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Court : Kolkata

Decided On : Feb-04-1997

Reported in : 1997CriLJ2447

Judge : Nure Alam Chowdhury and ;Debi Prasad Sarkar-II, JJ.

Acts : Indian Penal Code (IPC), 1860 - Section 302

Appeal No. : Criminal Appeal No, 286 of 1990

Appellant : Samir Paramanick

Respondent : State of West Bengal

Advocate for Pet/Ap. : Arun Kumar Mukherjee and ;Tapan Kumar Dutta Gupta, Advs.

Disposition : Appeal allowed

Judgement :

Debi Prasad Sarkar-II, J.

1. This Appeal is directed against the judgment and Order of conviction passed by the learned Additional Sessions Judge, Purulia in Sessions Trial No. 87/1989 arising out of the Sessions Case No. 43/1988 having reference to Barabazar Police Case No. I dated 11-9-1987 corresponding to the 25th Bhadra, 1394 B.S. under Section 302 of the Indian Penal Code.

2. The facts leading to this Appeal, in short, are that on 11-9- 1987 the wife of the convict-appellant was murdered in the house of her father-in-law with a knife. The father-in-law was in' the field at that time but he was informed by PW-1 about the incident and he rushed home at about 1.00 p.m. and found the dead body of his daughter-in-law with multiple injuries lying near the bed in their bed-room.

3. Meanwhile, the convict -appellant i.e. the husband of the deceased went to (be Police Station and reported the incident to the police. The police made a G.D. Entry on the basis of information and kept him confined in the Thana Lock-up and started for the place of occurrence. At the place of occurrence the statement of the father-in-law of he deceased was recorded and it was treated as an F.I.R. and on its basis the formal F.I.R. was drawn up and the ease was started. After investigation charge-sheet was submitted by the police and when the case was committed to the Court of Session the Id. Additional Sessions Judge took up the trial and on completion of the trial found the convict-appellant guilty to the charge and sentenced him to suffer Life Imprisonment and to pay a fine of Rs. 1,000/-.

4. On being aggrieved by such Judgment, Order of conviction and sentence the present Appeal has been preferred inter alia, on the ground that the Id. Additional Sessions Judge in the absence of any cogent and legal evidence simply based his conviction on some patched up facts. Accordingly, the convict-appellant prayed for setting aside the Judgment and Order of conviction.

5. After going through the evidence recorded by the id. Trial Court and the impugned Judgment and Order and also carefully considering the submission made by the Id. Senior Advocate appearing for the Slate, it is found that all the eyewitnesses to the incident although were near relations yet they turned hostile before the Id. Trial Court. Naturally, the Id. Trial Court based his decision on the statement of the police personnels of the other circumstances.

6. it may be noted, in this connection, the Id. Advocate for the convict-appellant was conspicuous by his absence when the matter has been called up for hearing. However, the Id. Senior Advocate for the State tried to support the impugned Judgment with the circumstantial evidence.

7. It is pointed out by the Id. Advocate for the State that the murder took place in the bed-room of the convict-appellant and the dead body with multiple bleeding injuries was lying in the said bed-room near the bed. This particular fact makes no improvement in the prosecution case. From this fact we find where the murder took place and where the dead body was lying.

8. Let. Advocate for the State refers to the second circumstantial evidence that the convict-appellant just after the incident went to the police station and reported the incident there and on the basis of the said information a G.D. Entry was also made there. This particular fact indicates that the information of murder was first given to the police by the convict-appellant. It does not establish that the convict-appellant committed the murder. Even any culpatory statement made before the police by the convict-appellant would not be admissible in evidence under the law. In this connection, it is necessary to be mentioned that the police received the information about: the murder first from the convict-appellant and as such the G.D. Entry made by the police on the basis of such information ought to be treated as an F.I.R. But without doing so the police after making the G.D. Entry regarding the information about a cognizable offence went to the place of occurrence and recorded the statement of the father-in-law of the victim and treated that statement as F.I.R. It was done against the provision of law.

9. The third circumstance as pointed out by the Ld. Advocate for the State is the absence of the convict-appellant from the house just after the incident of murder. The absence was temporary as we find and it is an admitted case that the convict-appellant went to the police station. Such temporary absence from the residence should not be treated as abscondence and as such this fact also docs not create any circumstantial evidence against the convict-appellant.

10. Fourthly, it is pointed out by the Ld. Advocate for the State that the convict-appellant with the victim used to live in a separate mess but in the same house and the relationship between the spouses was not good due to the appearance of a third person in between them. The Ld. Advocate tried to assign a motive for murder in this way. But we find from the evidence of the father-in-law of the victim that the relationship between the spouses was very good.

11. As the next circumstantial evidence Id. Advocate for the State refers to us the fact that the weapon used for committing the crime was recovered according to the statement made by the convict-appellant from a paddy field. We find from the statement of the police officer that the convict-appellant led the police party to a field and pointed out that he threw the knive there in the field which was under water. We find that the police tried to recover the knife but being unsuccessful came back to the police station and on the next day the knife was recovered from the field after draining out the water but behind the back of the convict-appellant. Therefore, this piece of circumstantial evidence also has lost its importance and has turned into a very weak piece of evidence.

12. There is no doubt that in the absence of direct evidence, conviction can be based on circumstantial evidence. But in such a case the chain of circumstance would be so strong that it would lead to irrestible conclusion that the convict-appellant and none else is liable for the commission of the alleged offence. In the instant case, we do not find any such strong circumstantial evidence that may lead to such irrestible conclusion; rather we find scattered pieces of circumstance which are very weak in nature.

13. It is true that the medical evidence supports that the injuries resulting death of the deceased could have been caused by a knife as exhibited in this case. Bt this fact also does not lend any support that the said knife was used by the convict-appellant or that the convict-appellant is the only author of the alleged crime under Section 302 of the Indian Penal Code.

14. In short, we hold that there was no evidence either direct or circumstantial sufficient to warrant conviction of the convict-appellant. Mere moral conviction about the liability of the convict-appellant for the alleged offence cannot from the basis of any legal conviction.

15. Accordingly, we feel constrained to say that the prosecution could not establish the case beyond the perrifery of doubts and as such the benefit of such doubt must go to the convict-appellant.

16. In the result, the Criminal Appeal is allowed. The impugned Judgment and Order of conviction are hereby set aside and the convict-appellant be acquitted on benefit of doubt and be set at liberty at once.

Nure Alam Chowdhury, J.

17. I agree