IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction

Present:

The Hon'ble Justice Debasish Kar Gupta
And
The Hon'ble Justice Md. Mumtaz Khan

CRA No. 184 of 2013

Safiqul Islam

Versus

The State of West Bengal

For the appellant : Dr. Joytirmoy Adhikari
Mr. Thirthankar Dhali.

For the State : Mr. Manjit Singh
Mr. Pawan Kumar Gupta

Judgment on: 12.05.2015.

Md. Mumtaz Khan, J. :

This appeal has been preferred by the appellant assailing the judgment and order of conviction and sentence dated 13.02.2013 and 14.02.2013 respectively passed by the Ld. Additional Sessions Judge, (newly created), Sadar, Cooch Behar in Sessions Trial No.1(12)/12 arising out of Sessions case no.440/2012 holding the appellant guilty of the offence punishable under Section 302 IPC and sentencing him to suffer life imprisonment and to pay a fine of Rs. 2000/- in default simple imprisonment for 03 months.

The prosecution case, in brief, is that on 25.05.2011 at 8.15 hours

Gopal Barman (P.W.1) lodged a written complaint at the Kotwali P.S. to the effect that on 24.05.2011 his younger brother Ratan Barman (victim) at about 10.30 p.m., after taking dinner as usual, left his house to sleep at Food Supply Office and on the next day, at about 6.30 a.m. an information was received that the dead body of his younger brother was lying at Lichutala. He then rushed to the place and found the dead body of his younger brother lying there with severe cut and bleeding injuries and it was his firm belief that Safiqul Islam/ appellant had murdered his brother.

On receipt of the above written complaint, P.W.8 started Kotwali P.S. Case No. 300/2011 dated 25.05.2011 under Section 302 I.P.C. against this appellant and endorsed the case for investigation to P.W.9 who then investigated the same and on his transfer handed over the case diary to P.W.10 who then after completion of investigation submitted charge sheet being No. 419/12 dated 30.06.2012 under Section 302 I.P.C. against this appellant. This case was then committed to the court of Sessions Judge, Cooch Behar who then transferred the case to the court of Additional Sessions Judge, (newly created) Cooch Behar for trial. Thereafter charge under Section 302 IPC was framed against this appellant on 01.12.2012 who then pleaded not guilty to the charge and claim to be tried, hence the trial proceeded.

Prosecution in order to prove the case examined 10 witnesses including the complainant, P.W.1, his wife, P.W.5, his brother, P.W.2, his father, P.W.6, one neighbour, P.W.3, Ward Commissioner, P.W.4, besides the doctor, P.W.7 who had conducted the Post Mortem Examination of the victim, recording officer, P.W.8 and the I.Os. and also produced and proved

the FIR, Investigation Report under Section 174 Cr.P.C., seizure lists, rough sketched map, P.M. report etc. which have been marked Exhibits1 to 8. Thereafter on completion of trial Ld. Court below found this appellant guilty of the offence punishable under Section 302 IPC and accordingly convicted and sentenced him to suffer imprisonment for life and also pay a fine of Rs. 2000/- in default simple imprisonment for 03 months.

Being aggrieved by and dissatisfied with the same the appellant has preferred the instant appeal and the ground raised in the instant appeal is that the Ld. Court below did not consider the facts and circumstances of this case and the evidence on record in its proper prospective and made a wrong approach to the whole case and failed to appreciate the well settled principle of law in the case based upon circumstantial evidence and arrived at a wrong decision that the prosecution had been able to prove guilt of the appellant and accordingly convicted him. He has, therefore, prayed for setting aside the impugned judgement and order of conviction and sentence passed by the Ld. Court below.

It is submitted by the Ld. Advocate appearing on behalf of the appellant that there was no eye witness to the incident in question and the entire case was based on circumstantial evidence and the circumstances from which the conclusion of guilt had been drawn had not been fully established and as such the impugned judgement and order of conviction and sentence passed by the ld. Court below is liable to be set aside. Our attention was drawn to the following facts on the basis of the materials on record:-

(i) According to the F.I.R. victim left the house at 10.30 p.m. after

taking dinner for sleeping at the Food Supply Office but there is no evidence on record to show that he was seen in the company of this appellant and/or that they were last seen together and even the night guard of the Food Supply Office has not been examined.

(ii) According to P.W.1 prior to the incident appellant used to come to their house and gave ill proposal to P.W.5, and also used abusive words towards her to which victim had raised objection and the matter was reported to the councillor and P.W.5 lodged diary at the P.S.

According to P.W.2 and P.W.6 also some days prior to the incident appellant had threatened them with dire consequences for their objection towards his mixing with P.W.5 and for this P.W.5 reported the matter to the P.S. But no such diary was produced nor P.W.5, nor P.W.4, the Ward Commissioner nor even P.W.3, the co-villager, supported their above claim.

(iii) There is no evidence on record that the appellant was absconding from his house and only because the appellant was arrested after some days of the incident Ld. Court below came to a conclusion that he was absconding though the arrest memo clearly shows that he was arrested from his house.

(iv) Ld. Court below noted in point nos.9 and 10 at page no.13 of the judgement and at page no.16 drawn the inference that almost all persons came to see the dead body but this appellant was not present there and he was arrested only on 03.6.11 so it was clear that after the incident he absconded from the place but no question was put to the appellant to this effect during his examination under section 313 Cr.P.C.

It is also submitted by the Ld. Advocate for the appellant that in the

case of circumstantial evidence chain of circumstances must be complete by reliable and clinching evidence and most clearly point out to the guilt of the accused, so as to lead to the conclusion that it is the accused only and no other person should have committed the offence of murder of the deceased and mere suspicion can not take the place of proof.

In support of his contention he relied upon the decision of Hanumant Gobind Nargundkar and another vs. State of Madhya Pradesh reported in A.I.R. 1952 Supreme Court 343.

Mr. Manjit Singh, learned Public Prosecutor, High Court, Calcutta, fairly submitted that there was no eye witness to the incident and the entire evidence was based on circumstantial evidence and in the case of circumstantial evidence chain of circumstances must be complete to established the guilt of the accused but our attention has not been drawn by the learned Public Prosecutor towards any material on record showing conclusive circumstantial evidence that in the instant case chain is complete as there is no evidence that appellant was last seen together with the victim and the lady, P.W.5 herself has remained silent about the reported threat given by the appellant and this has also not been corroborated from other independent witnesses. He also submitted that even the weapon of offence had not been recovered though the appellant was arrested and detained in police custody.

We have heard the learned Counsels appearing for the respective parties. We have given our thoughtful consideration to the evidence of the prosecution witnesses, the materials on record including the F.I.R., inquest report under section 174 Cr.P.C., rough sketch map with regard to the place

of occurrence, post mortem report, seizure lists, charge sheet, charge framed amongst other materials for examining propriety of the impugned judgement and order of conviction and sentence.

It is well settled proposition of law that where the cases rests squarely on the circumstantial evidence the inference of guilt can be justified only when all the incriminating facts and circumstance are found to be incompatible with the innocence of the accused. The chain of circumstance should be of a conclusive nature and must be complete and most clearly point out to the guilt of the accused. We find substance in the submission made on behalf of the appellant that the decision of **Hanumant Gobind Nargundkar and another vs. State of Madhya Pradesh** reported in **A.I.R. 1952 Supreme Court 343** is applicable in this case and the relevant portion of the above decision is quoted below:-

> *"10. ……In dealing with circumstantial evidence the rules specifically applicable to such evidence must be borne in mind. In such cases there is always the danger that the conjecture or suspicion may take the place of legal proof. ……It is well to remember that in cases where the evidence is of a circumstantial nature,the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established,and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstance should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words,there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused……"*

Admittedly none of the witnesses examined by the prosecution was witness to the occurrence and the entire case is based on the circumstantial evidence.

The Ld. Court below took into consideration the evidences of P.W. nos. 1,2 and 6 to arrive at a conclusion that a love affairs grew up in between the appellant and P.W.5, wife of victim's elder brother for which victim, P.W.1 and P.W.6 asked the appellant not to come to their house and not to proceed in the matter and for this reason appellant threatened them to commit murder and in the evening of 24.05.11 also P.W.6 saw the appellant near the P.O. along with another person telling him " Maal ta ekhuno aashe nai".

According to ld. Court below that almost all the neighbours on getting the news of death of the victim came to see the dead body but there was nothing from which it could be said that this appellant being an adjoining neighbour came at the P.O. to see the dead body and as he was arrested only on 3.6.11 so it is clear that he was absconding.

With regard to the reported love affairs between the appellant and P.W.5 and the reported threat by the appellant with dire consequences we find that the same has not been supported either by P.W.5 or by the Ward Commissioner, P.W.4 or by their neighbour, P.W.3. P.W.5 herself remained silent about the reported threat by the appellant. Even no such copy of the diary reportedly lodged at the P.S. by P.W.5 as claimed by P.W.1, P.W.2 and P.W.6 was produced nor any reason had been assigned for such non production.

We also do not find any evidence on record that on the relevant date victim was seen in the company of the appellant and/or that they were last seen together. The claim of P.W.6 that in the evening of 24.05.11 he saw the appellant near the P.O. along with another person telling him " Maal ta

ekhuno aashe nai" also did not find any corroboration from any corner nor even from his sons, P.W.1. or P.W.2. The night guard of the Food Supply Office, Cooch Behar where the victim used to sleep in the night had not been examined either during investigation by the I.O. or during trial by the prosecution.

There was also no evidence on record that appellant absconded after the incident. Even the I.O. had not stated that after the incident he attempted to apprehend the appellant but he absconded. There is also nothing in the record that in order to apprehend the appellant warrant of arrest and/or proclamation had to be issued. According to I.O. on 03.6.11 he apprehended appellant and produced him before court. Memo of arrest also shows that appellant was arrested from his house. Further more we find that even no such question was put to the appellant during his examination under section 313 Cr.P.C. thereby giving him any chance of explanation. Under the circumstances ld. Court below is not justified in holding that after the incident appellant absconded from the place. Moreover mere absconding by itself does not necessarily lead to a firm conclusion of guilt of mind unless corroborated from other circumstances. In the instant case thus, we find that the circumstances from which the conclusion of guilt is to be drawn have not been fully established.

In view of the above, we are of the considered opinion that the court below convicted the appellant on a mere superfluous approach without in depth analysis of the relevant facts and as such the judgement and order of conviction and sentence dated 13.02.2013 and 14.02.2013 respectively passed by the Ld. Additional Sessions Judge, (newly created), Sadar, Cooch

Behar in Sessions Trial No. 1(12)/12 arising out of Sessions case no.440/2012 are liable to be set aside.

In the facts and circumstances of the case, the appeal succeeds and is allowed. The appellant is given benefit of doubt and acquitted of the charge of offence punishable under section 302 I.P.C. The judgement and order of conviction and sentence dated 13.02.2013 and 14.02.2013 respectively passed by the Ld. Additional Sessions Judge, (newly created), Sadar, Cooch Behar in Sessions Trial No.1(12)/12 arising out of Sessions case no.440/2012 are hereby set aside. Appellant is in jail. He be released forthwith unless his detention is required in any other case.

Copy of this judgement along with the lower court records be sent down to the trial court immediately.

Urgent photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

I agree. ***(Md. Mumtaz Khan, J.)***

(Debasish Kar Gupta, J.)