

19.1.2023
29
SB
Ct. No.236

CRR 4432 of 2009

In the matter of : Md. Karim Box

Mr. B.K. Roy
Ms. Sima Biswas ... for the State

None is appearing on behalf of the petitioner.

Therefore, considering the age of the lis, I am inclined to dispose of the criminal revision on merit based on materials available with the record.

This application under consideration challenges the judgement passed by learned Additional Sessions Judge, 3rd F.T.C. Berhampore, Murshidabad in Sessions Case No. 729 of 2005, S.T. No. 6/ January, 2006 under Sections 302 / 34 of the Indian Penal Code.

Briefly stated, Md. Karim Box set the criminal administration of justice into motion by informing the Officer-in-Charge of Berhampore P.S. in writing that on 21.6.1992 at about 6 AM he along with his brother-in-law Golam Mondal went to Rampara Ghat with paddy. After they offloaded paddy from the cart the accused persons armed with pipe gun lifted those paddy bags and stacked them in the launch they brought. Both the informant and his brother-in-law Golam Mondal voiced their protest and they were assaulted by the accused persons. The accused persons thereafter forced the informant and his brother-in-law to board the boat. While the informant managed to escape from the boat the

accused persons took his brother-in-law Golam Mondal with them. Subsequently, Golam Mondal was found lying dead with gunshot injury. As the information disclosed offence cognizable in nature Berhampore P.S. Case No. 226 / 1992 was registered on 21.6.1992. Police took up investigation and submitted charge sheet against the accused persons who stood trial pleading their innocence.

To bring home charges, prosecution examined fifteen witnesses. Learned Trial Court after considering the testimony of the prosecution witnesses observed that de facto complainant stated that he heard that Golam Mondal had been murdered, so is the evidence of P.W.2 the widow of Golam Mondal; other witnesses did not have any direct knowledge of the incident. Therefore, the learned Trial Court was pleased to record an order of acquittal extending benefit of doubt to the accused persons.

Aggrieved by the said judgement and order of acquittal this application under consideration was filed by the de facto complainant. True it is, apart from the de facto complainant P.W. I, none of prosecution witnesses had any direct knowledge over the incident. De facto complainant as P.W. I and widow of the victim as P.W. 2 stated that Golam Mondal was murdered and gunshot injury was found on his person. P.W. 15 the autopsy surgeon also opined that the victim died because of gunshot injury. The post mortem report was admitted as Exhibit 5. P.W. I while adducing evidence stated that he heard the sound of gunshot and so is the evidence of P.W. 2. During his evidence-in-chief, P.W. I stated ;-

“While I was running towards my village then accused persons also sailing their boat with Golam Mondal over that Bhandardaha Bill”.

During cross-examination, he stated :-

“While I was running on the bank of Bhandardaha Bill then I was raising alarm by saying that the accused persons had taken away my brother-in-law. Those boats which were carrying persons were being operated by motor. That Boat in which the accused persons took away my brother-in-law was also operated by Motor”.

P.W. 1, had direct knowledge of the fact that victim Golam Mondal was kidnapped or taken away by force by none else than the accused persons. Not only during his evidence-in-chief during cross-examination as well the P.W. I the de facto complainant stated that Golam Mondal was in the custody of the accused persons while he was alive or in otherwords it can be said that the victim was found living for the last time in the company of the accused persons. Subsequent thereto, when the victim was found dead with gunshot injury, obviously onus shifted upon the accused persons, who had taken the victim by force with them to explain as to how the victim sustained injury and died. Section 106 of the Evidence Act, imposes such onus upon the accused persons which they failed to discharge.

Unfortunately, learned Trial Court did not consider this aspect of the evidence and recorded an order of acquittal. The impugned order in my humble opinion should not be allowed remain in force and should be set aside.

I am inclined to remit the case to the learned Trial Court with a direction to admit the same into the file and to pass judgement afresh in the light of observation made hereinabove

after granting an opportunity to the parties to argue the case before the learned Trial Court.

With this observation, the reivisional application is disposed of along with application, if any.

Lower Court Record be sent down immediately.

(Siddhartha Roy Chowdhury, J.)