

16.12.2022
S/L. 26

Court No.12
Suvayan/
Sourav

CRA 636 of 2007

In the matter of: **Dibakar Mondal**

....Appellant.

Mr. Navanil De
Mr. Rajeshwar Chakraborty
Mr. Srinjan Ghosh
Mr. Subhrajit Dey
Ms. Monami Mukherjee

...for the appellant.

Mr. Saswata Gopal Mukherjee, Ld. PP
Mr. Narayan Prasad Agarwala
Mr. Ashok Das
Mr. Protik Bose

...for the State.

1. Heard Mr. Navanil De, learned *amicus curiae* appearing for the appellant and Mr. Saswata Gopal Mukherjee, learned Public Prosecutor appearing for the State.
2. This appeal arises against the judgment of conviction and order of sentence passed by learned Additional Sessions Judge, Basirhat, North 24 Parganas in Sessions Trial No. 3 (1) of 2006 convicting the appellant under Sections 302/201 of the IPC and sentencing the appellant thereunder as recorded in the order of sentence.
3. This is a case of uxoricide. The deceased is the first wife of the present appellant. During subsistence of the first marriage, the appellant married for the second time. It is alleged that as the deceased became unable to bear any child even after eight years of their marriage, the appellant married for the second time and, thereafter, the deceased came to live in the house of her father in the same village. It is alleged that the appellant and her parents used to torture the deceased physically and mentally before the occurrence. Before the date of occurrence, the deceased had gone to nearby hospital for checkup of her

teeth. When she did not return, a missing report was filed by father of the deceased (P.W. 1). In course of the investigation in that case, it came to the knowledge of the police that the deceased was buried in the embankment of the pond belonging to the family of the appellant. On coming to know of such fact, the charge under Sections 302/201/34 IPC was added and investigation was taken up by the I.O. (P.W. 19) on the basis of written report lodged by the P.W. 1, father of the deceased.

4. In course of investigation, the I.O. (P.W. 19) examined the witnesses, made incriminating seizures, held inquest over the dead body after it was exhumed from the place where it was buried, challaned the dead body for postmortem, seized the wearing apparels, etc. of the deceased and made other incriminating seizures and after completion of investigation filed charge-sheet under Sections 302/201/34 of the IPC against the appellant and his father.
5. The prosecution has examined as many as 20 witnesses in order to bring to home the charge against the appellant.

The defence plea is one of complete denial and false implication.

6. It is fairly submitted at the Bar that the case is based entirely on substantial evidence and there is no eyewitness to the occurrence.
7. Perusal of the impugned judgment shows that learned Court below has returned the finding of guilt under Sections 302/201 IPC against the appellant on the basis of following

circumstances while acquitting the father of the appellant.

- i) The appellant was last seen together in the company of the deceased prior to the occurrence (proved by P.W.s 6 and 7).
- ii) The dead body was recovered at the instance of the appellant from the land belonging to his family and inquest was held over the dead body after it was exhumed (proved by P.W.s 10, 11, 12, 14, etc.).

8. Mr. De, learned *amicus curiae* strenuously submits that both the aforesaid circumstances have not been proved to the hilt inasmuch as P.W. 6 is inimically disposed of towards the appellant for pending litigation between the appellant and him and P.W. 7 is testified to have seen the appellant in the company of the deceased from the other side of the river amongst 70 to 80 persons ferrying in the boat. So far as the second circumstance is concerned, it is submitted by Mr. De, learned *amicus curiae* that there are both private and official witnesses to prove this circumstance and there are discrepancies in the evidence of the witnesses so far as this circumstance is concerned. According to Mr. De, some of the private witnesses have testified that the dead body was exhumed by the police, seized by them and inquest was held over the dead body. Some of them have stated that it was the appellant who showed the place of burial. One of the witness has testified that the appellant showed to a place, the earth was dug there, nothing was found and on digging of another

place the dead body was found. In view of such discrepancies which strikes at the very root of the prosecution case so far as the recovery of dead body at the instance of the appellant is concerned, this circumstance cannot also be held to have been proved.

9. Mr. Agarwala, learned Counsel for the State on the other hand submits that learned Trial Court on a thorough scrutiny of the evidence on record has believed the evidence of P.W.s 6 and 7 so far as the circumstance of “last seen together” is concerned and having believed the evidence on the point of recovery of the dead body at the instance of the appellant, the conviction awarded by the Trial Court should be affirmed and the appeal be dismissed.
10. We in our wisdom, feel it appropriate to discuss the aforesaid two circumstances only eschewing the unnecessary evidence adduced by the prosecution case. It is an admitted fact that except the aforesaid two circumstances, there is no other circumstance to implicate the appellant. On perusal of the impugned judgment, we also found that learned Trial Court has heavily relied on the aforesaid two circumstances.
11. P.W. 6 is the witness who had seen the appellant together in the company of the deceased on the 3rd day of Sravan of 2006 at about 11.30 a.m. (though wrongly recorded as p.m.). Appellant is the nephew of P.W. 6, appellant’s father being his cousin. In the cross-examination, this witness has specifically testified that he has brought two complaint cases against the appellant, one Giren Mondal and others. Those two cases are

testified to be still pending. This witness further testified that he also initiated proceeding under Section 144 Cr.P.C. against the aforesaid persons including the appellant and that proceeding was decided against him (P.W.6). It is common knowledge that litigation is a great ego issue for rustic people irrespective of the extent of the land it involves or meagerness of property it involves. This witness has contradicted himself in the cross-examination so far as the date on which he saw the appellant in the company of the deceased is concerned. In his evidence, P.W. 6 has further testified that he had seen the appellant in the Police Station at the time when he was examined at Hingalganj P.S. and after about 18 days, he came to learn that dead body of the deceased was recovered from the courtyard of the accused Giren Mondal (father of the appellant, since acquitted). Pendency of the litigation between the appellant and P.W. 6 is enough evidence to show that he is inimically disposed towards the appellant and his family. So far as P.W. 7 is concerned, he has fairly submitted that he saw the appellant in the company of the deceased from the other side of the river i.e., from the side of Parhasnabad when they were ferrying at the boat from the side of Kedarchak. He has further testified that 70 to 80 persons were present in the boat. Identification is such a situation from a distance amongst 70 to 80 persons is difficult even persons are known.

12. Even if, we accept the evidence of P.W.s. 6 and 7 to have been proved, then also their evidence has no credence inasmuch as there is no proximity between the time when appellant was

seen last in the company of the deceased and the death of the deceased, in as much as P.W. 6 himself has testified that 18 days after he saw the appellant in the Police Station, he came to learn about recovery of dead body of the deceased from the courtyard of the appellant.

13. So far as the second circumstance is concerned, having perused the evidence of the witnesses described (Supra), we find that there are discrepancies in the evidence as submitted by Mr. De, learned *amicus curiae*. Some of the witnesses have testified that they saw the police exhumed the dead body, seizure of the dead body was made in their presence and inquest was held. Some of the witnesses have testified that the appellant showed the place where the dead body was buried. One of the witness has testified that the appellant showed to some place which was dug but nothing was found and on digging another spot the dead body was exhumed. If all the aforesaid discrepancies are taken into consideration, those discrepancies strike at the root of the prosecution case so far as recovery of the dead body at the instance of the appellant is concerned and it cannot be held that the requirement of Section 27 of the Evidence Act has been satisfied. At best, the entire evidence, even if, accepted may point out to conduct of the appellant relevant under Section 8 of the Evidence Act and a person cannot be convicted on the basis of conduct only.
14. The non-examination of the medical officer who held post mortem also strikes at the face of the prosecution regarding

cause of death. Even if, we accept both the circumstances to have been proved i.e., i) the appellant was seen last in the company of the deceased some days prior to the occurrence not alone but amongst other people; and ii) the appellant pointed out to the place from where dead body was exhumed indicative of his conduct under Section 8 of the Evidence Act, there cannot be completeness of chain to point out to the guilt of the appellant and none else.

15. In view of our discussion (Supra) and the materials on record, we set aside the impugned judgment of conviction and order of sentence passed by the learned Additional Sessions Judge, Basirhat, North 24 Parganas in Sessions Trial No. 3 (1) of 2006.
16. The appeal is allowed.
17. The appellant being stated to be on bail, he be discharged of the bail bond.
17. Accordingly, the appeal being CRA 636 of 2007 is disposed of.
18. The L.C.R. be sent down to the Trial Court.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)

