

21.12.2022
S/L. 19
Court No.12
Suvayan

CRA 707 of 2008

In the matter of: **Sonarul Sk. @ Islam**

....Appellant.

Mr. Partha Sarathi Bhattacharyya
Ms. Swarnali Saha

...for the appellant.

Mr. Pravas Bhattacharya
Mr. Suman De

...for the State.

1. Heard learned Counsel for both the parties.
2. The instant appeal arises out of the judgment and order dated 28.08.2008 and 29.08.2008 as passed by learned Additional Sessions Judge, 1st Fast Track Court, Lalbagh, Murshidabad in Sessions Trial No. 3 of May, 2004 arising out of Sessions Case No. 146 of 2003. By the impugned judgment and order of sentence learned Trial Court found accused Sonarul Sk. @ Islam guilty under Section 302 IPC and thus sentenced him to suffer imprisonment for life and to pay fine of Rs. 5,000/- in default to suffer one year more.
3. The convict felt aggrieved and thus preferred the instant appeal.
4. For effective disposal of the instant appeal the facts leading to initiation of the aforementioned S.T. Case No. 3 of May, 2004 is required to be dealt with in a nutshell.
5. One S.I. Swapan Bhowmik (P.W. 2) being the Officer-in-Charge of Bhagawangola P.S. lodged a *suo motu* complaint stating *inter alia* that on 28.03.2002 on receipt of a telephonic information, he proceeded towards kuthibari mango garden near Bhagawangola and on reaching there he noticed that one unidentified female dead body was lying there under a mango

tree and at that time he also noticed that the neck of the deceased was rapped up with a lungi.

6. On the basis of such written complaint Bhagawangola P.S. Case No. 13 of 2002 dated 28.03.2002 under Section 302 IPC was started against unknown accused person. Investigation was taken up and on completion of the same charge-sheet was submitted against three accused persons namely; Sonarul Sk. @ Islam, Abu Bakkar Sk. @ Bakkar Sk. and Altaf Sk. under Section 302/34 IPC. After commitment the said case was transferred to the Court of the Trial Court who on perusal of entire materials on 06.12.2003 considered the charges against the three charge-sheeted accused persons and thus framed charge under Section 302/34 IPC against all the aforementioned three accused persons. Since all the three accused persons pleaded their innocence and claimed to be tried, the said trial proceeded.
7. On perusal of the trial court record it reveals that in order to bring whom the charges, the prosecution has examined 16 witnesses in all and several documents have exhibited on its behalf. It reveals further from the learned Trial Court record that the accused persons declined to adduce any defence witnesses. It further reveals to us that the learned Trial Court after considering the entire materials as placed before him found the present appellant Sonarul Sk. @ Islam guilty under Section 302 IPC, however, other two charged accused persons were set at liberty for want of appropriate evidence.
8. In course of his argument Mr. Bhattacharyya, learned Counsel

for the appellant took us to the evidence of P.W.s 1, 2 and 12. Attention of us is also drawn to the impugned judgment. It is submitted by Mr. Bhattacharyya that while passing the impugned judgment learned Trial Court has categorically pointed out a series of circumstances which according to the learned Trial Court are sufficient to prove the guilt of the present appellant. It is submitted by Mr. Bhattacharyya that the circumstances as mentioned in Clase F in the impugned judgment (at Page 90 of the Paper Book) has not been proved beyond reasonable doubt since the evidence of P.W. 1 that his deceased daughter was last seen together with the present appellant immediately before the alleged crime gets no corroboration from the evidence of P.W. 12. It is contended that it is settled principle of law that if in a chain of circumstances, one circumstance is disproved then the chain brakes and the same vitiates the trial. It is thus argued that it is a fit case for allowing the instant appeal by setting aside the impugned judgment.

9. Mr. De, learned Counsel for the State led by Mr. Bhattacharya in course of his argument, however, opposes the submission of Mr. Bhattacharyya, learned counsel for the appellant. Mr. De, learned Counsel for the State also places his reliance upon the finding of the learned Trial Court in the impugned judgment with regard to the chain of circumstances as involved in the instant case vis-a-vis the evidence of P.W.s 1, 2, 11 and 12. It is contended on behalf of the State that on conjoint perusal of the entire evidence of P.W.s 1, 2, 11 and 12 it would be

revealed that it is their consistent evidence that the victim was last seen together along with the present appellant immediately before the crime and, thus, learned Trial Court is very much justified in holding the present appellant guilty under 302 IPC.

10. After giving due consideration over the materials as placed before us as well as to the submissions as made by the learned Counsels for the contending parties, it appears to us that for effective disposal of the instant appeal a look to the impugned judgment as passed by the learned Trial Court is very much necessary. On perusal of the impugned judgment, it appears to us that the learned Trial Court has rightly held that the present case is based on circumstantial evidence and learned Trial Court in his impugned judgment expressed the following with regard to the circumstances which he found relevant at the time of the disposal of the said Sessions Trial and the same is reproduced herein below in verbatim:

“After due scrutiny of evidence as a whole I find following chain of circumstantial evidence :-

- A) *accd. Married Firoja while he was a labourer under P.W. 8 within a short spell of time as on 22.1.02.*
- B) *circumstance of due dower have already come in evidence to the effect that out of Rs.25,000/-, Rs.20,000/- was paid by P.W. 1 to Sonarul and regarding due dower Sonarul used to harass Firoja.*
- C) *Firoja and Sonarul enjoyed their conjugal life for a certain period and thereafter on 27.3.02 took away Firoja while she was carrying and*

about disclosing before P.W. 1 that he is taking Firoja to a tenanted premises at Calcutta.

- D) That P.W. 11 saw both Firoja and Sonarul on the way while they were going away,*
- E) accd. did not go to Calcutta on the contrary he boarded in a train at Sujnipara rail station with Firoja.*
- F) That P.W. 12 saw both Firoja and Sonarul in the Sujnipara station.*
- G) That just on the following day, i.e., 28.3.02 P.W.s 2, 3, 4, 5, 6 all these witnesses have seen dead body of a female and as per their statement said female was murdered by lungi.*
- H) P.W. 12 saw dead body of Firoja being taken away by 'Dom' subsequently and said witness has clearly said that at that time Firoja was with same read colour sari in her person.*
- I) Subsequent to the information of P.W. 12 dead body of Firoja as well as her sari was identified by P.W. 1 and 11.*
- J) P.W. 9 also corroborated that it was cardio respiratory failure following throting. In inquest report we also find that there was a blackish spot in the neck of the deceased.*
- K) There are sufficient evidence from so many witnesses showing the situation of dead body what they have viewed in Kuthibari mango garden.*

I do not find any other circumstance in the present trial in apart from availability Firoja and Sonarul in Sujnipara rail station and Kuthibari mango garden.”

11. Keeping in mind the circumstances as pointed out by the learned Trial Court in the impugned judgment we also once again propose to look to the evidence of P.W. 1 who is none but the father of the unfortunate deceased Firoza. In course of his examination-in-chief P.W. 1 stated categorically that marriage of Firoza with the present appellant was solemnized on 22.01.2002 and thereafter they returned to village Islampur after 15 days and one week thereafter both the Firoza and the present appellant came to their house at Islampur where he was required to pay dower of Rs.25,000/-. It is his further version that accused Sonarul Sk. used to pressurize him (P.W.1) and asked him to pay Rs.5.000/-. It is his further version that he assured the present appellant that he would pay Rs.5,000/- and with a request not to create any disturbance. It is his further version that on 29.03.2002 a fruit vendor of Jiaganj namely; Gayetri Mandal informed him that she had seen his daughter Firoza at Sujniapara railway station from where Firoza, Sonarul and Gayatri jointly boarded the train. It is his further version that at that time Firoza introduced Soranurl, the present appellant herein as her husband to Gayatri (P.W. 12) and he came to learn such fact also from Gayatri. He stated also that Gayatri (P.W. 12) also stated to him that Firoza, Sonarul and Gayatri got down at Azimganj railway station.
12. P.W. 2 being the informant in his examination-in-chief stated that on 28.03.2002 he recovered the dead body of the victim and on the basis of which he started Bhagawangola P.S. Case

No. 13 of 2002 dated 28.03.2002 under Section 302 IPC against unknown person. At this juncture we also propose to look the evidence of P.W. 12, i.e., Gayatri Mondal @ Gayeshri Mondal.

13. In considered view of us the evidence of P.W. 12 is very much relevant. In her examination-in-chief she stated that she knew Firoza and she had seen her at Sujanipara railway station and that Firoza used to call her as masi. She further stated that she saw her alive for the last time at Sujanipara rail station two days before she saw her dead body. On con-joint perusal of the evidence of P.W.s 1, 2 and 12 it thus appears that there is no dispute that the dead body of the victim was recovered on 28th March, 2002, however, P.W. 1 in his examination-in-chief stated that on 29.03.2002 P.W. 12 stated to him that he found the victim with the present appellant at Sujanipara railway station, however, in her examination-in-chief P.W. 12 disclosed no date or time as to when she noticed both the present appellant and the victim at Sujanipara rail station. It further appears to us that no endeavour has been made out by the prosecution to elicit the actual date and time of last seen together of the present appellant and the deceased from the mouth of the P.W. 12. It is important to note here also that on the day of recordings of evidence of P.W. 12, the present appellant was present in accused dock and in spite of the same, P.W. 12 remain absolutely mum with regard to the fact that with whom the victim Firoza was last seen at Sujanipara rail station which according to us demolishes the prosecution

case which is based on circumstantial evidence. In the impugned judgment it has been noticed by us that the learned Trial Court under Clause Nos. 'D', 'E' and 'F' as mentioned above, also found some favourable circumstances in favour of the prosecution, namely, P.W. 11 had seen both Firoza and Sonarul on the way while they were going away and the accused did not go to Calcutta on the contrary he boarded in a train at Sujanipara rail station with Firoza and P.W. 12 saw both Firoza and Sonarul in the Sujanipara rail station.

14. In considered view of us, the aforementioned three incriminating circumstances could not be properly proved by the prosecution since in his examination-in-chief P.W. 11 stated that on 27.03.2002 he found Firoza and Sonarul, while P.W. 1 in his examination-in-chief stated that on 29.03.2002 he came to learn from P.W. 12 that Firoza and Sonarul were last seen by her at Sujanipara rail station wherefrom she along with Sonarul (the present appellant) and Firoza boarded on the same train. However, P.W. 12 in her examination-in-chief stated that she saw Firoza at Sujanipara rail station, but she has not mentioned with whom Firoza was last seen by her and on which date.
15. Such being the position, we are constrained to hold that the circumstances under Clause Nos. D, E and F as mentioned above of the impugned judgment cannot be said to be proved as against the present appellant beyond reasonable doubt. We thus find various missing links in the series of circumstances as discussed by the learned Trial Court for which the

conviction as awarded by the learned Trial Court cannot be sustained.

16. Accordingly the instant appeal being CRA 707 of 2008 succeeds.
17. The impugned judgment of conviction and order of sentence dated 28.08.2008 and 29.08.2008 as passed by learned Additional Sessions Judge, 1st Fast Track Court, Lalbagh, Murshidabad in Sessions Trial No. 3 of May, 2004 arising out of Sessions Case No. 146 of 2003 is set aside.
18. The present appellant namely, Sonarul Sk. @ Islam be set at liberty at once if not wanted any connection any other case.
19. LCR be sent down forthwith to the concerned trial Court for due compliance.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)