

SUPREME COURT OF INDIA

Md.Younus Ali Tarafdar

Vs.

State of West Bengal

Crl.A.No.119 of 2010

(L.Nageswara Rao and Hemant Gupta,JJ.,)

20.02.2020

JUDGMENT

L.Nageswara Rao,J.,

1. The present Criminal Appeal arises from the judgment of the High Court of Calcutta by which the conviction of the Appellant under Section 302 read with Section 34 and Section 201 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'the /PC' was affirmed.

2. On 20.03.1984, a phone call was received from Bhaskar Gupta, PW 6 by Rajarhat Police Station that a dead body was found in a well inside the garden. The Investigating Officer PW 20, reached the place of occurrence at 6.05 p.m. and saw a body floating in the well. The dead body could not be taken out as it was dark by then. A First Information Report was registered and the sketch map of place of incident was prepared. The body was brought out of the well the next day.

3. PW 18 Dr. Santosh Kumar Biswas conducted the post-mortem of the body on 21.03.1984. He found the following injuries:

"1. One circular ligature mark on the neck at the level of hyoid bone. The width of the ligature mark was 2". On dissection I found that below, above and beneath the ligature mark all the soft tissues were damaged and I also noticed fracture of hyoid bone.

2. Two ligature marks on both the wrist joints of the deceased. There was no damage of soft tissues in this region.

3. Two circular ligature marks were seen in both the ankle joints of the deceased." According to the Doctor, the body was partially decomposed. The cause of death was mentioned as Asphyxia as a result of injury No.1 which was ante- mortem and homicidal in nature which was done by strangulation. The Doctor deposed in

Court and stated that the larynx and trachea were highly congested and hyoid bone was fractured.

4. During the course of investigation, the apparels on the body were seized. The photographs of the body were taken and cremation of the body was done as it was already in a decomposed state. One Kenaram Dhara along with his mother appeared at Rajarhat Police Station on 25.03.1984 and complained that Becharam Dhara @ Ashok was missing since 16.03.1984. When they were shown the apparels and photographs of the body which was already buried, they identified that the body was of Becharam Dhara.

5. On information received during the course of investigation, the Appellant was arrested. Pursuant to the confession made by the Appellant, an Anglo-Swiss watch was seized from A.C. Watch Company situated at Aswini Nagar, Baguihati. The case of the prosecution is that the wrist watch belongs to Kenaram Dhara PW 12 who is the brother of the deceased, Becharam Dhara. He stated before the Court that he gave his wrist watch to his brother when he left the house on 15.03.1984.

6. On completion of the investigation, the Appellant along with three others were charged with committing the murder of Becharam Dhara and concealing the body. The trial court convicted the Appellant for offences under Section 302 read with Section 34 and Section 201 read with Section 34 of the IPC. The other accused were acquitted as the trial court was of the opinion that the prosecution could not establish their guilt. The Appellant was sentenced to undergo rigorous imprisonment for life for the offence under Section 302 read with Section 34 and rigorous imprisonment for nine months for offence under Section 201 read with Section 34 of the IPC. The appeal of the Appellant was dismissed by the High Court and judgment of the trial court was affirmed.

7. On appreciation of the evidence on record, the trial court concluded that there was sufficient evidence to point to the guilt of the Appellant. The deceased and the Appellant were friends. The Appellant used to visit the house of the deceased. PW 11, Astomi Dhara, who was the sister of the deceased, deposed in Court that the deceased left the house by telling her that he was going to visit the Appellant. The evidence of PW 12 who was the brother of the deceased was similar to the effect that the deceased, Becharam Dhara, informed him that he was going to Atghara where the Appellant resides. PW 16 Ganga Rani, a relative of the deceased, deposed that the deceased visited her house at 10.30 a.m. on 15.03.1984. He left around 2.30 p.m. on that day informing her that he was going to meet the Appellant. According to PW 4 the proprietor of the A.C. Watch Company, the Appellant gave a watch for repair on 19.03.1984. There can be no doubt that the dead body recovered from the well was that of Becharam Dhara as identified by the brother and mother from the photographs of the dead body and the apparels worn by the deceased. Recovery of the watch belonging to PW 12 which was given to the deceased when he left the house on 15.03.1984 was relied upon by the trial court as a strong circumstance to prove involvement of the Appellant in the crime. The signature of the Appellant on the counterfoil taken from the watch shop owner was not denied by the Appellant. He merely stated that the signature was taken forcibly by the police during the course of the

investigation. On basis of the said evidence, the trial court concluded that the Appellant is guilty of committing the murder of Becharam Dhara. The High Court upheld the conviction after re- appreciating the evidence on record.

8. There is no direct evidence regarding the involvement of the Appellant in the crime. The case of the prosecution is on basis of circumstantial evidence. Factors to be taken into account in adjudication of cases of circumstantial evidence as laid down by this Court are :

"14. Admittedly, this is a case of circumstantial evidence. Factors to be taken into account in adjudication of cases of circumstantial evidence laid down by this Court are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so 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 *Sharad Birdhichand Sarda v State of Maharashtra* [*Sharad Birdhichand Sarda v State of Maharashtra*¹, SCC p. 185, para 153; *M.G. Agarwal v State of Maharashtra* [*M.G. Agarwal v State of Maharashtra*², AIR SC pa1ra 18.]")

9. We proceed to examine the matter in light of the factors mentioned above. It was contended on behalf of the Appellant that the dead body taken out from the well was completely mutilated and that the body was beyond identification. The family members of the deceased were not shown the body as it was cremated immediately. It was contended that the identification of the body was only on the basis of photographs of the dead body and the apparels found on the body. As the body was eaten by maggots it cannot be believed that the body could be identified on the basis of the photographs shown to the mother and brother of the deceased. We perused the photographs of the dead body from the original record and reject the submission made on behalf of the Appellant on this count. The dead body which was taken out of the well was not beyond recognition. On the other hand, it is reasonably recognizable. The next submission relating to the identification on the basis of apparels which were recovered from the body is also unsustainable. Taking into account the social background of the deceased, his wardrobe can be taken to be consisting of not too many clothes. It cannot be said that the mother and brother could not

have identified the clothes of the deceased. That apart, from the tag of the tailoring shop found on the apparels, the tailor - PW 8 was examined and he deposed that the clothes were stitched for the deceased. We have no doubt in approving the findings recorded by the trial court and the High Court that the dead body taken out of the well was that of Becharam Dhara and the prosecution has established the same by leading cogent evidence.

10. It is necessary to examine the circumstances which have been relied upon for conviction of the Appellant. The evidence of PW 11, Astomi Dhara who is sister of the deceased, PW 12 Kenaram, the brother of the deceased and PW 16 who is the relative of the deceased was relied upon by the prosecution to establish the connection between the Appellant and the deceased. PW 12 deposed in Court that the deceased left the house on 15.03.1984 stating that he was leaving for Atghara where the Appellant resides. PW 12 gave his Anglo-Swiss watch to the deceased. PW 11 Astomi Dhara stated in Court that the deceased informed her that he was going to meet the Appellant. PW 16 stated in Court that the deceased visited her house at 10.30 a.m. on 15.03.1984 and left at 2.30 p.m. by informing her that he will go back to his house after visiting the Appellant. After referring to the evidence of the above witnesses, it is relevant to mention that in his evidence, the Investigating Officer said that PW 11 Astomi Dhara did not inform him when her statement was initially recorded, that the deceased informed her on 15.03.1984 that he was going to visit the Appellant. From the cross-examination of PW 20- the Investigative Officer, it can be seen that he mentioned about the omission on the part of the PW 12 in his initial statement regarding the watch belonging to PW 12 being taken by the deceased on 15.03.1984. During the trial, PW 12 stated that on 19.03.1984 he and his mama-sasur-Shailendra Nath Shil were going to Baguihati Bazar by boarding a bus from Jangar More. The Appellant was in the same bus and on seeing PW 12 and his mama-sasur, the Appellant started trembling and alighted the bus one stop ahead of Baguihati. During his cross-examination, the Investigating Officer accepted that this is an improvement made by PW 12 as such incidence was not narrated to him in the initial statement made by PW 12 during the course of the investigation.

11. The prosecution strongly relied upon the recovery of the watch from the shop of PW 4. The watch belonged to PW 12 which was with the deceased when he left home on 15.03.1984. PW 4 Amar Das who was the owner of the watch shop deposed in Court that the Appellant gave a watch for repairing. He was shown the receipt given to the Appellant which was seized from the custody of the Appellant. The receipt was issued on 19.03.1984 and the watch had to be delivered on 27.03.1984. The counterfoil of the receipt was identified by PW 4 which was marked as exhibit 3 and the signature of the Appellant on the counterfoil was not denied by him.

12. The conviction of the Appellant is mainly on the basis of the recovery of the watch which was with the deceased pursuant to the confessional statement of the Appellant. According to the prosecution, the receipt issued by PW 4, the owner of the watch shop was seized from the Appellant during the course of investigation. His confessional statement was recorded pursuant to which the receipt was seized from his house. Thereafter, the watch was seized from the shop of PW 4 along with counterfoil of the

receipt on which the signature of appellant was found. The contention of the defense is that the Appellant was coerced by the police into signing the counterfoil of the receipt. It was also argued that there the receipt was not seized from the house of the Appellant.

13. PW 12 did not state before the Investigating Officer that he gave his watch to the deceased when he left the house on 15.03.1984. It is clear from the cross-examination of the Investigating Officer that this statement of PW 12 was an improvement. The manner in which the confessional statement of the Appellant was recorded and the seizure of the receipt of the watch was made is not free from doubt.

14. On an overall consideration of the evidence on record, especially the evidence of PWs 11, 12 and 16 would not lead us to believe that the Appellant and the deceased were last seen together. The evidence of PWs 11 and 16 only shows that they were informed by the deceased that he was going to visit the Appellant. There is no evidence on record to show that the Appellant was last seen with the deceased. Section 106 of the Indian Evidence Act, 1872 is not applicable to the facts of the case. It cannot be said that the Appellant failed to explain as to what happened after they were last seen together especially when there is no evidence to show that they were last seen together.

15. A close scrutiny of the material on record would disclose that the circumstances relied upon by the prosecution to prove the guilt of the Appellant were not complete and do not lead to the conclusion that in all human probability the murder must have been committed by the Appellant.

16. For the aforementioned reasons, the Appeal is allowed and the judgment of the High Court is set aside. The Appellant is acquitted of the charges under Section 302 read with Section 34 and Section 201 read with Section 34 of the IPC.

Judgment Referred.

¹(1984) 4 SCC 0116

²AIR 1963 SC 0200