

SUPREME COURT OF INDIA

Dilip Mallick

Vs.

State of West Bengal

Crl.A.No.130 of 2012

(S.A.Bobde and L.Nageswara Rao,JJ.,)

14.02.2017

JUDGMENT

L.Nageswara Rao, J.,

1. This Appeal is filed against the judgment dated 22.03.2010 of the High Court of Judicature at Calcutta in Criminal Appeal No.326 of 2005 by which the conviction of the Appellant under Section 302 Indian Penal Code, 1860 (hereinafter referred to as the 'IPC') and sentence of life imprisonment by the Additional Sessions Judge, Fast Track 2nd Court, Siliguri in Sessions Trial No.03/04 dated 11.02.2005 was confirmed.

2. A decapitated body was found lying in the Chandmuni Tea Estate near Himachal Behar Abasan Project at 13:15 hours on 03.02.2004. On the basis of a written complaint made by Bhupendra Nath Singh (PW-12), the investigation commenced and the Appellant along with Hira Routh and Khogesh Bansfore were arrested.

3. During the course of investigation the statements of accused persons were recorded on 04.02.2004. The accused led the police to Chandmuni Tea Estate area where the cut head was found wrapped with the wearing apparel of the deceased Sambhu Mallick son of late Pandi Mallick of Kuli Para, Siliguri. It was found concealed with soil and dry leaves in a garden drain. The body and the head of the deceased were identified by his relatives. The decapitated body and the cut head were sent for post-mortem to the North Bengal Medical College and Hospital and the seized articles along with wearing apparel of the deceased were sent to the R.F.S.L., Jalpaiguri. The weapon used for the commission of offence was also recovered on the basis of the statement and disclosure made by the accused persons from a concealed place on 08.02.2004.

4. Charges under Sections 302/201/34 IPC were framed against all the three accused persons who pleaded not guilty and claimed to be tried. After a detailed consideration of the entire evidence on record, the Additional Sessions Judge, Fast Track 2nd Court, Siliguri found all the accused persons guilty of committing an

offence under Section 302/201/34 IPC and sentenced them to suffer imprisonment for life. The Trial Court relied upon the testimonies of PW-3, PW-4 and PW-5 who are the family members of the deceased - Sambhu Mallick in its detailed discussion of oral evidence. PW-3, the wife of the deceased deposed that her husband was a sweeper by profession and at about 02:00 pm on 02.02.2004 the three accused persons and the father of Dilip Mallick came to their house and asked the deceased to accompany them for cleaning a safety tank. The Appellant took the cycle of deceased Sambhu Mallick and carried him on the cycle. As the deceased did not return home, PW-3 started searching for him in the evening. She went to the house of the Appellant and was informed by the Appellant's father that her husband and the Appellant went to clean a safety tank. The deceased did not return home that night. She met the Appellant on the next day morning and enquired about her husband. The Appellant asked her to go to Matigara Police Station. PW-3 deposed that she went to the Police Station but did not find him there. On 04.02.2004 she came to know about a beheaded body near Chandmuni Tea Estate area. It was identified to be that of her husband by her mother-in-law and sister-in-law from his wearing apparel. PW-4 and PW-5 are the sister and mother of the deceased respectively who corroborated the evidence of PW-3.

5. The post mortem over the beheaded body and the cut head was conducted by Dr. U.B. Ray Chaudhary (PW-10) at North Bengal Medical College and Hospital. The post mortem report Exh. 11 which was issued by PW-10 shows that there were eight stab injuries on the chest, stomach and other vital parts of the body. It was stated in the post mortem report that proximal and distal part of the neck fitted snugly with each other and that the head and the rest of the body belonged to the same individual. PW-14 was the witness to the seizure list marked as Exh.17 in respect of recovery of an iron made Khukri used in the crime. It was approximately 13 inches in length with a wooden butt and was recovered as per the statement and information of the accused on 08.02.2004.

6. The Trial Court held that the chain of circumstances was clearly established by clinching evidence which proved that the accused persons had committed the offence. The Appellant and the other accused Hira Routh and Khogesh Bansfore challenged their conviction and sentence by filing an Appeal before the High Court of Calcutta. The counsel appearing for the State conceded that the evidence against Hira Routh and Khogesh Bansfore was not sufficient for their conviction and that she could not support the judgment of the Trial Court in respect of their conviction and sentence. The High Court re-appreciated the evidence on record and upheld the conviction and sentence of the Appellant qua Section 302 IPC. The Appellant was acquitted of the charge under Section 201 IPC. The other two accused, Hira Routh and Khogesh Bansfore, were acquitted of all the charges. The High Court held that there were three circumstances against the Appellant. The three circumstances relied upon by the High Court are that the accused and the deceased were last seen together, that the accused attempted to mislead PW-3 regarding the whereabouts of the deceased and that the accused did not offer any explanation about the events of 02.02.2004. The High Court held that though the prosecution failed to prove the recoveries made pursuant to the joint disclosure statement, the other circumstances clearly pointed to the guilt of the accused.

7. After hearing the counsel for both the parties, we have examined the oral and documentary evidence on record and we are of the opinion that the judgment of the High Court does not warrant any interference. This is a case of circumstantial evidence. The approach to be adopted in appreciation of evidence in cases of circumstantial evidence is by now well settled. The facts in cases of circumstantial evidence should be consistent only with the hypothesis of guilt of the accused and the circumstances should be of conclusive nature and tendency. It has been held by this Court that the chain of evidence should be complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. (See ¹. On the basis of the above well-settled principles, we proceed to examine whether the accused can be held to be guilty.

8. PW-3, PW-4 and PW-5 who are the family members of the deceased were consistent in their testimonies that the deceased and accused were last seen together at around 02:00 pm on 02.02.2004. There is a burden on the accused to give an explanation about what happened after they left the house of the deceased. No explanation was given about the events of 02.02.2004 after they left from the house of the deceased. In the examination under Section 313 Cr. P.C. the accused denied any knowledge of the crime and alleged false implication. Section 106 of the Indian Evidence Act, 1872 imposes an obligation on the accused to explain as to what happened after they were last seen together. PW-3 gave evidence to the effect that the accused was not found in his house in the evening on 02.02.2004 when she went to enquire about her missing husband. She also stated that when she met the accused on the next day morning, the accused misled her by saying that she should go to Matigara Police Station in search of her husband. It is clear that the accused who was with the deceased on the earlier day did not give a proper answer to PW-3 and asked her to go to the Matigara Police Station which indicates that he was suggesting to PW-3 to complain to the police. These are strong circumstances against the accused.

9. There is one circumstance pertaining to recovery which could not be proved by the prosecution beyond reasonable doubt. The High Court held that recovery of the weapon and the severed cut head of the deceased was not corroborated by PW-7 and PW-14 who were seizure list witnesses. The High Court also held that the recorded version of the statement made by the Appellant which led to recovery was not produced by the prosecution. The High Court found that there was no evidence to show as to which particular article was recovered at whose instance pursuant to the joint statement made by the accused. The High Court proceeded to hold that the circumstances relating to recovery was not proved by the prosecution. The High Court concluded that the Appellant was guilty on the basis of other circumstantial evidence. We are in agreement with the conclusion of the High Court that though the recovery was not proved, the other circumstantial evidence is sufficient to prove the guilt of the accused.

10. We affirm the judgment of the High Court and dismiss the Appeal. The Appellant was enlarged on bail by this Court vide order dated 05.02.2016 on the ground of his prolonged incarceration for 11 years. He is directed to surrender before the jail authorities immediately

to undergo the remaining part of his sentence, failing which the authorities concerned are directed to proceed in accordance with law.

¹(1984) 4 SCC 0116