

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHITTA RANJAN DASH
AND
HON'BLE JUSTICE PARTHA SARATHI SEN

C.R.A. No. 97 of 2007

With

IA No: CRAN 1 of 2007 (Old No: CRAN 565 of 2007)

Tapas @ Pintu Das
-Versus-
The State of West Bengal

For the Appellant	:	Ms. Kakali Chatterjee Mr. Debasish Chatterjee
For the State	:	Mr. Madhusudan Sur Mr. Manoranjan Mahata
Last Heard on	:	10.01.2023
Judgment on	:	20.01.2023

PARTHA SARATHI SEN, J. : –

1. The instant appeal arises out of the judgement and order of conviction dated 17.01.2007 as passed by learned Additional Sessions Judge, 2nd Fast Track Court, Chandernagore, Dist. Hooghly, in Sessions Trial No.4 of 2006 whereby and whereunder the said court by the impugned judgement found accused no.1 Tapas @ Pintu Das guilty under Section 302 IPC and under Section 27(1) of the Arms Act and thus, sentenced him to suffer imprisonment for life and also to pay fine of

Rs.5000/- for the offence committed by him under section 302 IPC and RI for 5 years and a fine of Rs.2000/- i.d to suffer RI for 3 months more for the offence under Section 27(1) of the Arms Act as committed by him.

2. The convict felt aggrieved and thus, filed the instant appeal.

3. For effective adjudication of the instant appeal the facts leading to the initiation of the Sessions Trial no. 4/2006 is required to be discussed in a nutshell.

4. One Sibnath Adak of village Henriadaha, P.S. Chanditala, District Hooghly lodged a written compliant dated 21.12.2002, with the O/C Singur Police Station stating, inter alia, that his eldest daughter Kanika Adak was given marriage with the present appellant as per Hindu Rites and Customs and at the time of such marriage various nuptial gifts and Rs.15,000/- cash were given to the bridegroom. It has also been alleged in the said written complaint that soon after such marriage the present appellant being the husband of the said deceased Kanika Adak and his parents and his sister Rakhi Das started inflicting torture upon her said daughter both physically and mentally. It is his further version in the written complaint that very often his said daughter was thrown out from her matrimonial home and even on an occasion the present appellant made an attempt to kill his said daughter by throttling her by a belt. It has also been disclosed in the written complaint that several attempts were made by them to resolve such dispute but all their efforts went into vain. The de facto complainant also stated that his son-in-law i.e. the present appellant herein was a characterless person for which he was

very unpopular to everybody. The de facto complainant further disclosed that three days prior to the incident his wife went to her matrimonial home of her said daughter and at that time also his said daughter was subjected to torture even in front of her mother. In the said written complaint it has also been disclosed that on 21.11.2002 the de facto complainant came to learn from a close relative of him that his said daughter Kanika Adak died on account of a bullet injury on her head and on getting such information he and his family members rushed to the matrimonial home of her said daughter where he noticed that his said daughter Kanika was lying dead on a cot at her bedroom with two deep bleeding injuries on her head. In his said written complaint the de facto complainant stated further that it is his strong belief that his son-in-law Pintu had murdered his wife.

5. On the basis of such written complaint Singur P.S case no. 126 dated 21.12.2002 under Section 498/302 IPC and under Section 25/27 of the Arms Act was started.

6. Investigation was taken up and on completion of the same charge sheet under Sections 498A/302 IPC and under Sections 25/27 of the Arms Act was submitted against all the accused persons.

7. At the time of consideration of the charges learned trial court on perusal of the entire materials framed charges under Sections 498A/302 IPC and under Section 27 of the Arms Act as against the present appellant. Since the present appellant pleaded his innocence and claimed to be tried the said trial proceeded.

8. Trial Court Record reveals that for bringing home the charges against the present appellant as well as against his parents and his said sister (who have been charged with Sections 498A and 302 /114 IPC but subsequently acquitted by the impugned judgement) the prosecution has examined 20 witnesses in all and various documents and materials have been exhibited on their behalf.

9. Though before the learned trial court no evidence was adduced on behalf of the four accused persons but from the trend of cross-examination of the prosecution witnesses and from the answers as given by the accused persons in course of their examinations under Section 313 Cr.P.C , it appears that the defence case is based on clear denial and false implication.

10. As discussed above learned trial court by the impugned judgement though acquitted the other three accused persons namely; the parents and sister of the appellant but found the present appellant guilty under the aforementioned sections and thus, sentenced him in the manner discussed hereinabove.

11. In course of her argument Ms. Kakoli Chatterjee, learned advocate for the appellant draws attention of this Court to the evidence of the prosecution witnesses more specifically to the evidence of Samaresh Das (PW10), Sanjoy Bhandari (PW16) and Joydev Goswami (PW19). It is argued by her that on conjoint perusal of the evidence of PW10, PW16 and PW 19 it would reveal that before the learned trial court the prosecution has miserably failed to prove the seizure of the alleged

offending weapon as per showing of the present appellant being the accused beyond reasonable doubt. It is contended by her that since the alleged two seizure witnesses namely; PW10 and PW16 had become hostile and since the prosecution has failed to examine two other alleged seizure witnesses, learned trial court is not at all justified in coming to a conclusion that the seizure of the offending weapon by PW 19 has been proved in accordance with law and thus, the provisions of Section 27 of the Indian Evidence Act can be made applicable in this case and that the said provisions can be used as a material evidence as against the present appellant. It is further argued by her that the evidence of PW8 i.e. the senior scientist of Forensic Laboratory, Govt. of West Bengal vis-à-vis Exhibit 7 is of no use since before the learned trial court the prosecution has miserably failed to prove that the weapon which has been sent for forensic weapon was at all been used for the alleged murder of the deceased. It is further argued that since the prosecution has also failed to bring home the record of chemical analysis report and since the autopsy surgeon could not furnish his final view/opinion as to the cause of death of the victim, the learned trial court is also not justified in convicting the present appellant under Section 302 IPC.

In support of her contention learned advocate for the present appellant places her reliance upon the following three reported decisions:-

- (i) **Pulukori Kottaya Vs. King Emporer reported in 1947 P.C 67**
- (ii) **State of Punjab Vs Gurnam Singh reported in 1984(supp) SCC 502**
- (iii) **Sans Pal Singh Vs State of Delhi reported in (1998) 2 SCC 371**

12. Mr. Madhusudan Sur, learned advocate duly assisted by Mr. Manoranjan Mahata, learned advocate for the State in course of his argument further contended that while passing the impugned judgement learned trial court is very much justified to place his reliance under section 27 of the Evidence Act since the prosecution before the learned trial court is successful in proving that the alleged offending weapon of offence was recovered at the instance of the present appellant and it has also been proved beyond reasonable doubt from the evidence of PW8 vis-à-vis Exhibit 7 that the said weapon of offence was used for the murder of the victim. Learned advocate for the State thus, submits that it is a fit case for dismissal of the present appeal.

13. We have perused the entire materials as placed before us including the evidence of the prosecution witnesses both oral and documentary, the examination of the present appellant under section 313 Cr.P.C and the impugned judgement as passed by the learned trial court. We have also given our due considerations over the submission of the learned advocates for both the sides.

14. On perusal of the entire materials as placed before us we have no hesitation to hold that the present case is based on circumstantial evidence where prosecution relies upon the following circumstances to establish the guilt of the accused:-

- (i) The appellant/accused and the deceased/wife were married and there were matrimonial discord between them.
- (ii) The wife of the appellant was killed in her bedroom.
- (iii) She received gunshot injuries on her head.
- (iv) The present appellant being the husband of the victim lady intimated the matter to the police and also to a neighbour.
- (v) The husband i.e. the present appellant while in custody of police made a statement.
- (vi) On the basis of the statement the alleged weapon of offence was recovered.
- (vii) The seized bullet head was recovered from place of occurrence when compared with the gun and empty cartridges recovered subsequently, it matched completely.

15. Since learned advocate for the present appellant confined her argument on the veracity of the alleged making of statement by the appellant while in police custody and then as per his showing the alleged weapon of offence was recovered and seized and since legality of such search and seizure were vividly challenged before for us we shall confine our discussion with the relevant evidence of the prosecution witnesses both oral and documentary for arriving at a logical conclusion of the instant appeal.

In considered view of us the detailed discussion of evidence of PW1 (the informant and father of the victim), PW4 being the cousin of the victim and PW12 being the sister-in-law of the informant are not much

necessary except the fact that all the aforesaid witnesses in unequivocal terms categorically stated that for some reason or other, the matrimonial relation between the present appellant and his wife (deceased lady) was not cordial. It is equally undisputed that place of occurrence of the alleged incident of murder was at her bedroom which has been marked "A" in the rough sketch map (Exhibit 20) as drawn by the first I.O i.e. PW19. It is also undisputed that the present appellant intimated the matter to the police as well as to one of his neighbour i.e. PW6. From the trial court record it reveals further that from the evidence of PW19 i.e. first I.O and Exhibit 21 i.e. the statement of the accused before the said I.O while in custody have also been proved in accordance with law. In this premises we have to assess as to whether before the learned trial court the prosecution is at all successful in proving that the seizure of the alleged weapon of offence was at all made in accordance with law or not. From the evidence of PW 19 it appears to us that in course of his examination-in-chief he stated that after arresting the present appellant, he interrogated him and recorded his statement. It is his further examination-in-chief that in course of such examination under Section 161 Cr.P.C the present appellant stated before him that in the event the I.O accompanies the said accused, he would be able to identify the place where he had concealed the weapon of offence and that the same could be recovered from the said place. As discussed above that the said statement of the present appellant has also been duly exhibited before the learned trial court and in view of such we have no hesitation to hold that the

learned trial court is very much justified in holding that the statement of the victim as recorded by the said I.O i.e. PW19 is admissible in evidence under Section 27 of the Evidence Act. In this regard we may safely refer to a reported decision of **Chunda Murmu vs. State of West Bengal** **reported in (2012)5 SCC 753** wherein the Hon'ble Apex Court while dealing with a case under Section 27 of the Evidence Act expressed the following view:-

“From the evidence of the investigating officer it is also clear that the statement of the accused leading to the recovery of dead body was made while he was in custody and the same was in the presence of police officers, though, at that time some other persons were also present in the police station. The recovery of the dead body, therefore, is a fact which is admissible in evidence under section 27 of the Evidence Act, 1972. The absence of the identification of the accused by PW 15 at the time of recovery of the dead body, according to us, will not affect the core of the prosecution case.”

16. From the examination-in-chief of PW19 it reveals further that he testified that he thereafter went to village Ramnagar along with O/C of the Police Station and the present appellant and thereafter the present appellant namely; Pintu Das @ Tapas discovered a country made pipe gun from a heap of manure from the land of one Ram Chandra Jhar and thereafter he handed over the same to the I/O. He further testified that on opening such fire arm he found an empty cartridge inside the arm and thereafter he seized the fire arm by executing a seizure list which was written by one police personnel namely; Priyabrata Bakshi (PW17) and thereafter the said seizure list was duly signed by him and thereafter witnesses to such seizure put their respective signatures thereon. At this

juncture we propose to look to the seizure list dated 21.12.2002 wherefrom it reveals that the witnesses to such seizure are the following four persons namely; Shri Nilmoni Jhar, Shri Nitai Jhar, Shri Sanjoy Bhandari (PW 16) and Shri Samaresh Das (PW10). On careful scrutiny of the evidence of the aforesaid two seizure witnesses namely; PW10 and PW16 it would reveal that they became hostile to the prosecution and even in course of their cross-examination by the prosecution noting could be revealed that they witnessed the said alleged seizure of offending weapon as per showing of the present appellant. It is equally pertinent to mention herein that for the reason best known to the prosecution they have not examined the other two seizure witnesses. In view of such we have no hesitation to hold that the alleged seizure of the offending weapon as per showing by the present appellant from the heap of manure has become really doubtful.

17. Admittedly on conjoint perusal of the oral evidence of PW8 i.e. senior scientist of Forensic Laboratory, Govt. of West Bengal vis-à-vis Exhibit 7 i.e. the results of forensic examination as prepared by him it would reveal that on comparative study of the alleged weapon of offence i.e. pistol, empty fire case and the fired bullet duly matched with each other from which a conclusion was drawn by him that such bullet was fired from the said pistol which was allegedly seized by the I.O as per showing of the accused. However, on conjoint perusal of the testimony of PW8 and PW 19 i.e. the first I.O it would reveal that at the time of alleged seizure of the said alleged weapon of offence i.e. pistol and empty

cartridge and the fired bullet he made no label and seal upon such materials which were sent for forensic examination. Such being the position a reasonable doubt arises as to the genuineness of those materials which were claimed to have been seized by the I.O as per showing of the present appellant.

18. In view of the discussion made hereinabove we have no hesitation to hold that because of the perfunctory investigation as pointed out (supra) the present appellant is entitled to get benefit of doubt since the chain of circumstances on account of such perfunctory investigation could not be completed which may affect the prosecution case.

19. In view of the discussion made hereinabove we thus, find several merit in the instant appeal and accordingly the instant appeal is hereby allowed. As a result the impugned judgement and order of sentence dated 17.01.2007 as passed by learned Additional Sessions Judge, 2nd Fast Track Court, Chandernagore, Dist. Hooghly, in Sessions Trial No.4 of 2006 is hereby set aside.

20. The present appellant namely Tapas @ Pintu Das be set at liberty at once, if not, wanted in connection with any other case.

21. Department is hereby directed to send a copy of this judgement to the Superintendent of the concerned Correctional Home where the present appellant is detained now for doing the needful in accordance with the judgment as passed in this appeal.

22. Department is further directed to send another copy of this judgement to the Secretary, District Legal Service Authority, Hooghly with

a direction to him to forward the said copy of this judgement to the Superintendent of Correctional Home wherever the present appellant is detained now.

23. Department is further directed to transmit the trial court record along with a copy of this judgement forthwith.

24. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)