and intimate relationship with one of the appellants, victim was caught unaware when

the female appellants held his hand and Wahid suddenly throttled him. As a mark of resistance he may have writhed his head from one side to another causing head injuries. Injuries noted on the deceased as well as the cause of death are consistent with the ocular evidence of P.W. 7. Medical evidence wholly corroborates the eye-witness P.W. 7 and proves the case beyond doubt.

33. In this backdrop, failure to prove motive or credibility of the recovery of the ligature does not dent the authenticity and integrity of the prosecution case.

Conclusion:-

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

35. Bail bonds of the Sabina Sabnam @ Rumi are cancelled and she is directed to forthwith surrender and serve out the remainder of the sentence, failing which the trial Court shall issue appropriate processes for execution of the sentence in accordance with law.

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

37. The appeals are, accordingly, dismissed.

38. In view of dismissal of the appeals, connected applications, if any, also stand disposed of.

39. 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.

40. Photostat certified copy of this judgment, 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.)

PA (Sohel)