
(2011) 08 CAL CK 0112
In the Calcutta High Court
Case No : C.R.A. No. 345 of 1998

Raghu alias Roga Hembram	Vs	APPELLANT
State of West Bengal		RESPONDENT

Date of Decision : 29-08-2011

Acts Referred:

Evidence Act, 1872 — Section 27, 8
Penal Code, 1860 (IPC) — Section 302, 313, 34

Citation : (2012) 1 CALLT 53 : (2012) 3 CHN 81

Hon'ble Judges : J. N. Patel, C.J; Ashim Kumar Roy, J

Bench : Division Bench

Advocate : Prabir Mitra, for the Appellant; Madhusudan Sur and Mr. Apurba Kr. Dutta for state, for the Respondent

Final Decision : Allowed

Judgement

Ashim Kumar Roy, J.—The appellant Raghu @ Roga Hembram and one Rajen Nayek were placed on trial before the learned Additional Sessions Judge, Midnapore to answer a charge u/s 302/34 of the Indian Penal Code. In the said trial by a judgement and order passed on September 11, 1998 the appellant was finally convicted u/s 302 of the Indian Penal Code and sentenced to suffer rigorous imprisonment of life and to pay fine of Rs.5,000/-, in default to suffer rigorous imprisonment for a further period of one year and having found the co-accused not guilty passed an order of acquittal in his favour.

Hence, this appeal.

2. It is the case of the prosecution that on August 19, 1991 at about 7 p.m in the evening the victim Kartick Chandra Jana accompanied by Rajen Nayek and Raghu Hembram went out for having liquor but did not return home and on the next morning his dead body was found lying near the bank of Irrigation Canal of Nayanjuli. Subsequently, it was ascertained while they were consuming liquor at the shop of Bharat Tudu some quarrel took place between them but the same was soon pacified at the intervention of Bharat Tudu. It was also the case of the

prosecution soon thereafter some witnesses found the appellant Raghu Hembram with an axe near the place where the dead body was found and after arrest, at his instance the axe was recovered from near the place of occurrence and the bloodstained wearing apparels of the appellant from his house.

3. This is a case where there is no eyewitness to the murder and the prosecution case entirely rests on circumstantial evidence. The prosecution in order to sustain the charge against the appellant examined as many as 12 witnesses, while defence examined none and pleaded innocence.

4. It is well settled when a case based on circumstantial evidence the circumstances relied upon by the prosecution must be fully established and the chain of evidence furnished by those circumstances must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. Furthermore, the circumstances have not only to be fully established but also all the circumstances so established should be of a conclusive nature and must always be consistent only with the hypothesis of the guilt of the accused and not with his innocence. In other words, such circumstances should not be capable of being explained by any other hypothesis, except with the guilt of the accused and when all the circumstances cumulatively taken together, the same should lead to the only irresistible conclusion that the accused alone is the perpetrator of the crime and none else.

5. The prosecution case that the victim Kartick Chandra Jana died a homicidal death due to the ante-mortem injuries found in his body is not disputed from any quarter.

6. According to the P.W.11 Dr. Apurba Giri, the Autopsy Surgeon, who held the postmortem on August 21, 1991 at about 4 p.m., the victim died between 48 hours to 72 hours prior to the holding of postmortem examination and death was due to shock and cardiac respiratory failure as a result of the injuries found in his person, which were ante-mortem and homicidal in nature.

7. The first circumstance relied upon by the prosecution against the appellant is this that while consuming liquor at the shop of Bharat Tudu some altercation took place between the deceased Kartick Chandra Jana and the appellant and one Rajen Nayek and at the intervention of Bharat Tudu the quarrel stopped. In support of the same the prosecution examined P.W.2 Kali Pada Das, P.W.3 Anjali Jana, P.W.4 Sibeswar Das, P.W.6 Mahadeb Chandra Das but none of the said witnesses had any direct knowledge about the said incident and admittedly they were told about such facts by Bharat Tudu and during the trial Bharat Tudu was not examined as a witness. Accordingly, the evidence of the aforesaid witnesses being hearsay in nature is completely inadmissible in evidence and ought to be kept out of our zone of consideration and consequently, first circumstance against the appellant fails.

8. The second circumstance relied upon by the prosecution against the appellant that he was found with an axe in his hand near the place wherefrom the dead

body was recovered. In support of the same the prosecution examined P.W.5 Arshed Ali and P.W.8 Kajal Murmu. According to the P.W.5 Arshed Ali on the date of the occurrence while he was returning home he found the appellant standing on the "Bundh" and on being asked by him, the appellant told that he was going to cut trees and the place where he found the appellant standing was about 200 yards away from the place wherefrom the dead body was recovered. Whereas according to the P.W.8 Kajal Murmu on the date of the occurrence in the evening when he had been to "Bundh" to attend nature's call he found the appellant with an axe proceeding towards Bajju and the appellant told him that he was going to cut trees. This witness has admitted in his evidence that he has not told anybody on the following day of murder of Kartick that while he had been to "Bundh" he saw appellant with an axe in his hand proceeding toward Bajju. We find that so far as the P.W.5 Arshed Ali is concerned he has not only found the appellant about 200 yards away from the place where the dead body was lying he has not disclosed in his evidence as to when he saw the appellant there with axe. We also find that admittedly P.W.8 Kajal Murmu has not disclosed to anybody about the fact of finding the appellant near the place of occurrence with an axe in his hand on the date of the occurrence. In view of above, in our opinion, it would not at all be safe to act on their evidence. Furthermore, although one axe was recovered from the house of the appellant allegedly at his instance but during the trial the said axe was not exhibited before them for identification. We are, therefore, of the opinion this circumstance also does not lead to the conclusion of guilt against the appellant.

9. The third circumstance relied upon by the prosecution is the fact, according to P.W.7 Santosh Kumar Guchait after his arrest the accused confessed his guilt in committing murder of Kartick, which is also not admissible in evidence and is no help to the prosecution.

10. The fourth circumstance used against the appellant is the recovery of axe pursuant to his statement from his house as well as his bloodstained wearing apparels. However no statement of the appellant pursuant to which the axe in question and his bloodstained wearing apparels were recovered from his house was exhibited during the trial. Therefore such alleged recovery does not come within the ambit of section 27 of the Evidence Act and at best such recovery may be relevant u/s 8 of the Evidence Act as his conduct. We further find during the examination of the appellant u/s 313 of the Indian Penal Code it was put to him that the axe and the wearing apparels were recovered from his house pursuant to his statement although no recorded statement was exhibited. The prosecution has also not produced the said axe before the postmortem doctor while he was examined during trial seeking his opinion whether by such axe the injuries found on the dead body can be caused or not. The wearing apparels was sent to the FSL but there is no evidence that the same was stained with human blood. These being very serious infirmities in the prosecution case and that must go in favour of the appellant and this circumstance also fails.

11. For the reasons stated above, we have no hesitation to hold that in the case in hand, the prosecution has not been able to complete the chain of circumstances pointing towards the guilt of the appellant. We are of the further opinion the circumstances relied upon by the prosecution against the appellant are not of such nature which are only consistent with his guilt and not to any other hypothesis showing his innocence. Accordingly, the impugned order of conviction and sentence is set aside appeal is allowed.

12. The appellant who is now on jail if not wanted in connection with any other case be released from the jail forthwith. The Office is directed to communicate this order to the Trial Court and send down the records at once. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

J.N. Patel, CJ.

I agree.