

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. 689 of 2010

Etowa Oraon & Anr.

-Vs-

State of West Bengal

With

C.R.A. 344 of 2007

Budhua Oraon

-Vs-

State of West Bengal

With

C.R.A. 566 of 2009

+

C.R.A.N. 2 of 2010 (Old CRAN 192 of 2010)

Etowa Oraon

-Vs-

State of West Bengal

For the Appellants : Mr. Kaushik Gupta, Advocate.

For the State : Mr. Neguive Ahmed, Id. A.P.P.,
(In CRA 689/2010) Ms. Amita Gaur, Advocate.
(In CRA 344/2007)
(In CRA 566/2010)

Heard on : 9th March, 2022

Judgment on : 9th March, 2022

Joymalya Bagchi, J. :-

On 24th May, 1997, police at Banarhat Police Station received a written complaint from one Bifai Lohar (P.W. 10) regarding the death of his mother, Shanti Lohar. Upon receipt of such information, Banarhat Police

Station Case No. 48 of 1997 dated 24.05.1997 under Sections 147/148/149/448/326/302 of the Indian Penal Code was registered for investigation by the then Officer-in-charge of the said Police Station, S.I. Sisir Kr. Mitra (P.W. 9). Investigation of the case was handed over to S.I. D.K. Sarki, P.W. 10. The said Police Officer visited the place of occurrence and found the dead body of Shanti Lohar lying on the verandah of one Basua Lohar with burn injuries and other marks of injuries. He prepared inquest over the dead body, Exhibit-2/1 and sent the body for post mortem examination. He received information Budhua Lohar, husband of the deceased was also assaulted and hospitalised. He collected his injury report, Exhibit-8. Upon completion of investigation, he submitted charge-sheet against 16 accused persons including the appellants herein. Charge was framed against 15 accused persons including the appellants under Section 147/148/149/448/326/302 of the Indian Penal Code. Accused persons pleaded not guilty and claimed to be tried. Thereafter, the trial proceeded wherein to the utter dismay of this Court, it is noted most of the witnesses including the near relations of the deceased Shanti Lohar appeared to be won over and did not support the prosecution case. Motive of the crime was that the accused persons had suspected the deceased Shanti Lohar and her husband to be witches who had cast a spell resulting in the death of the daughter of Budhua Oraon, one of the appellants herein. Over this issue, Budhua Oraon, Etowa Oraon and Sushil Oraon and others had come to the residence of the deceased and her husband. They were dragged out and brutally assaulted by the

appellants and others. Hot water was also thrown on the deceased. As a result, she died and her husband was hospitalised for a protracted period of time. Budhua Lohar, husband of the deceased was not examined as he had expired prior to commencement of trial. However, sons of the deceased and their wives prompted by some sinister motive attempted to derail the prosecution by misstating the date of occurrence and/or deposing in an evasive manner in Court. A sensitive case like the present which relates to the brutal murder of an innocent lady on the suspicion that she is a witch, greater care and circumspect is expected on behalf of the prosecution as witnesses in such cases due to social pressure or money power may turn hostile. Prosecution, however, did not live up to its duty and elicit the truth by cross-examining/recalling the witnesses to correct their deposition relating to the date of occurrence which is patently incorrect. It was left to the Judge to wade through the thickest of falsehood and bring out at the kernal of truth embedded in the circumstances of the case. Upon distilling the evidence of prosecution witnesses who either were declared hostile or exhibited 'veiled hostility' by mouthing half truths or evasive answers, the Judge by the impugned judgment and order while acquitting the other co-accuseds convicted the appellants for commission of offence punishable under Sections 147/448/302/34 of the Indian Penal Code and sentenced them to various terms of imprisonment including imprisonment for life and a fine of Rs. 3,000/- each for the offence punishable under Sections 302/34 of the Indian Penal Code.

Being aggrieved by the aforesaid judgment and order, the appellants are before this Court. In view of the multiple appeals filed on behalf of the appellants, CRA 689 of 2010 so far as it relates to Etowa Oraon is dismissed as not maintainable. The said appeal shall be treated to have been filed by appellant No.2, Sushil Oraon alone. All the appeals have been taken up for hearing analogously and is being disposed of by this common judgment and order.

As Budhua Oraon (In CRA 344 of 2007) was unrepresented, Mr. Kaushik Gupta who is representing the other appellants had been requested to assist the Court as Amicus Curiae in the said appeal.

Mr. Gupta, learned Advocate appearing for the appellants argues the prosecution case has not been proved beyond doubt. All the witnesses in unison stated the incident occurred as 26.05.1997 whereas date of occurrence in the charge is stated as 23.05.1997. Trial Court was of the view such error is a slip of tongue which appears to be absurd as all the witnesses had deposed the victim had died on 26.05.1997 and not 23.05.1997. He further submits prosecution witnesses are unreliable and their evidence with regard to the appellants ought not to be believed. He submits all the witnesses stated they were not present at the place of occurrence and, therefore, they could not have witnessed the assault upon the deceased. He also submits the motive for commission of the crime has not been proved. Hence, he prays for acquittal of the appellants.

Mr. Ahmed, learned Additional Public Prosecutor submits evidence of P.Ws.2 and 3 clearly show that the appellants suspected the deceased

and her husband to be witches and had come to their house to teach them a lesson. They took out the deceased and her husband from the house and thereafter assaulted them. Post mortem report shows large number of injuries along with burn marks on the deceased corroborating their versions. Motive to commit the crime has also been proved. Hence, the appeals are liable to be dismissed.

Narration of the prosecution evidence would show the desperate attempt of the witnesses to obfuscate truth and screen the offences. It is sad to note even the sons and daughters-in-law of the deceased resorted to half truths and evasive replies in Court presumably out of social pressure or other considerations. In this backdrop, an onerous duty is cast on the Court to assess the evidence of the hostile witnesses in the backdrop of the circumstances of the case so that truth may be distilled after separating the shaff of falsehood from their depositions.

Firstly, all the witnesses stated incident occurred on 26.05.1997. This has been strongly relied upon by Mr. Gupta to show that the prosecution case is false. In this regard, he refers to the charge framed wherein the date of the incident is referred to as 23.05.1997. Trial Court observed that such error was a slip of tongue on the part of the witnesses. On the contrary, I am of the opinion the witnesses were tutored to give an incorrect date in Court so as to render the prosecution case vulnerable. I am emboldened to arrive at such conclusion as the circumstances of the case including the irrefutable documentary evidence on record leave no doubt in my mind that the victim had indeed died in the night of

23.05.1997 and her dead body was found by the Investigating Officer (P.W. 10) on the verandah of one Basua Lohar in the morning of the next day i.e. 24.05.1997. Investigating officer held inquest over the body which is proved by the inquest report marked as Exhibit-2/1. Moreover, the body was sent for post mortem on 24.05.1997 under dead body challan, Exhibit-6 and the post mortem was held on 25.05.1997 as per post mortem report, Exhibit-7. These unimpeachable documents leave no doubt to one's mind that the prosecution witnesses had lied on oath with regard to the date of incident which in fact took place in the night of 23.05.1997 as depicted in the charge framed against the appellants. It is the duty of the Court to ensure that such subversive efforts of motivated witnesses to derail the process of administration of criminal justice be thwarted and truth be brought to light. P.W. 1 (Bifai Lohar), one of sons of the deceased is the first informant in the case. He deposed on 26.05.1997 at 9 p.m. a large number of persons came to their house and assaulted his parents. As a result, his mother died and his father was hospitalised. He lodged F.I.R. Though he disowned the contents of the F.I.R., he admitted his signature on the document. Endorsement of the then officer-in-charge (P.W. 9) of the police station in the F.I.R., marked as Exhibit-1/1 shows the complaint of P.W. 1 was received on 24.05.1997 at 11.15 hours clearly establishing the victim was murdered on the night of 23.05.1997 and not 26.05.1997, as claimed by P.W. 1 and other witnesses. The golden rule of assessment of hostile witnesses is not to throw out their evidence in toto but to elicit such portion of their evidence which is consistent with other

circumstances of the case and reject the painted portions. Thus, I am of the view the evidence of the aforesaid witnesses with regard to the date of occurrence requires to be assessed in the light of unimpeachable documentary evidence which establishes beyond doubt that the incident occurred in the night of 23.05.1997 as proposed by the prosecution and not otherwise. Challenge of the appellants on the score, therefore, does not succeed.

P.W. 3, Sukra Lohar, is another son of the deceased and P.W. 2, Rowti Lohar, is his wife. Evidence has come on record that the deceased and her husband used to reside in the same quarter with P.W. 3. P.W. 2, wife of P.W. 3, deposed the incident occurred ten years ago at 9 p.m. There was a rumour that her parents-in-law were witches. Budhua, Etowa and Sushil asked her to open the door. She opened the door and her parents-in-law were taken out. Thereafter, Budhua, Etowa and Sushil assaulted them and threw water on her mother-in-law. Budhua stated he would kill her daughter. As a result, she fled away out of fear. In cross-examination, she stated that she is deposing for the first time in Court. Her husband, P.W. 3, though declared hostile, had supported her version to some extent. He stated on that night Sushil and Etowa came to their house and asked them to open the door. His wife opened the door and Budhua, Etowa and Sushil took away his parents to the road near the quarter. Budhua threatened that he would kill their daughter. As a result, they ran away. On the next day, dead body of her mother was found. His father was also injured and was admitted at the hospital. During cross-

examination he claimed that he stated such facts for the first time in court. However, from the cross-examination of investigating officer it appears that P.W. 3 had been examined and he stated to him that Budhua, Etowa and Sushil had assaulted his parents.

P.W. 4, Madhu Lohar and his wife Bipti Lohar (P.W. 5) are also co-residence of the quarter where the victims resided. They also did not support the prosecution case and have been declared hostile.

P.W. 6, Debi Lohar, is the wife of P.W. 1. She deposed all the accused persons had come to the house and assaulted her parents-in-law. However, from the cross-examination it appears that she used to reside in a different house which was adjacent to the quarter of Buni Oraon.

P.W. 9, S.I. Sisir Kumar Mitra, was the Officer-in-Charge of Banarhat Police Station. He received a written complaint from Bifai Lohar and he put on the written complaint and drew up F.I.R.

P.W. 10, S.I. D.K. Sarki, was the investigating officer who investigated the crime and submitted charge-sheet.

Analysis of the aforesaid hostile witnesses in the backdrop of the official witnesses would show a written complaint was lodged by Bifai Lohar which was received on 24.05.1997 at 11:15 hours and the instant case was registered. P.W. 10 was assigned the investigation and proceeded to the spot. He found the dead body of Shanti Lohar lying in the verandah of Basua Lohar. Sketch map 'Exhibit-5' prepared shows that the verandah of Basua Lohar is adjacent to the quarter of Madhu Lohar

(P.W. 4) wherein the victims as well as P.Ws. 2 and 3 used to reside. P.W. 10 held inquest over the dead body around 11:15 hours on 24.05.1997 and prepared inquest report. Evidence has also come on record that Badhua Lohar, husband of the deceased, was also assaulted and hospitalised. His injury report has been proved as 'Exhibit-8'

From these pieces of evidence particularly the documentary evidence on record it is clear in the night of 23.05.1997 around 9 p.m. Shanti Lohar and her husband were brutally assaulted. Hot water was also poured on Shanti Lohar. As a result, she died and her husband had been hospitalised.

The next question which crops up is who were the perpetrators of such murderous assault. Although most of the witnesses have shied away from claiming that they had seen the incident the evidence of P.Ws. 2 and 3 who were residing in the same quarter with the victims show that the appellants had come to their house and had dragged away the victims. While P.W. 2 claimed to have witnessed the assault by the appellants on the deceased and her husband, P.W. 3 stated they had run away out of fear. On the next day dead body of the victim was found from the adjoining verandah and husband of the victim Budhua Lohar (who could not be examined as he had died before trial) had been hospitalised. Post mortem report discloses large number of injuries on the body of the deceased along with burns. Post mortem doctor was not examined and his report was exhibited on consent under Section 294 of the Code of Criminal Procedure. Nature and number of injuries on the vital parts of

the body of the deceased as per post mortem report leaves no doubt in one's mind that the victim suffered homicidal death. Contemporaneity between the time the witnesses saw the appellants drag out the deceased from her residence, that is 9 p.m. and her heinous death due to innumerable injuries and burns which was prior to the receipt of written complaint of P.W. 1 at police station at 11:15 hours on 24.05.1997 form a live link which implicates the appellants in the alleged crime. No explanation is also forthcoming from the appellants who dragged out the deceased and her husband from their residence as to how she suffered homicidal death within a couple of hours.

Motive to commit the crime has also been proved. All the prosecution witnesses deposed regarding the death of the daughter of Punia and Budhua and there is hardly any cross-examination disputing such fact.

In view of the aforesaid, I am of the opinion the following circumstances have been duly proved in the present case:-

(a) Appellants suspected the deceased and her husband Budhua Lohar to be witches and blamed them for the death of the daughter of Budhua Oraon;

(b) Over this issue on 23.05.1997 at 9 p.m. appellants along with others came to the residence of the couple and dragged away the couple in the presence of P.Ws. 2 and 3;

(c) Budhua Oraon, threatened P.Ws, 2 and 3 that their daughter would be killed. Hence, the witnesses ran away out of fear;

(d) P.W. 1 lodged written complaint (contents not proved) at the police station which was received by the then Officer-in-charge at 11:15 hours on 24.05.1997;

(e) On the next day, dead body of the deceased was found with multiple injuries on the verandah of Basua Lohar, adjoining their residence;

(f) Post mortem report showed extensive injuries along with burns on the body of the deceased which establishes she suffered of homicidal death;

(g) Husband of the deceased also suffered injuries and was hospitalized;

(h) No explanation is offered by the appellants who had dragged away the deceased from her home with regard to the circumstances in which she suffered homicidal death within a couple of hours. These circumstances have been duly proved and clearly establish the guilt of the appellants beyond reasonable doubt.

Conviction and sentence of appellants is, accordingly, upheld.

Hence, the appeals being CRA 344 of 2007, CRA 566 of 2009 and CRA 689 of 2010 are hereby dismissed.

Connected application, if any, be also dismissed.

This Court is informed Budhua Oraon is on bail and Etowa Oraon has been released on parole. Bail bond and parole of Budhua Oroan and Etowa Oraon respectively are forthwith cancelled. They are directed to surrender before the trial Court and serve out the remainder of their

sentences in accordance with law. In the event they fail to do so, the Court below as well as the authorities of the correctional home concerned, that is, Jalpaiguri Central Correctional Home shall take appropriate steps for their apprehension and execution of the sentences in accordance with law.

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

Let a copy of this judgment along with the lower court records be forthwith sent down to the trial Court at once. A copy of this judgment be also sent down to the Jalpaiguri Central Correctional Home for necessary compliance.

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

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)