IN THE HIGH COURT AT CALCUTTA

CRIMINAL MISCELLANEOUS JURISDICTION

APPELLATE SIDE

CRA 674 of 2018
With
CRAN 1 of 2022
Srikanta Baskey
Vs.
The State of West Bengal

Before: The Hon'ble Justice Rajarshi Bharadwaj
&
The Hon'ble Justice Apurba Sinha Ray

For the Appellant	:	Mr. Moinak Bakshi, Adv. Ms. Niketa Bhattacharjee, Adv.
For the State	:	Mr. Ranabir Roy Chowdhury, Adv. Mr. Subham Bhakat, Adv.
CAV On	:	21.05.2025
Judgment On	:	02.07.2025

Apurba Sinha Ray, J. :-

1. This appeal under Section 374(2) of the Code of Criminal Procedure, 1973 has been preferred by the convict Srikanta Baskey against the judgment and order dated 09.10.2018 and 10.10.2018 respectively passed by the Learned Additional District and Sessions Judge, Fast Track Court, Court No. 2, Purulia, in Sessions Case No. 185 of 2017, Sessions Trial No.

09 of 2018, arising out of GR Case No. 1192 of 2017 in connection with Puncha Police Station Case No. 36 of 2017 dated 13.08.2017 under Section 302 of the Indian Penal Code convicting the accused and sentencing him to undergo imprisonment for life and pay a fine of Rs. 1000/-, in default, to suffer imprisonment of one month, for the offence punishable under Section 302 of Indian Penal Code on the grounds, inter alia, that the impugned order of conviction and sentence is devoid of proper appreciation of evidence on record and further the same is perverse, illegal and arbitrary and hence the same is liable to be set aside. It is also submitted that the prosecution could not prove the seizure and establish any motive behind the murder.

2. It is also alleged that the prosecution did not produce any FSL Report. Moreover, the Learned Trial Judge did not put necessary caution to the accused. During examination under Section 313 Cr.P.C. material circumstances were not put to the accused persons. Mr. Moinak Bakshi, the learned advocate appearing for the appellant has submitted that the prosecution builds up its case against the accused primarily on the deposition of PW1, who happened to be the neighbour of the deceased and who was washing utensils at a nearby tap when she saw the incident of murder. No other witnesses had witnessed the alleged murder committed by the present appellant. The other witnesses claimed to have heard about the incident but did not put any light on their source of such information. Even the husband of the PW1 did not mention that he heard the matter from his wife i.e. PW1. As such the conduct of the eye witnesses appears to be far

from normal, in as much as the PW1 did not raise any hue and cry upon witnessing such an incident nor did she mention it to her husband.

3. The learned counsel has further submitted that in her statement recorded under Section 164 of the Code of Criminal Procedure, the PW1 mentioned that the accused arrived at the place of occurrence from inside his house. This fact remains uncorroborated in her evidence during trial. Nor does it get any corroboration from the evidence of the family members of the victim as well as the accused. The inquest report which preceded the lodging of FIR does not mention the eye witness of the incident. In her evidence, during trial, the PW1 did not clearly state that she saw the incident of murder. Her evidence is inadmissible. The inquest report does not show that PW1 was present at the place of occurrence.

4. Mr. Bakshi has further submitted that the recovery of the offending weapon pursuant to the statement given by the accused fails the test of admissibility as enumerated under section 27 of the Evidence Act. The witnesses to the seizure of the weapon do not mention the presence of the accused at the place and time of seizure. Furthermore, the confessional statement to police leading to the seizure of the offending weapon is not exhibited. The seized weapon does not help the prosecution in establishing any fact discovered in relation to crime. No FSL Report was produced or exhibited during the trial.

5. Mr. Bakshi, learned advocate for the appellant, has further submitted that the autopsy surgeon does not mention whether the injury was sufficient

to cause death in the ordinary course of nature. The etiology of injury remains unclear. There is no definite opinion as to whether the injuries could have been caused by the seized weapon. The weapon was not shown to the doctor during trial to elicit his expert opinion. Therefore, the evidence of the autopsy surgeon suffers from gross material anomalies.

6. It is also vehemently argued by Mr. Bokshi that the material incriminating circumstances were not put to the accused during his examination under section 313 of the Code of Criminal Procedure. The fact of seizure of weapon pursuant to confessional statement was not put to the accused. This is in gross violation of the fundamental principle of fairness enshrined in section 313 of the Code of Criminal Procedure.

7. It is also argued that the prosecution chose not to examine the female family members of the deceased. Thus, material witnesses remain out of purview of the trial. The arrival of the accused at the spot and fleeing away therefrom do not find any corroboration from any independent source. Therefore, the prosecution has failed to prove any motive behind the crime and the convict should be acquitted after setting aside the impugned judgment and order of conviction.

8. Mr. Ranabir Roy Chowdhury, the learned Additional Public Prosecutor has submitted that it has been rightly considered by the Learned Trial Judge that no specific number of witnesses is required to prove a relevant fact. According to him, the PW1, Jamuna Hembam was the sole eye witness and her testimony is credible. The PW1 has not only stated before the

Learned Trial Judge regarding the incident as a sole eye witness but she also stated before the Learned Judicial Magistrate, First Class, who recorded her statement under Section 164 of Cr.P.C. The post mortem report which has been marked as exhibit-8 has also lent support to the deposition of the PW1 and the defence could not make a dent to the said deposition. The substantive piece of evidence of PW1 remained unshaken even after her thorough cross-examination. There is no illegality or perversity in the impugned judgment and thus needs no interference from this appellate forum. The conviction is, according to Mr. Roy Chowdhury, sustainable in law. The learned State counsel has also relied upon judicial decisions reported in (**2024) 6 SCC 799 Chandan Vs. State (Delhi Administration), (2004) 12 SCC 229 Yakub Ismailbhai Patel Vs. State of Gujarat**.

9. I have considered the rival contentions of the parties and also have taken into consideration the judicial decisions submitted on behalf of the State.

10. It is rightly held by the Learned Trial Judge that there is no specific number of witnesses mentioned in the Evidence Act or in any other law to be produced for proving a case. If the evidence of a single witness is credible and remains unshaken at the time of his/her cross-examination, the court can rely upon such evidence in convicting the accused. In this case, admittedly, only one eye witness PW1 was allegedly on the place of occurrence. She has clearly narrated the incident not only at the time of filing FIR but also at the time of recording her statement by the Judicial

Magistrate under Section 164 of Cr.P.C. She has also deposed before the Learned Court inconformity with her earlier statement in the FIR as well as her statement before the Learned Judicial Magistrate. The statements/deposition of the PW1 have been further corroborated by the injuries sustained by the victim and narrated in the post mortem report, which has been proved by the concerned doctor. It is true that all other evidence of neighbours who have been examined as witnesses are hearsay evidence since they did not disclose their source of information. Had it been stated by them that they heard the information from PW1, their evidence could have been relied upon subject to certain conditions. In this case, the said witnesses apart from PW1 have stated that they came to know that the appellant struck his mother with an offending weapon. Without naming the person from whom they gathered such information or without narrating how they came to know the above fact, they tried to impress upon the court that no one but it was the appellant who struck his mother. However, such deposition in my view cannot be relied upon, since they are hearsay evidence.

11. Undoubtedly, it is true that deposition of a single witness who stood by her statement in the FIR and statements made before Learned Judicial Magistrate acquires much credibility particularly when he/she remained unshaken during the cross-examination. There is no hard and fast rule that such deposition of a single witness cannot be the basis of conviction of an accused. However, to rely upon such evidence of a single witness, the court must be very circumspect and cautious to see that such deposition is free

from blemishes, incongruities and further such evidence can mitigate palpable inconsistencies. In this case, it is very much relevant that the husband of the deceased was murdered and a complaint was lodged by the deceased against one of the members of the family of the PW1. The said fact has been put to the PW1 during her cross-examination but she has stated that she does not know about such alleged fact. It has been further brought to her notice that one of her husband's brothers was alleged to have been involved in the murder of the husband of the deceased but the same was also not denied. Her answer to such a question is that she does not know about such alleged facts. The material on record further shows that one of the accused who was allegedly involved in murdering the husband of the deceased, is the brother in law of the PW1 namely, Manasaram Hembram who has also been examined in this case. He has also deposed that the appellant committed murder of her mother. In fact, the mother of the appellant i.e. the deceased, was the complainant against the said witness Manasaram for murder of her husband. The PW4, the husband of the PW1 and brother of Manasaram, has also deposed in support of the prosecution case. A doubt is looming large over the mind of this court as to why the members of a family, one of whose members was allegedly involved in the commission of the murder of the husband of the deceased, had become so much interested in lodging the case against the son of the deceased. Whether the FIR in this case was the actual narration of the incident by the PW1 or the same was a counter-blast of the previous enmity between two families, should have been gone into by the learned trial court. PW1 Jamuna

Hembram, PW4 Subodh Hembram, and PW14 Manasaram Hembram were the witnesses of one family, and one of them was charged with the murder of the husband of the deceased. This aspect was not properly considered by the Learned Trial Judge at the time of relying upon the sole deposition of PW1, particularly, when the PW1 did not deny the involvement of one of her brother-in-laws in the criminal case, lodged by the deceased. The PW14 had curiously made a statement that he used to help the deceased in cultivation. Why such a statement was made from the side of PW14, is not understandable but from such materials on record it is given to understand that the witness Manasaram has tried to show that the relation between two families has become normal. It is true that PW14 was not confronted by asking about his involvement with the murder of the husband of the deceased. Be it mentioned, PW2, Gobinda Mandi, has stated that he was aware about such a case against PW14. His deposition further shows that he is closely related with both the families. However, it appears that three members of a family, one of whom was involved in the commission of the alleged murder of the deceased's husband had suddenly become very much interested in proceeding with the case against the present appellant and this certainly raises a doubt in the mind of this court. This doubt has not been cleared in the impugned judgment under challenge. The learned Trial Judge relied upon the weakness of the defence on the ground that such a question was not put to the PW14.

12. The entire materials on record show that the recovery of the offending weapon was not made from the house of the appellant nor from the place

under the control of the appellant. The recovery statement under section 27 of Evidence Act, 1872 has not been brought in the evidence. It is found from the seizure list which has been marked as exhibit –5/2 that the said axe (Kurul) (Mat Exhibit – II) has been recovered from a bush far away from the place of occurrence or from the house of appellant. Astonishingly, in the seizure list it has been mentioned by the I.O. that the recovery of the said seizure of the axe was done as per the leading statement of the appellant. Neither the recovery statement under Section 27 of Evidence Act, 1872 has been brought in the picture nor in his deposition the I.O. has stated that such an axe was recovered on the basis of the statement of the appellant. Therefore, in our view the recovery of the axe as per leading statement of the appellant has not been proved in accordance with law. The axe containing blood stains was not sent to the forensic laboratory for chemical examination for the reasons best known to the concerned I.O. It is not understandable as to why such a recovery statement of the appellant was not exhibited.

13. Another alarming feature is that the learned Trial Judge had shown unnecessary haste in recording deposition. There is no mention in the deposition sheet the nature of seizure lists. The I.O. deposed that he prepared several seizure lists but he did not mention the nature of articles for which such seizure lists were made. I am quoting the excerpts of the deposition of I.O. hereunder:-

> *"During investigation, I visited the P.O, examined the available witnesses and recorded*

their statement under section 161 Cr.P.C., got statement of witnesses recorded under section 164 Cr. P.C. prepared seizure lists, prepared rough sketch map of the P.O along with index, collected P.M report of the deceased. I also conducted inquest over the dead body of the deceased.

This is that inquest report in carbon process. The inquest report be marked as (Ext.3/3).

This is the seizure list dated 13.08.17 prepared by me. The same be marked as (Ext. 4/3).

This is another seizure list dated 14.08.17 prepared by me. The same be marked as (Ext. 7/2).

This is another seizure list dated 15.08.17 prepared by me. The same be marked as (Ext. 5/2).

This is the rough sketch map of the P.O along with index. The same be marked as (Ext.9).

This is the formal FIR of the aforesaid case under the hand writing and signature of Biswajit Banerjee. I worked with him and as such I am acquainted with his hand writing and signature. The formal FIR be marked as (Ext. 10).

These are the photographs of the victim and the P.O collected by me during investigation. The witness identifies Mat Ext.I.

This is the Kural (offending weapon) seized by me. The Kural be marked as (Mat Ext.II).

These are the wearing apparels of the deceased seized by me. The same be marked as (Mat Ext.III).

After completion of investigation I submitted charge sheet against the FIR named accused."

14. The above deposition shows that he did not depose that the recovery of the offending axe (kurul) was done on the leading statement of the appellant. He did not mention by which one of the seizure lists he seized the axe. He did not state whether the accused put his signature in such a seizure list or not. Furthermore, he did not mention such recovery was made in presence of witnesses viz. Gobinda Mandi (PW2) and Subodh Hembram (PW4). The PW2 and PW4 also did not state that the axe was seized in their presence. The excerpts of deposition of PW2 are as hereunder:-

"....Police held inquest over the dead body of Shantimani at Puncha Hospital and prepared a report.

I signed in that inquest report.

This is my signature on the inquest report. The signature be marked as (Ext.3).

I also signed on the seizure list dated 13.08.17 and 15.08.17.

These are my signatures on the seizure lists. The signatures be marked as (Ext.4 and Ext.5) respectively…..

15. The excerpts of deposition of PW4 are as hereunder:-

".....I signed in the seizure list dated 13.08.17.

This is my signature on the seizure list. The same be marked as Ext.4/1.

This is my another signature on the seizure list dated 15.08.17. The same be marked as Ext.5/1.

I was examined by police……"

16. Another glaring defect is found in examination of the accused under section 313 of Cr.P.C. It appears that the examination of the accused under Section 313 of Cr.P.C. is very cryptic. Various documents such as the seizure list of axe (Kurul) containing the alleged signature of the accused was not brought to the notice at the time of recording statement under section 313 of Cr.P.C. Several other documents which have been marked as exhibits were also not put to the appellant at the time of such examination. However, cryptic deposition recorded by the learned Trial Judge, as already discussed in the earlier paragraph, is also responsible for such defective recording of statements under section 313 Cr.P.C. The law has been well settled in this regard. Judicial decisions of **Naval Kishore Singh Vs. State of Bihar reported in (2004) 7 Supreme Court Cases 502** and **Tara Singh Vs. State reported in 1951 Supreme Court Cases 903,** can be referred to in this regard. *It has been decided by the Hon'ble Apex Court that various items of evidence produced by the prosecution are to be put to the accused in the form of questions.* In **Naval Kishore Singh's case (supra)** in paragraph 5 it has been observed by the Hon'ble Supreme Court as hereunder:-

> *"Counsel for the appellant pointed out that the Sessions Court committed serious error in not properly examining the accused under Section 313 Cr.P.C. Our attention was drawn to the statement taken from the present appellant.*

Only three questions were put to the appellant. The first question was whether he heard the statement of the witnesses and the second question was that the evidence given by the witnesses showed that he committed the murder of the deceased and whether he had to say anything in defence. The questioning of the accused under Section 313 Cr.P.C was done in the most unsatisfactory manner. Under Section 313 Cr.P.C the accused should have been given opportunity to explain any of the circumstances appearing in the evidence against him. At least, the various items of evidence, which had been produced by the prosecution, should have been put to the accused in the form of questions and he should have been given opportunity to give his explanation. No such opportunity was given to the accused in the instant case."

17. In Tara Singh (supra) the Hon'ble Supreme Court has been pleased to observe as hereunder:-

"The whole object of Section 342 (Sec. 313 Code of 1973) (emphasis added) is to afford the accused a fair and proper opportunity of explaining circumstances which appear against

him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of the opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned." (Emphasis added)

18. Moreover, in **State (Delhi Administration) Vs. Dharampal reported in (2001) 10 SCC 372** it has been laid down that not contents of report or certificate upon which the prosecution is relied upon are to be brought to

the notice of the accused at the time of his examination under section 313 of Cr.P.C. but it is held that the report or the certificate should be drawn to the attention of the accused during his examination under Section 313 of Cr.P.C.

19. In this case, neither the seizure lists nor the post mortem report nor other material circumstances are brought to the notice of the appellant at the relevant point of time.

20. In Nar Singh Vs. State of Haryana reported in (2015) 1 SCC 496 it has been clearly held that the attention of the accused should be drawn to every inculpatory material. Therefore, in our view, the examination of the accused under Section 313 of Cr.P.C. was not judiciously done by the Learned Trial Judge. There are sufficient reasons on behalf of the appellant that he has been materially prejudiced particularly when his alleged leading statement for recovery under section 27 of Evidence Act was not brought on record and when no evidence was led on behalf of the investigating officer at the time of his deposition that the said axe was recovered on the basis of the leading statement of the appellant. Furthermore, the seizure list of axe allegedly containing the signature of the appellant was also not brought to the notice of the appellant at the relevant point of time.

21. Therefore, in view of the above discussion, we find that though the PW1 has categorically deposed that she saw the appellant to commit crime of murder of one Shantimoni Baskey, the prosecution was unable to dispel the doubt as to why the three members of a family, one of whom was

allegedly involved in the commission of the murder of the husband of the deceased had taken so much enthusiasm from lodging the criminal case to supporting to the prosecution case during trial. The case law of **Yakub Ismailbhai Patel (supra)** cited by the prosecution is not applicable in this case since in the cited decision there was no inimical relation between the complainant and the accused but in our case, there was a relation of previous enmity. Further, the recovery of the alleged offending weapon as per leading statement of the appellant was not proved in accordance with law. The recovery statement of the appellant under section 27 of the Evidence Act, 1872 was not produced in evidence and further no FSL Report regarding blood stains in the axe (Kurul) was sought for by the prosecution. In addition thereto, unsatisfactory and cryptic recording of the appellant's statement under section 313 of Cr.P.C. by not bringing all inculpatory materials to the notice of the appellant, compel us to record that the guilt of the appellant Srikanta Baskey for murdering Shantimoni Baskey was not proved beyond all sorts of reasonable doubt and hence, we are inclined to acquit the appellant Srikanta Baskey who is languishing in the correctional home for more than 7 years after his conviction and imposition of sentence, from the relevant charge of the case. In the case of Chandan (supra) it is rightly held that motive is not required to prove a criminal case against the accused. However, in our case, the prosecution has failed to prove the case itself beyond reasonable doubt and hence no further discussion is required on this aspect.

22. Accordingly, the impugned judgment passed in judgment and order dated 09.10.2018 and 10.10.2018 respectively passed by the Learned Additional District and Sessions Judge, Fast Track Court, Court No. 2, Purulia, in Sessions Case No. 185 of 2017, Sessions Trial No. 09 of 2018, arising out of GR Case No. 1192 of 2017 in connection with Puncha Police Station Case No. 36 of 2017 dated 13.08.2017 under Section 302 of the Indian Penal Code is hereby set aside. The appellant Srikanta Baskey be acquitted from the charges of the case. He be set at liberty at once, if not wanted in any other case. Let a copy of this judgment along with the trial court record be sent back to the court concerned immediately.

23. CRA 674 of 2018 with CRAN 1 of 2022 is accordingly disposed of.

24. Urgent photostat certified copies of this Judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(RAJARSHI BHARADWAJ, J)

(APURBA SINHA RAY, J.)