

State Vs. Mritunjay Biswas

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Court : Kolkata

Decided On : Dec-22-2004

Reported in : 2005(2)CHN677

Judge : Nure Alam Chowdhury and ;Ashim Kumar Banerjee, JJ.

Acts : Code of Criminal Procedure (CrPC) - Sections 164 and 313

Appeal No. : Cr. A. No. 8 of 2004

Appellant : State

Respondent : Mritunjay Biswas

Advocate for Def. : N.A. Khan, Adv.

Advocate for Pet/Ap. : R.S. Saroop, Id. P.P. and ;KMB Jayapal, Adv.

Disposition : Appeal dismissed

Judgement :

Ashim Kumar Banerjee, J.

1. On 10th May, 2000 one Ramananda was found dead in his house at about 9/9.30 a.m. in the morning his head was detached from his body. The villagers discovered the deadbody and thereafter lodged FIR with the local police station. On the day earlier i.e., on May 9, 2000 the accused Mritunjay came to the house

of Ramananda and victim in presence of the Prosecution Witness No. 1 advised Mritunjay to stay at night as the road was a forest road and it was not advisable to travel during night. PW.1 and one Kalipada met Mritunjay in the evening at the house of Ramananda and they left the place after a while. In the next morning at 9/9.30 a.m. they discovered the deadbody and lodged FIR with the police. While going to the police station they met one tea stall owner being P.W. 7 who stated that the accused Mritunjay took tea from his stall and when he demanded money Mritunjay threatened him with dire consequence and told him that he had finished one and the stall owner would have the same fate if the money was demanded.

2. Next day, i.e., on 11th May, 2000 Mritunjay surrendered to the police and made confessional statement under Section 164 of the Cr. PC.

3. The local police authority recovered the body from the locale. They also seized one chopper (Dah) with blood-stained near the deadbody. The police authority also found the head detached from the body. They also recovered the wearing apparels of Mritunjay being one baniyan and one lungi from the house of the victim. The police sent the body for post-mortem. The police authority also sent the blood samples from the body, the chopper as well as the wearing apparels having blood stains used by Mritunjay.

4. The post-mortem report suggested that the death was caused by sharp weapon and it was conducted while the victim was asleep and the probable time of death was about 5/6 hours after the meal.

5. On the basis of the surrender and statement made under Section 164, Cr. P.C. the police authority chargesheeted the accused Mritunjay and he faced the trial.

6. During the trial the police produced at least 10 witnesses. The PWs. 1, 2 and 3 are respectively the FIR lodger, the Sarpanch and one villager. They all witnessed the discovery of the body and seizure by the police. PW.5 was the witness to the seizure list. PW.4 was the son of the victim who was staying at Sitanagar and came after receiving the information of the unfortunate incident. He adduced that his mother was away from the place of occurrence and she stayed with PW.4 at his house at Sitanagar as his mother could not return after receiving kerosene oil

from the ration shop at Diglipur. The tea stall owner being PW. 7 also made statement as referred to above. PW.6 was the Head Constable officiating as SHO on the relevant date while PW.10 was the Sub-Inspector who stated that the murder was caused due to quarrel between the victim and the accused due to old enmity. Pertinent to mention, this was a hearsay evidence as the PW.10 was told this by one Narayan Nair who also heard it when the PW. 6 was talking to the accused at the police station. Pertinent to mention that PW.6 did not corroborate such fact while deposing.

7. Accused did not examine himself or any other witness in support of his defence. He, however, pleaded not guilty while making statement under Section 313 of Cr. PC.

8. The learned Sessions Judge analysed the evidence and came to a conclusion that since there was no eye-witness to the unfortunate incident, it was the duty of the prosecution and prosecution only to prove the circumstantial evidence which would conclusively suggest that the murder was caused by the accused and none else. The learned Sessions Judge also made reference to the fact that the weapon allegedly used for such murder was not examined by the forensic expert and the finger print appearing therein was not tallied with the finger print of the accused. The learned Sessions Judge ultimately held that the accused was entitled to have benefit of doubt and passed an order of acquittal.

9. We have carefully examined the judgment and order impugned. We have also independently examined the evidence of the witnesses as well as the postmortem report and serological report. On analysis of the evidence both oral and documentary, it would reveal as follows :--

Facts proved/Presumption as Facts should have been against the accused. proved, but not proved/i) Prosecution was able to prove the Facts in favour of the murder. The beheaded body of the accused.victim was found and recovered by the i) There was no eye-witness to police. Post-mortem report suggested the incident.that the death was caused due to (ii) Nobody was there save and murder by sharp weapon while the except the victim and the victim was asleep. accused last seen in the house(ii) The weapon was found near the in the evening of 9th

May, 2000. deadbody with blood stains. (iii) There was no proof that (iii) Mritunjay being the accused stayed Mritunjay stayed at the night with the victim and was last seen in the house of the victim. together at the house of the victim. (iv) The finger print which was (iv) The accused Mritunjay surren- relevant evidence was not dered to the police and made statement taken by the police and was not under Section 164, Cr. PC. (not tallied through forensic ex-exhibited). amination with the finger print (v) The blood-stained cloths and the of the accused. blood group of the deadbody tallied as (v) Two material witnesses per the serological report and both Kalipada and the doctor who blood groups were A+. conducted the post-mortem (vi) The accused Mritunjay was last (Dr. Kajal Anand) were not seen on the relevant date i.e. 10th May, produced by the prosecution as 2000 before he was arrested by the witnesses. police at 6 o'clock in the morning when (vi) The reason for murder he took tea from the tea stall and being the mens rea was totally threatened the stall owner with dire absent and the prosecution consequence and stated that the tea could not bring the same install owner would have the same fate evidence save and except a if he demanded the money as Mritunjay mere statement of PW. 10 ashad just finished one. discussed herein before.

10. If we balance these two, then we would find that there are more things which are required to be brought in evidence to rope in Mritunjay, specially when there was no eye-witness. We are unhesitantly of the opinion that the prosecution failed to do so. Upon a complete reading of the entire evidence, the reports and the judgement of the learned Sessions Judge, one might feel that the accused might be involved in this case but that is not sufficient to rope in the accused and convict him and the learned Sessions Judge was right in giving the benefit of doubt to the accused.

11. Hence, we are totally in agreement with the well-reasoned judgement and order of the learned Sessions Judge and we do not find any scope of interference.

12. Hence, the appeal fails and is hereby dismissed.

13. Before parting with, we must record our appreciation to the contribution made by Mr. KMB Jayapal, learned Counsel holding the brief on behalf of Mr. R. S. Saroop, learned Public Prosecutor appearing for the appellant as well as the

contribution made by Mr. N.A. Khan, learned Counsel engaged by the State on behalf of the respondent.

Nure Alam Chowdhury, J.

14. I agree.

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