

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ananda Kumar Mukherjee

C.R.A. 363 of 2016

Bistu Das

-Vs-

State of West Bengal

For the Appellant : Mr. Moinak Bakshi, Adv.

For the State : Mr. Partha Pratim Das, Adv.
Mrs. Manasi Roy, Adv.

Heard on : 7th February, 2022

Judgment on : 7th February, 2022

Joymalya Bagchi, J. :-

The appellant has assailed the impugned judgment and order dated 25.11.2014 and 26.11.2014 passed by the learned Additional District & Sessions Judge, Ranaghat, District - Nadia corresponding to Sessions Trial No. 2(7)2009 arising out of Sessions Case No. 78(8)2008 convicting the appellant for commission of offence punishable under Section 302 of the Indian Penal Code and directing him to suffer rigorous imprisonment for life for the offence of murder and also to pay fine of Rs.10,000/- only, in default, to suffer rigorous imprisonment for a period of six months more.

Appellant was called upon to answer the following charge:

“That, on or about 31st day of July, 2007, at about 8-30 P.M. at Dhantala Bazar in front of Sridurga Jewellers within P.S. Dhantala the appellant did commit murder by intentionally causing the death of Sadhan Mondal.”

In order to prove the aforesaid charge the prosecution examined 24 witnesses and exhibited a number of documents as well as material exhibits. Defence of the appellant was one of innocence and false implication. In conclusion of trial, learned trial Judge by impugned judgment and order dated 25.11.2014 and 26.11.2014 convicted and sentenced the appellant, as aforesaid.

Mr. Bakshi, learned Counsel appearing for the appellant argues that there is no direct evidence that the appellant had committed the murder. Motive to commit the crime has also not been established. Independent witnesses to the seizure of ‘bhojali’ namely P.Ws. 15 and 16 have turned hostile. Statement of the appellant leading to the recovery of the offending weapon has not been proved. Forensic report with regard to the seized weapon as well as wearing apparels has not been produced in Court. Accordingly, he prays for acquittal of the appellant.

On the other hand, Mr. Das, learned Counsel appearing for the State submits that the appellant had grudge against the deceased as the latter had an illicit relation with the appellant’s wife. Incident occurred at around 8.30 P.M. in a market in front of Sridurga Jewellery Shop owned by P.W. 12. All the witnesses in the market claimed they had heard the appellant had murdered the deceased. First information report was

promptly lodged by the wife of the deceased (P.W. 7) against the appellant. Post mortem doctor (P.W. 20) opined that the death was due to stab injuries which is ante mortem and homicidal in nature. Weapon of offence and blood stained wearing apparels were recovered from the appellant by Investigating Officer (P.W. 24). Hence, the aforesaid circumstances clearly indicate that the appellant, out of grudge, had committed the murder of the deceased.

Genesis of the prosecution case can be traced to the written complaint lodged by P.W. 7, Kakali Mondal, wife of the deceased. In the first information report she claimed that her husband had gone to Dhantala Market for shopping at around 7 p.m. on 31.07.2007. Around 9 P.M., she came to know that at around 8.30 P.M. the appellant had murdered her husband in front of Sridurga Jewellery Shop out of previous grudge. Written complaint lodged by P.W. 7, was scribed by P.W. 23 and received by P.W. 18 at the police station. In Court, P.W. 7 proved the written complaint and deposed in similar lines. She, however, did not divulge the circumstances giving rise to previous grudge between her husband and the appellant.

P.W. 8 is the son of deceased. Though he claimed that the appellant had committed the murder, he stated that he could not recollect the incident and was declared hostile. However, in cross-examination he admitted there was an illicit relationship between his father and Bulbuli Das, wife of the appellant. As a result, appellant had grudge against his father.

Although the incident occurred at around 8.30P.M., in the evening, in a busy market place, none of the witnesses examined by the prosecution claimed to have witnessed the said incident. Let me examine their depositions in seriatim.

P.W. 1, Tapan Mondal, is the nephew of the deceased. He was in his jewellery shop in the market when the incident occurred. He heard a 'halla' that a murder had been committed. He rushed to the spot and found that his uncle was lying beside the pucca road with bleeding injuries. He was a signatory to the inquest report. In cross-examination, he denied the suggestion of the prosecution that a case has been filed against his uncle with regard to kidnapping the wife of the accused/appellant.

P.W. 2, Umesh Chandra Roy, is the owner of a fertilizer shop at Dhantala Bazar. He stated that he had heard that the appellant had committed the murder. On the next day, he signed on the seizure list as per instruction of police.

Similarly, P.W. 3, Pankaj Kumar Roy, who is an owner of a mobile phone shop at Dhantala Bazar, deposed that the deceased had been murdered in the bazar and he had heard that the appellant had committed the murder. He is a signatory to the seizure list prepared in connection with blood stained earth collected from the place of occurrence.

P.W. 4, Raj Kumar Das, a teacher, was present in the market at the time of occurrence. He, however, is also a reported witness. He signed on the inquest report prepared by the police.

P.W. 5, Arup Biswas, was the owner of an electronic goods shop at Dhantala Bazar. He deposed that the appellant used to sell fish in that bazar. He was declared hostile.

P.W. 6, Shambu Roy, was the owner of a grocery shop in the bazar. He is the signatory to the seizure list prepared in connection with seizure of photographs of the deceased which was taken by the official photographer.

P.W. 9, Netai Pada Saha, was the owner of a readymade garment shop at Dhantala Bazar. He also is a reported witness with regard to the murder.

P.Ws. 10 and 11 are local shop owners who were declared hostile.

P.W. 12, Subhas Karmakar, is the owner of Sridurga Jewellery Shop. The incident occurred in front of his shop. He, however, was not present at the shop at the time of occurrence.

P.W. 13, Jagannath Roy, is another shop owner who did not witness the incident but claimed that he had heard that Bistu had committed the murder.

P.W. 15 and 16 carried on business in the market. They did not support the seizure of bhojoli on the leading statement of the appellant. They were declared hostile. They, however, admitted their signature on seizure list.

Analysis of the evidence of the aforesaid witnesses would show although they are owners of various businesses in the bazar and most of them were present at the time of occurrence, none of them had seen that

the appellant commit the murder. All of them stated in unison that they had heard that the appellant had committed murder. None of the witnesses, however, disclosed the source from where they gathered such knowledge. Hence, their evidence with regard to the fact that the appellant had committed murder is clearly hearsay.

The relevant official witnesses are as follows:-

P.W 20 is the post mortem doctor who conducted post mortem over the dead body of the deceased and found the following injuries:

“(1) Sharp edged 1 ½” x 1” x chest deep ½” left lateral in 3rd and 4th costal cartilage.

(2) Sharp edged 2” long x 1 ½” x 4” below left costal region.

(3) Sharp edged 1” x ½” x 1” left axillary region.

(4) Sharp edged 1” x ½” x 4” deep left loin.

(5) Abrasion in left elbow joint.

He opined that death was due to stab injuries which is ante mortem and homicidal in nature.

P.W 24 is the Investigating Officer of the case. He examined the witnesses and recorded their statements. He held inquest over the dead body of the deceased. He proved the inquest report (Exhibit 1/3). He forwarded the dead body for post mortem examination. He seized blood-stained earth and control earth from the place of occurrence under the seizure list (Exhibit 2/2). He seized photographs of the deceased taken by the official photographer (Exhibit 3/2). He seized wearing apparels of the

deceased from the place of occurrence under seizure list (Exhibit 4/1). He arrested the accused. He seized other apparels with blood stains under seizure list (Exhibit 5/2). On his leading statement, he recovered bhojali under seizure list (Exhibit 6/2). He identified the seized articles in court. He stated that seized articles were sent for forensic examination. He did not get the expert opinion. He submitted charge sheet. Subsequently, expert opinion was collected. However, in cross examination he contradicted his stance and stated that he did not collect chemical analysis report relating to the offending weapon.

From an evaluation of the aforesaid evidence on record, it appears the version of the witnesses who were present at Dhantala bazaar on the fateful evening are hearsay in nature. As discussed earlier, none of the witnesses had seen the incident. All of them claimed that they heard the appellant had committed murder. However, none of them had seen the appellant at the place of occurrence soon before or after the incident. Nor did they disclose the identity of the person/source from where they had acquired such knowledge. In this backdrop, trial Court by referring to the principle of *res gestae* as provided in section 6 of the Evidence Act relied on their evidence as admissible in law. I am unable to accept the reasoning of the trial Judge.

Section 6 of the Evidence Act reads as follows :

“6. Relevancy of facts forming part of same transaction – Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.”

The aforesaid section makes it is clear that a fact which is not in issue but so connected with a fact in issue to form a part of the same transaction may be said to be relevant. Invoking this principle of relevancy, the trial Court came to a finding the fact that the aforesaid witnesses had heard the appellant had committed the murder is relevant and admissible in law. In doing so, the court lost sight of a basic requirement of law that a fact can be said to be relevant under section 6 of the Evidence Act only if it is shown to be a part of the same transaction with a fact in issue. In the present case, all the witnesses have stated that they had heard that Bistu had committed the murder. However, none of them indicated the person or source from whom they derived such information. Failure to do so results in a snap in the link which connects the fact in issue i.e., murder and the proposed fact i.e., disclose of the identity of the murderer to the aforesaid witnesses as a part of the same transaction. Hence, I am constrained to hold that the evidence of the witnesses that they heard Bistu was the murderer is clearly hearsay and inadmissible in law.

If the evidence of the aforesaid witnesses are ignored what remains of the prosecution case is that the appellant bore a grudge against the deceased as he had illicit relationship with his wife and the alleged seizure of blood stained bhojali and wearing apparels from the appellant on his leading statement. Even if the aforesaid motive transpires from the deposition of P.W. 8, the other circumstances, namely, seizure of blood stained 'bhojali' and wearing apparels on the leading statement of the

appellant is based on flimsy and contradictory evidence. P.W 15 and 16 who are the independent witnesses to the seizure of the 'bhojali' did not support the prosecution case and have been declared hostile. Statement of the appellant leading to recovery has not been proved by the investigating officer. It is also relevant to note the forensic report with regard bhojali and wearing apparels seized from the appellant has not been produced in Court. Hence, the prosecution has not been able to prove that there were stains of human blood on the 'bhojali' as well as the wearing apparels so seized. Moreover, the 'bhojali' was also not shown to the post mortem doctor P.W. 20 to corroborate that the same is the weapon of offence.

If a prosecution case is based on circumstantial evidence, it is settled law that all the circumstances relied upon by the prosecution must be proved and they should form a complete chain which is wholly inconsistent with the hypothesis of innocence and unerringly points to the guilt of the appellant. In the present case, none of the witnesses had seen the appellant before or after the incident in the bazar. Though some of them claimed that they heard the appellant had committed the murder, none came forward to disclose the person or the source from whom they had derived such knowledge. Forensic report with regard to 'bhojali' and wearing apparels recovered from the appellant have not been produced in court to prove presence of blood stains on the seized articles. These are serious lacunae in the prosecution case which cannot be glossed over. Hence, I am constrained to hold the prosecution evidence does not form a complete chain unerringly pointing to the guilt of the appellant. Suspicion

whosoever high cannot take the place of proof and such proof must be based on legally admissible evidence. In the present case, cogent and admissible evidence establishing the guilt of the appellant is lacking and the appellant is, therefore, entitled to the benefit of doubt.

The appeal is, accordingly, allowed.

Appellant Bistu Das shall be forthwith released from custody, if not wanted in any other case, upon executing a bond to the satisfaction of the trial court for a period of six months in terms of section 437A of the Code of Criminal Procedure.

Convicts and sentence of the appellant is set aside.

In view of the disposal of the appeal, connected applications, if any, are also disposed of.

Let a copy of this judgment along with the lower court records be forthwith sent down to the trial court at once.

Photostat certified copy of this judgment, if applied for, shall be made available to the appellant within a week from the date of putting in the requisites.

I agree.

(Ananda Kumar Mukherjee, J.)

(Joymalya Bagchi, J.)