

11.01.2023
SL. 33
Court No.12
Sourav/
Suvayan

CRA 75 of 1998
With
IA No: CRAN 1 of 1998 (Old No: CRAN 260 of 1998)

In the matter of: **Dulal Chandra Das**

....Appellant.

Ms. Sujata Das

... *Amicus Curiae*
for the Appellant.

Ms. Zareen N. Khan
Md. Kutubuddin

... for the State.

1. Heard Ms. Sujata Das, learned *amicus curiae* appearing for the appellant and Ms. Zareen N. Khan along with Md. Kutubuddin, learned Counsel appearing for the State.
2. The appellant having been convicted under Section 302 IPC and sentenced to suffer imprisonment for life by learned Additional Sessions Judge, 1st Court, Balurghat, Dakshin Dinajpur in Sessions Trial No. 14 of 1997 arising out of Sessions Case No. 28 of 1997 has preferred this appeal.
3. From the materials on record, it is found that at about 6:00 a.m. on 08.10.1992 an unknown dead body was found lying by the side of a 'Nayanjali' of Manico village. Khagendra Nath Biswas (P.W. 2), Choukidar of the village reported about such incident before the Officer-in-Charge of local Police Station. When the facts became known, many villagers also gathered there. One woman appeared near the dead body at the spot and began to cry yelling that the dead body is that of her husband.
4. On the basis of the report submitted by Khagendra Nath Biswas (P.W.2), Choukidar, the Officer-in-Charge of Hili P.S. (P.W. 13) registered U.D. Case No. 14 of 1992 dated

08.10.1992 and took up enquiry. In course of enquiry, inquest over the dead body was held by S.I., U. Mukherjee (P.W. 8) in presence of witnesses and the dead body was challaned for Post Mortem. On 09.10.1992, one Purno Chandra Oraw (P.W. 1) of village Manico lodged report regarding the fact of finding of a dead body in the village. On the basis of that report, the Hili P.S. Case No. 261 of 1992 dated 09.10.1992 was registered against unknown accused persons.

P.W. 13 took up investigation, examined the witnesses including Jyostna Mondal (P.W. 6), mother-in-law of the deceased and Minati Das (P.W. 7), widow of the deceased. After completion of major part of investigation, P.W. 13 handed over charge of investigation to P.W. 12 on his transfer. P.W. 12 subsequently arrested the accused (present appellant), forwarded him to Court in custody and filed charge-sheet against him for offence under Section 364/302 IPC.

5. In course of trial, prosecution examined 13 witnesses to bring to whom the charge against the appellant. Besides the witnesses introduced (supra), P.W. 9 is the Medical Officer who conducted Post Mortem over the dead body. P.W. 11 is a home guard, P.W.s. 3 and 4 who were examined on the point of some seizure etc., have turned hostile. P.W. 10 is cousin of the deceased.

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

6. Admittedly, the case is based entirely on circumstantial

evidence. P.W. 9, the Medical Officer who conducted the Post Mortem has specifically opined that the death of the deceased was caused as a result of throttling which is ante-mortem and homicidal in nature. From the sole testimony of P.W. 9, it is clear that the death of the deceased was homicidal in nature. So far as the identification of the dead body is concerned, P.W. 7, the widow of the deceased having identified the dead body, there is no doubt about the misidentification of the person murdered. Another circumstance which is material for the prosecution is that the deceased was seen last in the company of appellant by P.W.s. 6 and 7 prior to the occurrence.

7. Relying on the circumstances to the effect that death of the deceased was a homicidal death and he was seen last in the company of the appellant prior to the occurrence by P.W.s. 6 and 7, mother-in-law and widow of the deceased respectively. The learned Court below has arrived at the finding of the guilt against the appellant so far as offence under Section 302 I.P.C. is concerned. He, however, was acquitted of the charge under Section 364 I.P.C.
8. Learned *amicus curiae* appearing for the appellant, vehemently submits that the aforesaid two circumstances cannot be held to have proved the charge inasmuch as though the appellant was arrested in course of investigation, he was not put to T.I. Parade to be identified by P.W.s. 6 and 7 and P.W. 6 being an old lady identified him for the first time in the Court after five years of the occurrence. Further it is submitted by her that P.W. 7 failed to identify the appellant.

The most crucial point which totally embellishes the circumstance is that the time gap between the death of the deceased and the factum of his seen last together with the appellant being long, it is not possible to arrive at a conclusion that it was the appellant who could have committed the murder.

Mr. Ashok Das, learned Counsel for the State on the other hand submits that the learned trial Court has supplied justifiable reasons for believing P.W.s. 6 and 7 on the aspect of 'last seen together' and the judgment passed by the learned trial Court is to be affirmed.

9. In our view, the homicidal death of the deceased is not at all a circumstance pointing out to guilt of someone and it is well-settled in law that no person can be convicted only on the ground that somebody has died a homicidal death [see ***Balaji Gunthu Dhule Vs. State of Maharashtra (2012) 11 SCC 685***].
10. So far as the circumstance of 'last seen together' is concerned, this being the solitary circumstance, we do not find any justification to rely on that circumstance alone to arrive at a finding of guilt and we emphatically hold that the circumstance of 'last seen together' alone cannot be made the basis of conviction though it is one of substantive circumstance to make a complete chain along with other circumstances.
11. In the present case, the deceased was there in his house. According to P.W. 7, widow of the deceased, the deceased was to go to the house of her parents to bring some money as per

prior discussion between her (P.W.7) and her parents. The deceased left the house with someone (allegedly appellant). Both of them went to the house of P.W. 6, mother-in-law of the deceased. Both of them stayed there in the night. P.W. 6, gave Rs. 700/- to the deceased. Both of them (deceased and the appellant) had visited cinema there and in the morning next day, they left the house. It was 06.10.1992. Before leaving the house, they had not intimated P.W. 6. Coming from the cornfield, she came to know that the deceased had already left.

12. P.W. 6 identified the appellant in dock after five years of the occurrence. P.W. 7 failed to identify the appellant in the dock. That means P.W.7 could not tell which friend of the deceased had come to their house with whom the deceased had left the house. Identification of the appellant by P.W. 6 who is admittedly an old rustic lady arouse doubt in our mind, in view of absence of previous identification, especially, when the FIR as against unknown accused persons.
13. The Hon'ble Supreme Court in the Case of ***State of U.P. Vs. Satish, 2005 (3) SCC 114*** has held that the last seen theory comes into play where the time gap between point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Same view has also been taken by the Hon'ble Supreme Court in ***Bodhraj Vs. State of Jammu and Kashmir, (2002) 8 SCC 45***.
14. If the aforesaid principles are applied in the present case, it is

found that the deceased and the appellant were last seen together alive by P.W. 6 on 06.10.1992 and the dead body of the appellant was found at the spot, which is another village in the morning of 08.10.1992. The time gap being long, the appellant cannot be shackled to the guilt by this circumstance alone inasmuch as in course of long gap of two days, the deceased might have come to contact with many other persons and any person other than the appellant might have the occasion to cause the murder of the deceased.

15. Regard being had to the aforesaid facts and submissions, we are constrained to hold that the finding arrived at by the learned trial court is erroneous and the impugned judgment passed by learned Additional Sessions Judge, 1st Court, Balurghat, Dakshin Dinajpur in Sessions Trial No. 14 of 1997 arising out of Sessions Case No. 28 of 1997 is set aside.
16. The appeal is allowed.
17. The appellant being stated to be on bail, he be discharged of the bail bond in the present case.
18. The LCR along with a copy of this judgment be sent down to the Lower Court forthwith.
19. Accordingly, the appeal being **CRA 75 of 1998** along with the interim application being **CRAN 1 of 1998 (Old No: CRAN 260 of 1998)** are disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)

