

(2012) 09 CAL CK 0052
In the Calcutta High Court
Case No : CRA No. 297 and 704 of 2007

Manoj Rajak

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 21-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 6
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2012) 09 CAL CK 0052

Hon'ble Judges : Tapen Sen, J; Dipak Saha Ray, J

Bench : Division Bench

Advocate : Manjit Singh, Mr. Anand Keshari and Mr. Pawan K. Gupta, for the Appellant; Siladitya Sanyal, Ld. , Assistant Public Prosecutor and Mr. Sandip Chakraborty for the State, for the Respondent

Judgement

Dipak Saha Ray, J.—A common Judgment and order of conviction and sentence have been assailed in four criminal appeals. For the sake of convenience of discussion and arriving at a just decision, all the four appeals viz. CRA. No. 297 of 2007 with CRA No. 704 of 2007; CRA No. 413 of 2007 and CRA No. 857 of 2006 are taken up jointly. The aforesaid four appeals are directed against the judgment and order of conviction and sentence passed by the learned Additional District & Sessions Judge, First Court, Alipore, South 24 Parganas in connection with Sessions Trial No. 4(2)/2001 arising out of Cossipore P.S. Case No. 132 of 2000 dated 30.7.2000 u/s 302/34 of the Indian Penal Code.

2. The said case was started on the basis of a written complaint filed by one Gopal Das, brother of the deceased Tapan Das, on 30.7.2000 before the Officer-in-Charge, Cossipore P.S. The defacto complainant in his written complaint alleged inter alia that on 30.7.2000 at about 3.50 A.M. he woke up on hearing the cry "khoon, khoon" of his sister-in-law (Boudi), Laxmi Das and accordingly he came out from his room and went to the staircase for proceeding towards the room of his elder brother situated in the same building. At that time he saw

Manoj Rajak with a large knife in his hand coming down from the first floor. He also saw Pappu Singh and Debu Patra with razors in their hands, coming down from the first floor and fleeing away towards the field situated by the side of that house. At that time other occupants of that house and also "para" people saw Manoj Rajak, Pappu Singh and Debu Patra coming down from the first floor of the said house. It is further contended in the written complaint that the defacto complainant thereafter entered into the room of his elder brother and noticed that his elder brother was lying on the bed in a pool of blood. He also noticed that the intestines of his elder brother had come out. He also found injuries on the neck and left shoulder of his elder brother. At that time, his sister-in-law and his nephew were found inside the room. On seeing him, his sister-in-law (wife of his elder brother) informed him that Manoj Rajak with a knife, Pappu Singh with a razor had entered into the room and after having gagged her, threatened to kill her if she attempted to shout. Thereafter Manoj Rajak assaulted her husband on his abdomen with the knife. She also informed him that Debu Patra, with a razor in his hand, was standing outside the door of their room and was acting as a guard. After the assault of Manoj Rajak, Debu Patra also assaulted her husband with razor and thereafter they fled away from the room.

3. In the said written complaint, the defacto complainant has further alleged that his sister-in-law, Laxmi Das, had illicit relation with Manoj Rajak. Accordingly, he suspected that Laxmi Das perhaps opened the door of their room and accordingly Manoj Rajak, Pappu Singh and Debu Patra got scope to enter into their room and were able to commit murder of his elder brother, Tapan Das. In the said written complaint, the informant alleged that Manoj Rajak, Pappu Singh and Debu Patra entered in a criminal conspiracy with Laxmi Das and committed murder of Tapan Das. On the basis of the said written complaint, Cossipore P.S. Case No. 132 of 2000 dated 30.7.2000 u/s 302/34 of the Indian Penal Code was started.

4. The Police after completion of investigation submitted charge sheet in this case against four accused persons viz. Manoj Rajak, Pappu Singh, Debu Patra and Laxmi Das for the offence punishable u/s 302/34 of the Indian Penal Code.

5. On the basis of the aforesaid allegations and other relevant materials, the accused persons were tried for the offence punishable u/s 302/34 of the Indian Penal Code. All the accused persons, however, pleaded not guilty and claimed to be tried when the said charge was read over and explained to them.

6. As against this, the defence case, as it appears from the trend of cross-examination and the statements made during examination of the accused persons u/s 313 of the Code of Criminal Procedure, was the denial of the prosecution allegations and the plea of innocence.

7. The prosecution in order to discharge the burden of establishing the guilt of the accused persons examined as many as 21 witnesses.

8. After taking into consideration all relevant facts and circumstances and the evidence on record, the learned trial court found all the four accused persons

guilty for the offence punishable u/s 302/34 of the Indian Penal Code and the accused persons were convicted accordingly.

9. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence, the convicts viz. Manoj Rajak, Pappu Singh and Debu Patra as appellants have preferred appeals which have been registered as CRA. No. 297 of 2007; CRA No. 413 of 2007 and CRA. No. 857 of 2006 respectively. Apart from CRA. No. 297 of 2007, Manoj Rajak as appellant has also preferred another appeal which has been registered as CRA. No. 704 of 2007.

10. The grievances of the appellants may be capsulated in a few sentences as follows:

The learned trial court has failed to appreciate the evidence on record on its proper perspective and approached the case from a wrong angle and this has resulted in failure of justice. It is further alleged that the learned Trial Court has failed to take note of the fact that the time of the alleged occurrence was night and as such it could not be possible to identify the miscreants who are said to have been found coming down from the first floor as there was no electricity in the said holding where the alleged incident took place. The learned trial court has failed to take notice of the fact of other inconsistencies of the evidence on record and as such has come to an erroneous decision.

11. After taking into consideration all relevant facts and circumstances and materials on record and giving due regard to the submissions made by the Learned Counsels for both the parties, we think that the only point requiring adjudication is whether or not the impugned judgment and order of conviction and sentence passed by the learned trial court are liable to be set aside.

12. The Learned Counsel for the petitioner has submitted that according to the prosecution case, the wife and the minor son were present at the place of occurrence when the incident took place and that at the time of initiation of the case, the wife has been implicated as one of the accused persons of this case; but it is surprising to note that the son who was also present in the room of the deceased at the time of occurrence, has not been made a witness of this case which creates an adverse presumption in respect of the case. He has further submitted that there are major contradictions in the evidence of the witnesses with reference to their previous statements made before the I.O.; so, the conviction of the appellants on the basis of the said testimony of the witnesses was unsafe.

13. The Learned Counsel for the State, on the other hand, has submitted that the learned trial court rightly appreciated the evidence on record and after considering the materials on record rightly convicted the accused persons.

14. In this case, there is no controversy that the accused persons viz. Manoj Rajak, Debu Patra, and Pappu Singh, the victim/deceased Tapan Das and most of the witnesses of the case were the residents of the same building. There is also

no controversy that victim Tapas Das was murdered inside his tenanted room. There does not appear to be any controversy that the victim was murdered in presence of his wife, Lakshmi Das.

15. The controversy mainly relates to the question as to whether it was the present three convicts/appellants who inflicted the injuries by assaulting the victim with knife and razors as alleged by the prosecution.

16. PW 1 is the defacto complainant and this witness has stated about the incident in details. He has also stated that he saw the accused persons with sharp cutting weapons coming down from the first floor i.e., from the floor where the room of the deceased is situated. It further appears that this witness has corroborated his earlier statement i.e. contents of the written complaint which was lodged with the O.C. of the concerned P.S.

17. P.W. No. 2 is the Police photographer who took snaps of the place of occurrence and dead-body.

18. P.W. 3 is the Plan Maker who prepared the rough sketch map of the P.O.

19. PW 4 is also a resident of the same holding where the incident took place. This witness has also corroborated the evidence of the informant i.e., PW 1. On careful scrutiny of the testimony of this witness, it appears that there is no contradiction in his evidence before the Court with reference to his earlier statement made before the I.O.

20. PW 5 is also a resident of the said holding where the occurrence took place. From the evidence of these witnesses, it appears that in presence of the accused persons one blood stained "lungi" was recovered from the house of deceased Tapan Das which was seized under the seizure list, marked Ext. 1.

21. PW 6 is also the resident of the same building where P.W. s No. 1, 4, 5 reside. From her evidence, it appears that the relation between Manoj Rajak and Laxmi Das was informed by her to the mother-in-law and sister-in-law of Laxmi Das.

22. PW 7 in her evidence stated that there was love affairs between Manoj Rajak and Laxmi Das and as deceased Tapan Das opposed such relation, Laxmi Das used to threat him to kill and Manoj Rajak also used to threaten Tapan Das that he would kill him. This witness except the aforesaid evidence has stated nothing in respect of the incident of this case.

23. PW 8 is the mother of the deceased Tapan Das. She stated about the illicit connection between Manoj Rajak and Laxmi Das and from her evidence it appears that three/four weeks before the incident, Laxmi Das cautioned her husband, deceased Tapan Das, that he would be killed by Manoj Rajak. The cross-examination of PW 8 goes to show that she never asked her husband to inform the said matter of threatening before the Police.

24. PW 9 is a seizure witness. From his evidence it appears that the accused

Debu Patra led the recovery of a razor from the a bush. Accordingly, the Police seized the said razor under seizure list and during cross-examination of this witness the defence put suggestion before this witness that he never saw Debu Patra to recover the razor from the bush of the ground. But this witness has denied the said suggestion.

25. PW 10 is also a seizure witness who is also the resident of the holding where the incident took place. From his evidence it appears that Manoj Rajak recovered a knife from the bush and handed over the same to the Police Officer. This witness has also denied the suggestion of the defence that he never saw Manoj Rajak to recover the knife from the bush.

26. PW 11 has corroborated the evidence of PW 10. This witness has negated the suggestion of the defence that he never saw Manoj Rajak to pick up a knife from the bush and hand over the same to the Police.

27. PW 12 is also the resident of 58/1B, B.T. Road, Calcutta-2 where the incident took place. This witness has corroborated the evidence of PWs. 1 and 4 and his evidence goes to show that on hearing cry of Laxmi Das when he came out at about 3.45/4 A.M., from his room to attend nature's call, he heard the hue and cry of Laxmi Das and at that time he saw Manoj Rajak, Pappu Singh and Debu Patra were coming down from the first floor and went towards the field. He has also identified the said three persons in court. Now, considering his evidence with reference to the evidence of I.O., it appears that he has corroborated his earlier evidence made before the I.O. during investigation.

28. PW 14 has displayed unfriendly attitude towards the prosecution for which he has been declared hostile. This witness has not supported the prosecution case at all. He has resiled from his earlier statement altogether. So, his credibility has been seriously impeached and he stands thoroughly discredited. So his evidence is rejected in toto.

29. PW 15 in his evidence has also stated that she also saw Manoj Rajak, Pappu Singh and Debu Patra coming out from the house of deceased Tapan Das. Her evidence also goes to show that she also noticed Tapan Das lying dead in his room and his intestine came out from his abdomen. On careful perusal of the cross-examination of this witness it appears that the defence has failed to shake her evidence.

30. PW 16 is a Police Officer and he held inquest over the dead body of the deceased and prepared inquest report which is marked as Ext. 13.

31. PW 17 is a Police Constable who brought the dead body to R. G. Kar Medical College & Hospital for postmortem examination of the dead body of Tapan Das.

32. PW 18 is a autopsy surgeon who held the postmortem over the dead body of Tapan Das. He also proved the postmortem report and during postmortem, he opined that death was due to the effect of injuries which was antemortem and homicidal in nature.

33. PW 19 examined the P.O. and submitted the report which has been marked as Ext. 16.

34. PW 20 is a Physician and from his evidence it appears that on 30.7.2000 he was posted as Emergency Medical Officer at R.G. Kar Medical College & Hospital where he examined the dead body of Tapan Das and from his evidence it appears that the victim Tapan Das was brought before him and after examination, he declared that Tapan was brought dead. His evidence further goes to show that the wife of the deceased at that time informed him that the patient was stabbed by Manoj Rajak.

35. PW 21 is the Investigating Officer of this case. This witness, during investigation examined the witnesses and recorded their statements. He also collected the documentary evidence in support of the case and after completion of investigation submitted charge sheet against the four accused persons viz. Manoj Rajak, Pappu Singh, Debu Patra and Laxmi Das u/s 302/34 IPC.

36. Now, considering the evidence and materials on record, it appears that PWs. 1, 4, 5, 12 and 15 on hearing hue and cry of Laxmi Das, came out from their respective rooms and went to the room of Tapan Das situated at first floor of the same building and found Tapan lying dead. At that time, Laxmi Das told them that Manoj Rajak, Pappu Singh and Debu Patra killed her husband. It is the case of the prosecution that on 30.7.2000 at about 3.50 A.M., on hearing the hue and cry of Laxmi Das, wife of deceased Tapan Das, they woke up and came out from their room and noticed that the accused persons viz. Manoj Rajak, Pappu Singh and Debu Patra being armed with sharp cutting weapons viz. a large knife and razors coming down from the first floor and fled away therefrom. The incident took place at 58/1B, B.T. Road, Calcutta-2. The evidence of the witnesses goes to show that many tenants reside in the said holding. PWs. 1, 4, 5, 12, 15 are also the inhabitants of the same holding. Of them PW 1 is the brother of the deceased Tapan Das. Other witnesses have got no relation with the deceased Tapan Das.

37. During examination on oath before the court, all the said witnesses have corroborated the prosecution case in details. In this context, it is desirable to mention that from the evidence of the witnesses of this case, it appears that the accused persons are also the residents of the said holding i.e. of 58/1B, B.T. Road, Calcutta-2. So, the said accused persons are well known to the inhabitants of the said holding including the witnesses. From the evidence of the witnesses, it further appears that the said holding had no electric connection at the relevant point of time; but there was street light. From the above facts and circumstances and the evidence on record it appears that accused persons are known to the witnesses as they are the Co-tenants of the same holding. So, it was possible on the part of the witnesses to identify the accused persons in the street light.

38. From the discussion of the evidence of the witnesses of this case, it appears that in this case PWs. 1, 4, 5, 12 and 15 are very vital and valuable witnesses who have stated in details about the prosecution case. During discussion of the

evidence of the said witnesses, it has already been pointed out that the defence has failed to elicit any contradiction in their cross-examination to discredit their testimony. During cross-examination of the said witnesses PWs. 1, 4, 5, 12 and 15, the defence has also not raised any question to the fact that these witnesses are in any way related and/or connected with the deceased Tapan Das or with his family. During cross-examination, no suggestion was also put to the said witnesses describing them as interested witnesses. So, the said witnesses have no reason to be disbelieved and their evidence cannot be discarded. After all, they cannot be coloured as interested witnesses when the defence has not raised any doubt in this regard. It is not found that the said PWs. have any sort of enmity with the present accused persons. From the evidence of PWs. 9, 10 and 11, it appears that Debu Patra led the recovery of razor and Manoj Rajak led the recovery of knife and the said razor and knife were seized by the Police under seizure list in presence of the said witnesses.

39. The evidence of PW 5 also goes to show that the Police took the accused persons to the house of deceased Tapan Das and searched that house and recovered a blood stained lungi therefrom. Now, Exts. 16, 19, 20 and 23 go to show that during investigation, the accused Manoj Rajak, Pappu Singh and Debu Patra made statements to the Police and on the basis of the said statements incriminating articles i.e., weapons of offence were recovered from the place shown by the accused persons. It further appears that as per the statement of Manoj Rajak, his blood stained lungi was also recovered from the room of the deceased Tapan Das.

40. It is argued on behalf of the defence that the alleged offending weapons recovered in connection with this case were not sent to Forensic test, so, it cannot be said that the said weapons were used by the accused persons at the time of alleged commission of offence. It is also argued that no blood stain was found on the said weapons and as such it cannot be said that the said weapons were used at the time of commission of murder of Tapan Das.

41. Now, from the seizure lists it appears that the knife was recovered on 6.8.2000 as per the statement of Manoj Rajak and one razor was recovered on 9.8.2000 as per the statement of Debu Patra. So, it appears that the knife was recovered six days after the occurrence and razor was recovered nine days after the occurrence. In the instant case, the occurrence took place on 30.7.2000 and the weapons were recovered on 6.8.2000 and 9.8.2000 respectively i.e., during the rainy season. Accordingly the possibility of washing out of the blood stain from the alleged offending weapons cannot be ruled out. So, non-detection of any blood stain on the said weapons does not harm the prosecution case. In the instant case, none of the witnesses has stated that Pappu Singh also assaulted deceased Tapan Das with his razor and as such the question of detecting blood stain on the razor which was recovered on the very day of occurrence does not arise at all.

42. There are some minor inconsistencies and non-antagonistic contradiction in

the evidence of some of the witnesses and the said minor contradiction or inconsistencies in the evidence of the said witnesses could not cause any harm to the prosecution case.

43. In this context, it is desirable to refer to a decision reported in 1988 CrLJ 828. In the said decision the Hon''ble Supreme Court has been pleased to observe as follows:

The Court while appreciating the evidence must not attach undue importance to minor discrepancy. The discrepancies which do not shake the version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court by calling into aid its vast experience of men and matters in different cases must evaluate the entire materials on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses now-a-days go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the Court. The Courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy.

43. In another case reported in *Sohrab and Another Vs. The State of Madhya Pradesh*, it has been observed by the Hon''ble Supreme Court that "... hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration or embroideries or embellishments."

44. It has been argued by the learned defence counsel that in absence of motive conviction based solely on circumstantial evidence is not justified. It is further submitted that the prosecution has failed to establish any motive for the commission of the alleged crime by the accused persons. Now, let us see if this argument of the learned defence counsel based on motive has any force at all.

45. It is true that in the instant case the prosecution has not established any motive; but the question is whether the proof of motive is indispensably essential in every case. It has already been pointed out from the evidence of the witnesses that just after the incident when they went to the room of the deceased Tapan Das, the wife of the deceased Tapan Das informed them that Manoj Rajak assaulted Tapan Das with a knife and thereafter Debu Patra assaulted Tapan Das with razor. Ext. 17 and the evidence of P.W. 20 also go to show that Laxmi Das, wife of the deceased, informed the emergency Medical Officer that Manoj Rajak assaulted Tapan Das. The evidence of the witnesses also goes to show that Manoj Rajak and Pappu Singh threatened Laxmi Das not to make any noise. From the evidence of PW 20, it further appears that Laxmi Das and others brought Tapan Das to the hospital before the Medical Officer-in-charge of R. G. Kar Medical College & Hospital and at that time Laxmi Das informed him (Medical

Officer) that the patient was stabbed by Manoj Rajak on 30.7.2000 at about 3.50 A.M. by a large knife. The aforesaid facts were not controverted during cross-examination.

46. The said statements of Laxmi Das (who was make an accused of the case) is taken into consideration in the facts and circumstances of this case as per the provision of Section 6 of the Evidence Act.

47. In the present case, there is no direct evidence and it rested entirely on the following circumstantial evidence viz. i) on 30.7.2000 at about 3.50 A.M. the witnesses saw all the three accused persons/appellants herein with sharp cutting weapons in their hands coming down from the first floor. After coming down from the first floor they fled away towards the nearby field; ii) the wife of the victim Tapan Das just after the incident informed the witnesses that her husband was murdered by the accused persons; iii) as per the statements of Manoj Rajak, the blood stained lungi was subsequently (on the self-same day of the incident) recovered from the P.O.; iv) the accused persons also led the recovery of the knife and razors and v) from the post mortem report (Ext. 14/10) with reference to the evidence of PW 18, it appears that the injuries found on the dead body cannot be caused by a single person.

48. From the above discussions, it can be said that complete chain of circumstances to hold the accused guilty have been established by the prosecution beyond reasonable doubt. In other words, the prosecution has successfully shown the circumstances linked together establishing the guilt of the accused meaning thereby that these facts and circumstances lead us to the only theory that it was the accused persons who committed the crime and none else.

49. Considering all such facts and circumstances and materials on record and from the discussions made above, we are inclined to hold that the prosecution has proved the guilt of the accused persons viz. Manoj Rajak, Pappu Singh and Debu Patra u/s 302/34 of the Indian Penal Code beyond all reasonable doubt and dispute and to the satisfaction of the judicial conscience of the court.

50. We, therefore, find no reason for sharing the grievances as ventilated on behalf of the appellants and in our opinion, there is no reason for any disagreement with the views of the learned trial court. So, to conclude the judgment and order of conviction and sentence which have been sought to be assailed do not call for or deserve any interference.

51. Accordingly, these Criminal Appeals fail.

52. CRA No. 297 of 2007 with CRA No. 704 of 2007; CRA No. 413 of 2007 and CRA No. 857 of 2006 be dismissed on contest.

53. The judgment and order of conviction and sentence passed by the learned trial court in Sessions Trial No. 4(2)2001 stand affirmed.

54. The appellants/convicts viz. Manoj Rajak, Pappu Singh, Debu Patra and

Laxmi Das are found guilty of offence u/s 302/34 of the Indian Penal Code. They are directed to surrender before the learned Additional District & Sessions Judge, First Court, Alipore, South 24 Parganas to serve out the sentence.

55. Let a copy of this judgment alongwith the LCR be sent to the learned trial court for information and necessary action.

56. Upon appropriate Application(s) being made, urgent Photostat Certified copy of this Judgment, be given/issued expeditiously subject to usual terms and conditions.

Tapen Sen, J.

I agree.