

SUPREME COURT OF INDIA

Arabindra Mukherjee

Vs.

State of West Bengal

Crl.A.No.825 of 2007

(B.S. Chauhan and Swatanter Kumar JJ.)

02.06.2011

ORDER

1. The Appeal is dismissed in terms of the signed order.
2. Heard learned Counsel for the parties.
3. The present Appeal is directed against the impugned judgment of the Division Bench of the Calcutta High Court dated 14th February, 2006 by which the High Court affirmed the conviction and sentence awarded by the learned trial court. The Appellant was charged for offences under Sections 302, 364, 120B and 201 of the Indian Penal Code.
4. We may notice the necessary facts giving rise to the present Appeal.
5. The Appellant was married to the deceased, namely, Nilima Mukherjee. After some time, there was matrimonial dispute between the husband and the wife. On 8th May, 1997, the date of occurrence, the Appellant went along with her cousin brother to the house of the deceased and requested her to go out with him for watching a movie in the cinema hall. She went with him and later on her body was found on a railway track. It is alleged against the Appellant that he first murdered his ex-wife and thereafter threw her body on the railway track. For these reasons, he was charged with the above offences.
6. The contention raised before us by the learned Amicus Curiae, is that there is no evidence to directly connect the Appellant with the commission of the offences and it is only circumstantial evidence which has weighed with the learned courts,

including the High Court, in convicting the Appellant. Further, it is contended that the Appellant had instituted a divorce petition, upon which an ex-parte decree for divorce is based, being Exhibit-C. Thus the Appellant had no connection with his ex-wife. This was not a case of circumstantial evidence, where the chain of events had been proved by the prosecution, but the findings are based on surmises and conjectures. The Appellant was entitled to be acquitted even on the ground that he was falsely implicated in the case.

7. None of these contentions impress us. PW-1 and PW-11 both have deposed that the accused used to come to the house of the deceased even subsequent to the passing of the decree of divorce. Thus, the visits of the accused to the house of the deceased was a common phenomena. On the fateful day, as per these witnesses, he had come to the house of the deceased and requested her to come out with him for seeing a movie in the cinema hall. The deceased had accompanied the accused never to return to her home. Upon search, her body was found on the railway track next day.

8. The statements of these two witnesses read along with the medical evidence on record fully support the case of the prosecution. Once the Appellant was last seen with the deceased, the onus is upon him to show that either he was not involved in the occurrence at all or that he had left the deceased at her home or at any other reasonable place. To rebut the evidence of last seen and its consequences in law, the onus was upon the accused to lead evidence in order to prove his innocence. It was also for the accused to establish that he was falsely implicated. The stand taken by the accused in his statement under Section 313 of the Code of Criminal Procedure, was a complete denial of involvement and a result of false charges by the Appellants. Once the prosecution had established its case, it was expected from the Appellant to prove his defence of false implication. The conduct of the accused-Appellant also is suspicious in the sense that after the occurrence he was absconding and with difficulty the police could trace and arrest him.

9. For the reasons above stated, we find no merit in the present Appeal and the same is dismissed accordingly. However, we appreciate the assistance given by the learned Amicus Curiae in the present Appeal.