

07.02.2023

S/L. 12

Court No.12

Suvayan/

Sourav

CRA 265 of 1999

In the matter of: **Pintu @ Buro Sutradhar & Anr.**

....Appellants.

Ms. Sutapa Sanyal

...for the appellants.

Mr. Prasun Kumar Dutta

Mr. Pravas Bhattacharya

Mr. M. A. A. Begg

...for the State.

1. Heard learned Counsel for both the parties.
2. This appeal arises out of judgment of conviction dated 29.07.1999 and order of sentence dated 30.07.1999 passed by learned Additional Sessions Judge, 4th Court, Nadia in S.T. Case No. II of November, 1998 arising out of S.C. Case No. 9 of September, 1998 convicting the appellants under Sections 364/302/34 IPC and sentencing each of them to suffer imprisonment for life and to pay fine of Rs. 20,000/- each in default to suffer rigorous imprisonment of one year more each for the offence under Sections 302/34 IPC and to suffer rigorous imprisonment for a terms of five years each and to pay fine of Rs. 25,000/- each in default to suffer rigorous imprisonment for six months each for the offence under Section 364/34 IPC. Both the sentences were ordered to run concurrently.
3. The occurrence happened on 13.04.1998. The dead body of the deceased Amal Mazumdar alias Tarak was found in front of the house of one M. K. Biswas (not examined). The P.W. 1, who is the mother of the deceased is the informant and she lodged the FIR scribed by her daughter P.W. 2, on the allegation that at about 5/5.30 p.m. on 12.04.1998 (Sunday), the deceased

Tarak was watching T.V. in his house; at that time both the appellants came there and called deceased Tarak to accompany them. Deceased Tarak did not return to his home in the night. Next day morning his beheaded body was found in front of the house of M. K. Biswas at short distance from the house of the deceased.

4. On the basis of the FIR, P.W. 14, ASI, Sadananda Dutta attached to Haringhata P.S. registered the P.S. case under Sections 364/302/34 IPC. Subsequently, investigation was taken up by S.I. of Police of the aforesaid P.S. who in course of investigation conducted inquest over the dead body, seized incriminating articles from near the dead body including a 'khapa' (cover of a dagger), bloodstained earth, sample earth etc. He also examined the witnesses. The weapon of offence, i.e., a dagger was recovered from a pond in the locality at the instance of both the appellants. The dead body was also challaned for postmortem and postmortem over the dead body was held by the medical officer (P.W. 15) on 13.04.1998 itself. On completion of investigation charge-sheet was filed against the appellants for offence under Section 364/302/34 IPC.
5. Prosecution has examined 16 witnesses to bring to home the charge levelled against the appellants. P.W. 1 is the mother of the deceased and the informant. She in her examination-in-chief has testified that it is her guess that the appellants called the deceased and murdered him. P.W. 2 is the sister of the deceased, who had scribed the FIR, who in her examination-in-chief has testified that she firmly believes that as the

appellants called Tarak from the house, they committed the murder. She is also witness to the seizure of the dagger (Bhojali) recovered at the instance of the appellants. P.W. 3 is the father of the deceased but his evidence is of no avail to either party. P.W. 4 is a witness to the inquest over the dead body vide Exhibit-2 and seizure of the 'khap' (cover of bhojali) vide seizure list (Exhibit-3). P.W. 5 is the brother-in-law of the deceased and he is witness to the seizure of the 'khap' and inquest over the dead body of the deceased. Similarly, P.W. 6 is the witness to inquest over the dead body. P.W. 7 is the rickshaw van puller who had taken the dead body from the spot to the hospital for postmortem. P.W. 8 is the helper of P.W. 7, he was also present with P.W. 7 when the dead body was taken for postmortem. P.W. 9 is an engineer of some construction company who has testified about theft of some pipes from their premises and that appellant No. 1, Pintu @ Buro Sutradhar was working as a night watchman in the site of P.W. 9. P.W.s 10 and 13 are the constable who were present at the time of recovery of the 'bhojali' from the pond at the instance of the appellants. P.W.s 11 and 12 are the independent witnesses to such recovery. P.W. 14 as introduced (Supra) is the police A.S.I. who had received the FIR and registered the P.S. case, P.W. 15 as introduced (Supra), is the medical officer who conducted postmortem over the dead body of the deceased. P.W. 16 is the I.O. of the case.

Defence plea is one of complete denial and false implication.

6. Learned Trial Court relied on the following circumstances to the effect that the deceased was seen last together in the company of the appellants; appellant No. 1 Pintu did not return to his house after he left the house with the deceased; the beheaded dead body of the deceased was found next day morning; the confessional statement of the appellants before the I.O. regarding the place of concealment of the offending 'bhojali'; recovery of the offending 'bhojali' at the instance of the appellants; opinion of the medical officer to the effect that the injuries found on the dead body of the deceased might have been caused by a sharp cutting weapon like the 'bhojali' (Exhibit-V); the appellants absconded for five days and they were arrested from an abandoned house; recovery of some stolen pipes from near the premises of the office where appellant No. 1, Pintu was working as night watchman on the basis of information of the deceased before the date of incident. Relying on the aforesaid circumstances, learned Court Below returned the finding of guilt as against the appellants.
7. It is submitted by learned *amicus curiae* appearing for the appellants that the case rests entirely on circumstantial evidence and the circumstances relied on by learned Trial Court are not sufficient to complete the chain unerringly pointing to the guilt of the appellants to return the finding of guilt as against the appellants. It is further submitted by her that learned Trial Court had relied on circumstances which have not at all been proved by any of the witness.

Learned Counsel for the State on the other hand supports the

impugned judgment and submits that the appeal being devoid of any merit be dismissed.

8. Before embarking on the discussion regarding the evidence adduced by the witnesses, we deem it just to make it clear that we are very much conscious of the principles of 'panchasheel' as enunciated by Hon'ble Supreme Court in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra in 1984 (4) SCC 116 which deals with the appreciation of circumstantial evidence.
9. In the present case, learned Trial Court in page 19 of the judgment has enumerated the circumstances in detail which are as follows:

- "a) Last seen together – that the accused persons and the deceased Tarak were last seen together in the afternoon of 12.04.1998.**
- b) The deceased was called from his house by both the accused persons in the after noon of 12.04.1998.**
- c) Conduct of the accused – on the night of incident the accused Buro alias Pintu did not return home after he left the house in the afternoon on that day as per version of her mother herself which P.W. 2, sister of the deceased, has stated in her evidence.**
- d) At the time of leaving the house the deceased was wearing a black pand and a shirt. The black pant was seized by the police but the shirt was damaged. The beheaded dead body of the deceased was found in the morning of 13.04.1998 and at that time the deceased was wearing that black pant which his mother and other witnesses have also stated.**

- e) *The accused Buro alias Pintu was the night-watchman of the telephone exchange office and some pipes were stolen from the compound of the telephone exchange which was recovered at the instance of the deceased with the help of police just one day before the date of incident.*
- f) *Confessional statements before the I.O. by the accused persons as regards the place of concealment of the offending Bhojali.*
- g) *Recovery of the offending Bhojali – the accused persons led the police officers including the villagers to the pond named Bedpukur very close to the telephone exchange and the Bhojali was recovered by P.W. 10 from the pond after search which was prepared the accused persons and the witnesses signed.*
- h) *The accused persons were arrested after 5 days from the date of incident who took shelter in an abandoned house.*
- i) *The Medical Officer (P.W. 15), who held the post-mortem examination over the dead body of the deceased, has stated in his evidence that the injuries which the deceased sustained might be caused by the sharp cutting weapon like the Bhojali (Ext. V) which was shown to the Medical Officer.”*

10. From the above circumstances it is found that circumstances Nos. a, b and d are one circumstance, i.e., that the appellants were seen last in the company of the deceased at about 5/5.30 p.m. on 12.04.1998 and at about 6 a.m. in the morning of 13.04.1998 dead body of the deceased was found in the place nearer to his residence. Regarding as to what apparels the

deceased had put on at the time of leaving the house and damage caused to those apparels as enumerated in circumstance No. D (Supra) by the Trial Court is of no avail in a murder trial. Similarly circumstance Nos. F and G refers to one circumstance, i.e., that the 'bhojali' was recovered at the instance of the appellants from a pond. Circumstance No. E is one referring to motive of one of the appellant No. 1, Pintu @ Buro Sutradhar. Circumstance No. H as (Supra) is referring to factum of absconding by the appellants. Circumstance No. I (Supra), in our view is inconsequential in as much as the learned Trial Court has tried to connect the alleged weapon 'bhojali' recovered at the instance of the appellants to the crime committed on the basis of the medical opinion of the doctor (P.W. 15) who conducted postmortem over the dead body.

11. Coming to the question of motive as discussed by learned Trial Court under circumstance No. E it is found from the evidence of P.W. 9 that he was working as an engineer of some construction company at the relevant time and some pipes from the premises of P.W. 9 were stolen in April 1998. Those pipes were recovered at some distance from the telephone exchange as per information of deceased Tarak. Those pipes were brought to the police station and from there he (P.W. 9) took 'zima' of the pipes. P.W. 9 had not lodged any report in the police station regarding the theft of the pipes. He has further testified that appellant No. 1, Pintu @ Buro Sutradhar was working as a night watchman in the site of the

construction company. From such evidence of P.W. 9 learned Trial Court has come to a definite finding that as appellant No. 1, Pintu @ Buro Sutradhar was working as night watchman in the site of the construction company and as the pipes were stolen from there were recovered from a nearby place on the information of deceased Tarak, the appellant No. 1 along with appellant No. 2 had motive to commit the murder.

We, however, do not find any substantive evidence in the testimony of P.W. 9 to attribute motive to appellants for committing the murder.

12. So far as the circumstance of abscondance by the appellants outlined in point H (Supra) by the Trial court is concerned, the appellants were arrested after five days of the incident from a abandoned house. After the murder took place P.W. 1, mother of the deceased and P.W. 2, sister of the deceased had already made up their mind and conveyed to all concerned that the appellants who might have committed the murder. So in such a circumstance absconding by the appellants out of fear is not unnatural but obvious especially when they are living in a rural area and everybody knows everybody.
13. Coming to the remaining circumstances, we find that the two circumstances that remain for discussion are i) appellants were last seen together in the company of the deceased at about 5/5.30 p.m. on 12.04.1998 and the dead body of the deceased was found in the place nearer to his home at 6 a.m. in the morning next day, ii) recovery of the weapon of offence, i.e., bhojali at the instance of the appellants.

14. It is fairly submitted at the Bar that so far as the recovery of the 'bhojali' at the instance of the appellants are concerned no statement of the appellants under Section 27 of the Evidence Act has been recorded. It is also coming out from the evidence of P.W.s 10 and 13 (both constables), 11 and 12 (both independent witnesses) that the appellants were taken near the pond but the 'bhojali' was recovered by the constables and some co-villagers by going inside the pond. We do not think that any decision is required to be discussed to rule that in absence of the recovery statement made by the appellants under Section 27 of the Evidence Act, the recovery of weapon of offence, i.e., bhojali at the instance of the appellants refer to their conduct under Section 8 of the Evidence Act only and such a conduct is inconsequential so far as guilt of the appellants is concerned.
15. Coming to the last circumstance of "last seen together" it is well-settled in law that the time gap between the accused person seen last in the company of the deceased and the commission of offence should be so proximate that, possibility of any other person then the accused person being the author of the crime becomes impossible.
16. In the present case, it is seen that the appellants were last seen in the company of the deceased at about 5/5.30 p.m. on 12.04.1998 the dead body was found at about 6 a.m. in the next day of morning, i.e., 13.04.1998. There was a long gap at about 12 hours or to some extent even less than that if the crime might have been committed in the night and there was

possibility of any other person committing the crime also. We think it apposite to refer to the circumstance of motives outlined by learned Trial Court here. Some pipes were stolen from the premises of P.W. 9. The pipes were recovered at the instance of the deceased Tarak. There is no evidence to connect any of the appellants to the theft of the pipes. It might have happened that the person who had stolen the pipe might have also picked up quarrel with the deceased Tarak in the night when he was returning home and he/they might have committed the murder of Tarak.

17. From our discussion (Supra), we are clear in our mind that the circumstances relied on by learned Trial Court as discussed by us is not complete pointing out to the guilt of the appellants. Further, we are of the considered view that the circumstance of last seen together may be one of circumstance or a link in the chain of circumstances to find an accused guilty but the circumstance of "last seen together" on its own without substantive evidence regarding the time gap in between the two events, i.e., the time when accused was seen last in the company of the deceased and the time when murder was committed, is not sufficient to base a conviction in absence of any other circumstance pointing out to the guilt of the accused.
18. Regard being had to the discussion (Supra), we are of the firm view that the prosecution has failed to prove the charge against the appellants and, therefore, the appellants are entitled to be acquitted.

19. Accordingly the impugned judgment passed by learned Additional Sessions Judge, 4th Court, Nadia in S.T. Case No. II of November, 1998 arising out of S.C. Case No. 9 of September, 1998 convicting the appellants under Sections 364/302/34 IPC and sentencing them thereunder are set aside and the appeal is allowed.
20. The appellants being stated to be on bail, they be discharged on the bail bond.
21. Accordingly, the appeal being **CRA 265 of 1999** is allowed.
22. Let a copy of this judgment along with LCR be sent down to the Trial Court forthwith.
23. Urgent xerox certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)