SUPREME COURT OF INDIA

Sujoy Sen @ Sujoy Kr. Sen

Vs.

The State of West Bengal

(S. B. Sinha and Markandey Katju JJ.)

08.05.2007

JUDGMENT

MARKANDEY KATJU, J.

1. This appeal has been filed against the impugned judgment and order dated 22.8.2005 of the Calcutta High Court in C.R.A No. 125 of 1996.

2. Heard learned counsel for the parties and perused the record.

3. The prosecution case is that on 22.3.1991 at about 11.30 hrs., one Anindita Sengupta @ Pom, the only daughter of Pranab Sengupta was alone in their residence. It is alleged that the appellant came to the said residence and finding Anindita alone in the house, murdered her by throttling her neck.

Pranab Sengupta, on the ground of his son Joy Sengupta's Madhyamik examination took permission from his school, where he was a teacher, to return to his house early and when he came to his house early, he noticed Anindita lying on the floor of a room, and being suspicious of the situation he raised hue and cry and at this neighbours rushed to the place of occurrence and soon thereafter Anindita was removed to Ranaghat Sub- Divisional Hospital where she was declared dead by the attending doctor.

4. After the investigation held by the C.I.D, West Bengal in connection with this incident, a charge-sheet was submitted against the appellant under Section 302 IPC.

5. The trial court after considering the evidence on record convicted the appellant and his appeal before the High Court was dismissed. Hence, this appeal.

6. In our opinion this appeal has to be allowed.

7. This is a case of circumstantial evidence, and it is well settled that in a case of circumstantial evidence the prosecution has to establish the chain of circumstances which inevitably connect the accused to the crime. Even if a single link breaks, the whole prosecution case collapses.

8. In the present case, a perusal of the FIR which was lodged on 22.3.1991 at 6 P.M. shows that the first informant, who is the father of the deceased, has not stated that he saw the accused leaving the house of the deceased when the first informant was entering into it. In fact, in the FIR Pranab Sengupta, the first informant, stated that the accused entered into the house of the first informant during his absence. Thus, according to the FIR version, the first informant never saw the accused leaving his house when he was entering into it. It is only subsequently in his evidence before the

trial court that the first informant stated that the accused was leaving the house of the first informant when he was entering into the house.

9. PW4, Surath Biswas who is a neighbour, stated in his evidence that he saw the accused entering into the house of Pranab Sengupta at 12 noon, but he has thereafter stated that he did not state before the Police that he saw the accused entering into the said house. Thus the statement of PW4 that he saw the accused entering into the house of the first informant Pranab Sengupta, father of the deceased, cannot be believed as he had not stated that fact in his statement to the Police recorded under Section 161 Cr.P.C.

10. Similarly, PW7 Dilip Das in his deposition stated that he saw the accused coming down from the door steps of the house of Pranab Sengupta at the relevant time and he heard Pranab say "Sujoy ki korli". However, subsequently, in his deposition he stated that he had not stated before the Police that PW4 Surath Biswas disclosed to him that he saw the accused entering into the house of Pranab.

11. Learned counsel for the respondent has relied upon a decision of this Court in Manoj @ Bhau and others vs. State of Maharashtra (1999) 4 SCC 268, where it has been stated that FIR need not be an encyclopaedia.

That may be true, but an FIR is a very vital material as it is the first information about the incident and has less chances of altering the version and improvement.

12. It appears to us that the appellant was implicated only on the strong suspicion on the part of the first informant against the appellant. It has come in evidence that the appellant, who is a young man, used to visit the daughter of the first informant and this was resented by the first informant and also by some neighbours. In fact, the first informant told the appellant not to meet his daughter. It is quite possible that on the basis of suspicion the first informant has implicated the appellant. However, from the version given in the FIR it is evident that the first informant had not seen the accused leaving the house of the first informant when the latter entered into it. In fact, in the FIR it is mentioned clearly that the appellant entered into the house of the first informant in the absence of the latter. Thus, it appears to us that the first informant never saw the appellant leaving the house of the first informant when the latter entered into it and the subsequent version is an improvement. A vital link in the chain of circumstances is missing in this case.

13. No doubt a minor discrepancy in a FIR will not be fatal to the prosecution case. But the discrepancy in the FIR in the present case is not a minor discrepancy, but a major one. Had the first informant seen the accused entering into the house at the time of the incident he would have definitely mentioned the fact in the FIR.

14. Thus, we are of the opinion that the prosecution has not been able to prove the chain of circumstances linking the accused to the crime beyond reasonable doubt. Thus, the appellant is entitled to the benefit of doubt. We order accordingly.

15. Resultantly, the impugned orders of the Courts below are set aside.

The appeal is allowed. The appellant shall be released forthwith unless required in connection with any other case.