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**(2017) 07 CAL CK 0027**  
**In the Calcutta High Court**  
**Case No : 784 of 2006**

Ganesh Rajwar

APPELLANT

Vs

The State of West Bengal

RESPONDENT

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**Date of Decision :** 12-07-2017

**Acts Referred:**

[Code of Criminal Procedure, 1973](#), [Section 313](#) - Power to examine the accused  
[Indian Penal Code, 1860](#), [Section 120B](#),  
[Section 302](#), [Section 201](#)

**Citation :** (2017) 07 CAL CK 0027

**Hon'ble Judges :** Debasish Kar Gupta, Md. Mumtaz Khan

**Bench :** DIVISION BENCH

**Advocate :** Mainak Bakshi, Ranabir Roy Chowdhury, Mainak Gupta

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## Judgement

1. This appeal is directed against a judgment, order of conviction and sentence dated November 1, 2006, passed by the learned Additional Sessions Judge, 2nd Court, Purulia in Sessions Trial No.29 of 2006 arising out of Sessions Case No.143 of 2006. The appellant was convicted for commission of offence punishable under Sections 302 / 201 Indian Penal Code (hereinafter referred to as the I.P.C .) and he was sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/- only in default of payment of fine to suffer rigorous imprisonment for a further period of six months for finding him guilty of commission of offence punishable under Section 302 I.P.C. as also to suffer rigorous imprisonment for one year and to pay fine of Rs.5000/- in default of payment of fine to suffer rigorous imprisonment for a further period of one month for the offence punishable under Section 201 I.P.C.

2. The other four (4) accused persons namely, Sudhir Rajwar, Visam Rajwar, Bidesh Rajwar and Bhiku Rajwar were found not guilty of commission of offence punishable under Section 302 / 201 I.P.C. and they were acquitted accordingly.

3. The prosecution case in a nutshell is as under:- A written complaint dated

March 5, 2005, was received by the Officer-in-Charge, Kenda Police Station, Purulia from one Sri Santosh Mahato (PW 1). According to the above letter of complaint, his cousin brother namely, Hashu Mahato, since deceased, went out of his residence on March 2, 2005, at 19.00 hours. He did not come back to his house. On March 5, 2005, at about 13.00 hours the dead body of the aforesaid person was discovered in the Kamta Dam in floating condition. Mark of injury on the dead body of the aforesaid deceased was found.

4. According to the above written complaint, there was existence of illicit intimacy of the above deceased person with one Parbati Rajwar, wife of Indra Rajwar of the same village. For that reason, the deceased was beaten by the husband of Parbati Rajwar and their relations namely, Sudhir Rajwar, Visam Rajwar, Bidesh Rajwar and Bhiku Rajwar few years back. The aforesaid Parbati Rajwar made an attempt to kill the deceased with a sharp cutting weapon (Vojali) one year back before the date of marriage of the deceased. The appellant had intimacy with the deceased. According to the letter of complaint, the appellant took the deceased out of his house on the date of incident taking advantage of his intimacy with the deceased and killed him. Thereafter, the appellant and his associates dropped the dead body of the deceased in the water of Kamta Dam situated near their village.

5. On the basis of the above written compliant formal FIR being Kenda P.S. Case No.06/2005 dated March 5, 2005 was lodged against five (5) accused persons including the appellant for commission of offence punishable under Sections 302 / 201 / 120B I.P.C. PW 14, the Investigating Officer conducted inquest examination on the dead body of the deceased on March 5, 2005 at about 18.45 hours in connection with the above FIR. From the preliminary investigation the names of five (5) persons including the appellant surfaced as recorded in the above inquest report. PW 1, PW 2, PW 5 and one Dilip Choudhury were the witness of the above inquest report.

6. Post mortem examination over the dead body of the deceased was conducted by PW 13 on March 6, 2005 at 13.10 hours. According to the above post mortem report, the cause of death was due to asphyxia and shock due to throttling and other injuries mentioned in the above post mortem report which were ante mortem and homicidal in nature.

7. After conducting investigation, PW 14 submitted charge sheet no.21 of 2005 dated August 30, 2005, in the matter against five (5) accused persons including the appellant for commission of offence punishable under Sections 302 / 34 I.P.C.

8. Charge was framed against five (5) accused persons including the appellant on June 7, 2006 for commission of offence punishable under Sections 302 / 34 & 201 I.P.C.

9. After examining fourteen (14) prosecution witnesses and taking into consideration the other documentary evidences as also the statement of the appellant and other accused persons under Section 313 Cr.P.C. the impugned

judgment, order of conviction and sentence were passed.

10. It is submitted by Mr. Mainak Bakshi, learned advocate appearing for the appellant that the impugned order of conviction was based on the basis of the circumstantial evidence applying the doctrine of "last seen together". According to him, the learned trial Judge was in error in ignoring the time gap in applying the above doctrine. According to him, the evidence of PW 1 though corroborating with that of PW 6 and PW 7, it was not enough to prove the commission of offence by the appellant beyond all reasonable doubt on the basis of the circumstantial evidence. It is also submitted by him that the entire evidence of PW 7 was neither corroborating with the evidence of PW 1 and PW 6 nor it was trustworthy. It is also added by him that from the evidence of PW 1, PW 6 and PW 7 the close friendship in between the appellant and the deceased was proved and no motive of the appellant for commission of offence was proved.

11. Drawing our attention towards the evidence of PW 14 (the I.O.), it is submitted by him that the statement of the PW 7 (the mother of the deceased) with regard to confession of the appellant for commission of offence had not been disclosed to the PW14 (the I.O.) during investigation and it was disclosed for the first time in Court. According to him, there was failure on the part of the prosecution to form a complete chain to prove prosecution case beyond all reasonable doubts on the basis of the circumstantial evidence.

12. Reliance is placed by Mr. Bakshi on the decisions of *Lakhanpal vs. State of M.P.*, reported in AIR 1979 SC 1620, *State of Uttar Pradesh vs. Shyam Behari*, reported in (2009) 15 SCC 548 and *Arun Bhakta @ Thule vs. State of West Bengal*, reported in (2008) 17 SCC 367 in support of his above submissions.

13. On the other hand the above submissions are vividly opposed by Mr. Ranabir Roy Chowdhury, learned advocate appearing for the State respondent. According to him, the prosecution case was proved beyond all reasonable doubts from the evidence of PW 1 corroborating with the evidence of PW 6 and PW 7. According to him, it could not be a ground for disbelieving the evidence of PW 7 that the fact appellant's confession to PW 7 with regard to commission of offence was disclosed in Court for the first time.

14. We have heard the learned Counsel appearing for the respective parties at length and we have given our anxious consideration to the facts and circumstances of this case.

15. Admittedly, the prosecution case was not based on eyewitness. The impugned conviction was based mainly on the evidence of PW 1. According to his evidence, the appellant and the deceased were seen together for the last time by PW 1 on March 2, 2005, at about 19.00 hours. According to his evidence, the appellant called the deceased to come out of his house. It was corroborated by the evidence of PW 6, the widow of the deceased and that of the PW 7, the mother of the deceased. The appellant came back to his house on the aforesaid date at night but the appellant did not come back. On the basis of the evidence

on record the dead body of the deceased was found floating in the water of Kamta Dam on March 5, 2005, i.e., after three (3) days from the date of disappearance of the deceased. From the evidence of PW 1 during his cross-examination it appears that he had found the appellant and the deceased on March 2, 2005, to move silently. According to the evidence of PW 10 the appellant and the deceased were friends.

16. In *Bodhraj @ Bodha & Ors. vs. State of Jammu and Kashmir*, reported in (2002) 8 SCC 45, it was decided that the time gap between the point of time when the accused and the deceased were last seen alive and the deceased was found dead was so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other person coming in between exists. The relevant portion of the above decision is quoted below:-

"The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult to some cases, to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other person coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases." 17. In view of the above settled principles of law, we find that the appellant and the deceased were found together for the last time 48 hours before the discovery of the dead body of the deceased which was a long gap. Applying the above principles of law the possibility of other person coming in between could not be ruled out. That apart, there was friendship in between the deceased person and the appellant which supported the possibility of moving around together.

18. For the aforesaid reasons, the impugned judgment requires our interference on the above ground.

19. With regard to the evidence of the mother of the deceased (PW 7) that the appellant had confessed before her on March 2, 2005, that- "the deceased was no more in this world"- the same should not be considered as trustworthy in view of the admitted fact that the above fact was not disclosed to the investigating officer during investigation or at the time of searching the deceased before discovery of his dead body. Nothing is available on record showing that there was intimacy of the appellant with one Parbati Rajwar, who allegedly had illicit relationship with the deceased nor any link of the alleged illicit relationship with the murder of the deceased surfaced from the evidence on record.

20. In view of the above, we are of the opinion that there was failure on the part of the prosecution to form a complete chain of link on the basis of the

circumstantial evidence to prove the commission of offence by the appellant beyond all reasonable doubts.

21. The impugned judgment, order of conviction and the sentence are quashed and set aside. This appeal is, thus, allowed. The appellant is directed to be set free expeditiously unless he is otherwise required in any case.

22. Let this judgment together with the Lower Court's records be sent back to the learned Court below expeditiously.

23. Urgent photostat Certified Copy of this judgment, if applied for, be given to the parties, on priority basis.