
(2011) 02 CAL CK 0052
In the Calcutta High Court
Case No : CRA No. 237 of 2003

Santosh Ghosh and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 03-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157, 313
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2011) 2 CHN 337

Hon'ble Judges : J.N. Patel, C.J.; Mrinal Kanti Sinha, J

Bench : Division Bench

Advocate : Y.Z. Dastoor and Prabir Majumder, for the Appellant; Asimesh Goswami, Ld. P.P. and Joy Sengupta, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Patel, C.J.—In Sessions Trial No. 1(7) of 1999 arising out of Sessions Case No. 6(1) of 1999 the Appellants-accused were charged of having committed murder of Mrs. Arati Mukherjee, wife of late Asim Mukherjee in furtherance of their common intention and were found guilty of having committed offence u/s 302 read with Section 34 of the IPC and sentenced to suffer imprisonment for life and to pay 5,000/- each in default imprisonment for 6 months. This is challenged by the Appellants-accused by way of this appeal.

2. It is the prosecution's case that Mrs. Arati Mukherjee, the deceased, was employed by Durgapur Steel Plant on the death of her husband, Asim Mukherjee. While working she developed intimate relations with Santosh Ghosh (Appellant No. 1) and at times used to go out along with him. On the fateful day i.e., on 6.7.1997 Santosh Ghosh visited Mrs. Arati Mukherjee at her house and took her away with him on the pretext of visiting "Rather Mela" at village Pakhanna situated within the jurisdiction of P.S. Borjora. On the next day, a person from village Pakhanna came to the house where Mrs. Arati Mukherjee was residing along with her sister Mrs. Mira Rani Acharya (P.W. 1) and others and informed

that Arati was murdered in the house of Santoshbabu at village Pakhanna. As a result of this information, Mrs. Mira Rani Acharya (P.W. 1) accompanied with her son Durgapada Acharya (P.W. 2), Siddheswar Nanda (P.W. 3) and Rathin Ganguly went to the house of Santoshbabu at village Pakhanna. On reaching the house they saw the dead body of Mrs. Arati Mukherjee lying on a mat with one pillow on her head in the bedroom of Santoshbabu. They noticed marks of assault over the dead body causing bleeding injuries on the head, forehead and chest. On inquiry from the Appellant-accused Santosh Ghosh they came to know that due to quarrel between the Appellants-accused Santosh Ghosh, Pradip Ghosh and Mrs. Arati Mukherjee, Arati was brutally assaulted causing her death. On this Mrs. Mira Rani Acharya (P.W. 1) along with her son and nephew went to Borjora P.S. and lodged a report (Exbt. 1) which was treated as an FIR (Exbt. 5). On receipt of the report, officer in-charge of Borjora P.S. registered P.S. Case No. 48/97 u/s 302 read with Section 34 IPC and entrusted the investigation to PSI Baroda Prasad Dey (P.W. 14) who along with the staff visited the place of occurrence, i.e., the house of Appellant-accused Santosh Ghosh in village Pakhanna and found the dead body of the Mrs. Arati Mukherjee @ Ghosh in the Western side of the bed room of Appellant-accused Santosh Ghosh. Thereafter, in the presence of the witnesses prepared the inquest report (Exbt. 7) and seized certain articles and the dead body was sent for postmortem examination. The Investigating Officer in course of investigation recorded the statement of witnesses and on the next day arrested the Appellants-accused at their residence and at their instance a blood stained axe (Mat. Exbt. 4) came to be seized. The seized articles were sent to Forensic Science Laboratory. After completing investigation, charge sheet against the Appellants-accused was filed.

3. During trial, the Appellants-accused pleaded not guilty to the charge of having committed murder of Mrs. Arati Mukherjee @ Ghosh and claimed to be tried. It was their case that some unknown persons might have committed murder of Mrs. Arati Mukherjee and they suspected that the sister of the deceased Mrs. Mira Rani Acharya (P.W. 1) and her relatives might have got her killed through an assassin. The prosecution in all examined 14 witnesses; whereas in defence the Appellants-accused examined 21 witnesses including the Appellant-accused Santosh Kumar Ghosh who examined himself as one of the witnesses. On conclusion of the trial, the learned Additional Sessions Judge found that the prosecution has proved that the Appellants-accused have committed the murder and, therefore, having found them guilty, sentenced them to suffer imprisonment for life and fine.

4. On behalf of the Appellants-accused, it was submitted that the Appellants-accused have been falsely implicated in the case by Mrs. Mira Rani Acharya (P.W. 1), the sister of the deceased, in order to grab the property of the deceased who was a widow and had remarried the Appellant-accused Santosh Kumar Ghosh. It is stated that the complainant in this case, i.e., Mrs. Mira Rani Acharya (P.W. 1) was interested in grabbing the property of her sister and for that purpose in connivance with the Police Officer of Borjora P.S. filed report implicating the

Appellants-accused by stating that they have made an extra judicial confession of having committed murder of her sister and, accordingly, the police carried out the investigation and charge sheeted the Appellants-accused. It is submitted that the fact is evident as the first information report was manipulated and tampered and the FIR was not sent forthwith to the nearest Magistrate as per provision of Section 157 of the Cr. P.C. It is contended by the learned Counsel for the Appellants-accused that the learned Trial Court has not taken into consideration the evidence of witnesses who were the villagers, i.e., P.W. 4, 5, 6, 7 and 8 misdirected himself into believing the evidence led down by the prosecution by examining the sister of the deceased as the complainant and her nephews as P.W. 1, 2 and 3. It is submitted that prosecution has miserably failed to lead any evidence as regards the motive due to which the Appellants-accused will commit such a heinous offence and that in absence of any direct evidence led by the prosecution in the case, the learned Trial Court proceeded on the basis of conjecture and suspicion. It is submitted that the prosecution has foisted the recovery of an axe at the instance of the Appellants-accused; whereas the axe was found lying near the dead body when the police visited the place of occurrence of the incident. It is further submitted that the Appellants-accused were very much present at the time the inquest report was prepared and one of the witnesses Anup Kumar Mukherjee (P.W. 10) who was present at the time of inquest report has specifically stated in his evidence that the axe was lying near the dead body when the inquest report was prepared so also in the evidence of the villagers who were present at the place of occurrence when the police arrived at the scene. Therefore, the prosecution's case is unreliable and the Appellants-accused are entitled for acquittal.

5. It is submitted that the learned Trial Court has failed to consider the evidence led by the defence witnesses and the fact that though the Appellant-accused Santosh Kumar Ghosh has married Mrs. Arati Mukherjee, the prosecution had intentionally omitted the fact in the investigation of the case and there has been tampering in the name of Mrs. Arati Mukherjee @ Ghosh while preparing documents such as inquest report, postmortem examination and so on.

6. It is submitted that during pendency of the trial, the complainant Mrs. Mira Rani Acharya (P.W. 1) and her relatives ransacked the house of the Appellant-accused Santosh Kumar Ghosh and took away all important records and valuables of which though report was made, no cognizance was taken. It is, therefore, submitted that the prosecution has falsely implicated the Appellants-accused and for want of evidence they deserve to be acquitted.

7. On the other hand, the learned P.P. submitted that the prosecution has led evidence of all the witnesses in the case but except for the relatives of the deceased, i.e., complainant, Mrs. Mira Rani Acharya (P.W. 1), her son and nephew, the villagers who have been examined as witnesses in the case have turned hostile and did not support the prosecution for reason best known to them. This shows that the Appellants-accused had tampered the witnesses

during trial. It is submitted that in view of the fact that there was claim and counter-claim whether Mrs. Arati Mukherjee had remarried Santosh Kumar Ghosh or not, the Investigating Officer was required to make various corrections from time to time which are not manipulations but bona fide done and, therefore, this cannot be a reason to doubt the investigation done in the case. It is submitted that the Appellants-accused cannot take benefit of this fact. The prosecution has been able to establish by leading best available evidence in the case and the Appellants-accused are guilty of having committed murder of Mrs. Arati Mukherjee @ Ghosh.

8. It is submitted that though the Appellant-accused Santosh Kumar Ghosh was present at the time the inquest report was prepared, subsequently he along with his son have absconded and it is only after the police gathering information they came to be arrested from the house of their relatives in the nearby village which is brought on record through the evidence of the Investigating Officer. It is submitted that the axe came to be discovered on the information given by the Appellants-accused and it was not found by the police when they had first visited the place of occurrence as claimed by the Appellants-accused. It is submitted that the witnesses who have turned hostile had tried to support the Appellants-accused by falsely deposing that the axe was lying near the dead body.

9. It is submitted by the learned P.P. that the fact that Mrs. Arati Mukherjee @ Ghosh accompanied the Appellant-accused Santosh Kumar Ghosh to his village and resided with him in his house at the time she was murdered is not disputed. It is submitted that the investigation conducted by the police does not show that Mrs. Arati Mukherjee @ Ghosh was murdered by any assassin engaged by the complainant but by the Appellants-accused only, as they have failed to offer any explanation relating to the cause of death and that both the Appellants-accused have failed to prove the alibi which is the stand taken in defence. Therefore, the only conclusion which can be arrived coupled with the fact that the deceased was at the relevant time residing in the house of the Appellants-accused Santosh Kumar Ghosh and his son Pradip Ghosh are the persons who committed the murder and, therefore, the learned Trial Court was right in arriving at a finding that the Appellants-accused are guilty.

10. It is submitted that the FIR in the case could not be transmitted to the Magistrate immediately as the police was busy in investigating the offence and the Investigating Officer being a promotee, was not conversant with the procedure of forthwith dispatching the FIR and, therefore, this was not an intentional lapse on the part of the Investigating Officer and this, by itself, does not damage the prosecution's case which is otherwise foolproof. Therefore, the appeal deserves to be dismissed.

11. In nutshell we find the prosecution has established that Mrs. Arati Mukherjee, wife of late Asim Mukherjee was an employee of Durgapur Steel Plant and that she developed intimacy with the Appellant-accused Santosh Kumar Ghosh who was at the relevant time an employee of A.B. Ltd., Durgapur and that on

6.7.1997, the Appellant-accused Santosh Kumar Ghosh approached Mrs. Arati Mukherjee to accompany him to his village Pakhanna in order to visit "Rather Mela" and that deceased Arati Mukherjee left with Santosh Kumar Ghosh to visit his village Pakhanna. On the next day Mrs. Arati Mukherjee was found murdered in the house of Santosh Kumar Ghosh at village Pakhanna and her dead body was lying in the bed room of Santosh Kumar Ghosh. That a report came to be lodged by Mrs. Mira Rani Acharya (P.W. 1) at P.S. Borjora pursuant to which police led by S.I. Baroda Prasad Dey (P.W. 14) visited the place of occurrence, i.e., the house of Appellant-accused Santosh Kumar Ghosh and found the dead body of Mrs. Arati Mukherjee @ Ghosh in the Western side of the bed room of Santosh Kumar Ghosh and proceeded to hold inquest. The inquest report (Exbt. 7) which has been proved by the prosecution by examining Anup Kumar Mukherjee (P.W. 10) and S.I., Baroda Prasad Dey (P.W. 14) records:

The dead body is lying in supine position with the head pointing to the south and the legs pointing to the north. It is found that the head is tilted on the right side, two legs are straight, two hands are folded and placed on the chest, the eyes are closed, the mouth is slightly open. After turning it over and over again with the help of a "Dom" (Corpse handler) it is found that on the both sides of the face that is on the right side and the left side of the forehead there are blood-stained injuries and blood-stained injuries are found right on the right side of the right eye and on the right and left side of the left eye. There is no trace of semen. There is no defecation. The vagina is found unscathed.

A white coloured "saya" (petticoat), a red coloured synthetic saree and red blouse are found on the person of the deceased. There is "Sindoor" (vermillion power) on the forehead and the parting. There are iron bangle, white bangle made of conch-sheel and red bangle made of coral (all confirming her marital status) found in the left hand. A blood-stained injury mark is found on the left eye-brow.

12. Description of clothes, ornaments, weapons and other articles found on or near the dead body:

- (1) Red coloured synthetic saree
- (2) White "Saya" (Pettycoat)
- (3) Red blouse
- (4) Iron bangle, white bangle made of conch-sheel, red bangle made of coral.

13. The inquest report is signed by the Appellant-accused Santosh Kumar Ghosh which is not disputed by him and the other two witnesses.

14. After the inquest report was prepared, the dead body was handed over to police constable Sunil Kumar Roy (P.W. 13) for being taken to the hospital for postmortem examination. The postmortem on the dead body was carried out by Dr. Jnanendra Nath De (P.W. 9) who found the following injuries:

(1) A lacerated wound 1 1/2" x 1" muscle, 1/2" above the outer one-third of left eye brow.

(2) A lacerated wound 1" x 1/2" bone, 1/2" below on outer end of lower eye i.e., over left maxillary region. On dissection there are gross laceration of the skin, fossa, muscles, vessels of the corresponding part with comminuted fracture of left maxillary bone,

(3) A lacerated wound 1" x 1/2" muscle, 1" in front of left tragus.

(4) A lacerated wound 2" x 1" bone over right maxillary region. On dissection - there are gross laceration of skin, fossa, muscles, vessels of the corresponding part with comminuted fracture of right maxillary bone,

(5) A lacerated wound 1" x 1/2" bone just below chin. On dissection - there are gross laceration of skin, fossa, muscle and vessels of the corresponding part with comminuted fracture of mid part of mandible.

(6) An abrasion 7" x 7" over mid part of the front of chest. On further dissection - (one) - comminuted fracture of all ribs on both sides with gross laceration of both lungs, heart liver. Both chest cavities and abdominal cavity contain fair amount of extra vasated, clotted and liquid blood. A fair amount of extra vasated, clotted and liquid blood seen to infiltrate the tissues in and around the lacerated injuries and fractures described above.

15. In the opinion of Dr. Jnanendra Nath De (P.W. 9) death was due to the effect of injuries described above, ante mortem and homicidal in nature. According to him, the above-stated injuries are sufficient to cause death of the victim obviously in the ordinary course of nature. All these injuries were caused by moderately heavy hard blunt weapon. These injuries may be caused if any one is assaulted by the back side of an axe. This is the postmortem report which is prepared and signed by him (Exbt. 4). In the cross-examination of Dr. Jnanendra Nath De (P.W. 9) the only question which was suggested appears to be that the injuries could be caused due to fall on the floor or being dashed against wall which is specifically denied.

16. Therefore, it stands proved that Mrs. Arati Mukherjee @ Ghosh suffered a homicidal death due to injuries found on her dead body which were ante-mortem and is possibly by a weapon like the axe (Mat. Exbt. 4).

17. The Appellants-accused have not disputed these facts which have come on record through the evidence of witnesses when put to them u/s 313 of the Cr. P.c. Therefore, let us examine as to whether the prosecution has established that the Appellants-accused have committed the murder of Mrs. Arati Mukherjee @ Ghosh. At the outset, we may make it clear that the issue which is trying to be raised in the trial as to whether Mrs. Arati Mukherjee @ Ghosh got married to Santosh Kumar Ghosh and was his legally wedded wife is not germane to the decision of this case as it does not affect the prosecution's case in any manner and no investigation was conducted to find out marital status of the deceased.

On the basis of the evidence on record, it is quite clear that Mrs. Arati Mukherjee @ Ghosh after having lost her husband, Asim Mukherjee, was employed on compassionate ground by Durgapur Steel Plant and she developed intimacy with the Appellant-accused Santosh Kumar Ghosh and used to go out with him as it happened on 6.7.1997. The prosecution has examined complainant Mrs. Mira Rani Acharya (P.W. 1), sister of the deceased, Durgapada Acharya (P.W. 2), son of Mrs. Mira Rani Acharya and nephew of the deceased and Siddheswar Nanda (P.W. 3), another nephew of the deceased. Therefore, the evidence before the Court that on 6.7.1997 in the morning the Appellant-accused Santosh Kumar Ghosh came to their house at about 10 A.M. and took away Mrs. Arati Mukherjee @ Ghosh along with him stating that she should pay visit to "Rather Mela" at village Pakhanna which fact is not disputed by the Appellants-accused Santosh Ghosh and Pradip Ghosh. However, on the next day, they got information through one unknown person that Mrs. Arati Mukherjee @ Ghosh was murdered in the house of Santoshbabu at Pakhanna and hearing this news Mrs. Mira Rani Acharya (P.W. 1) along with Durgapada Acharya (P.W. 2), Siddheswar Nanda (P.W. 3), Rathin Ganguly and Paresh Pal visited the house of Santoshbabu at village Pakhanna. On their way to Pakhanna Rathin Ganguly was dropped at Borjora. They went to the house of Santoshbabu and noticed the dead body of Mrs. Arati Mukherjee @ Ghosh lying on a mat with one pillow on her head. The dead body was covered by a bed sheet. In the room of Santoshbabu, they noticed that she had marks of injury on her body, i.e., on the head and chest and found marks of bleeding injuries. They have deposed before the Court that on inquiry Santosh Kumar Ghosh and Pradip Ghosh informed them that there was quarrel at about 11 P.M. of the preceding night in which Santosh Kumar Ghosh kept her tight (sic), held her and Pradip Ghosh assaulted her with the help of an axe. On learning this, they all went to Borjora P.S where Mrs. Mira Rani Acharya (P.W. 1) lodged a written complaint which was scribed by Rathin Ganguly and signed by Mrs. Mira Rani Acharya (P.W. 1) which was endorsed by Officer in-charge, Debashis Mazumder (P.W. 12) who in his evidence has deposed that on receipt of the complaint from Mrs. Mira Rani Acharya (P.W. 1) at Borjora P.S., he registered case bearing No. Borjora P.S. Case No. 48/97 u/s 302 IPC dated 7.7.1997 against the accused Santosh Kumar Ghosh and Pradip Ghosh and, accordingly, filled up formal FIR and also put an endorsement in support of the receipt of the said written complaint and identified the formal FIR, filled in and signed by him which is marked as Exhibit 5. He has also identified the endorsement on the written complaint which is duly signed by him and marked Exhibit - 1/A. He has further deposed that he endorsed the case to S.I. Baroda Prasad Dey (P.W. 14) for investigation. In cross-examination, Debashis Mazumder (P.W. 12) was questioned on the dispatch of the FIR to the Magistrate and that the FIR was prepared subsequently which he had denied. Further, he was specifically questioned that the information of death of the deceased was reported by the local Panchayat and after receipt of information from Panchayat he sent police forces and posted two constables at the place of occurrence in the village. However, he has suppressed the fact of receipt of previous information

about the death of the deceased from Panchayat which he has specifically denied. We find that except for this specific suggestion made to Officer in-charge, Borjora P.S., nothing has been brought on record to show that any report or complaint was lodged in the matter of information of death of Mrs. Arati Mukherjee @ Ghosh by the local Panchayat.

18. The prosecution has examined Ajit Banerjee (P.W. 4), Anchal Pradhan, Bipad Taran Das (P.W. 7), Sabhapati and other villagers like Subarnamoy Ghosh (P.W. 5) and Dharmadas Mondal (P.W. 6). All these witnesses were declared hostile by the prosecution as they failed to support the prosecution case. Ajit Banerjee (P.W. 4) in his cross-examination by the defence stated that from Panchayat office he intimated Police Station over telephone and on that very night police visited his house at first and then along with the Police Officer went to the house of Sabhapati, i.e., Bipad Taran Das (P.W. 7), from where they went to the house of Santosh Kumar Ghosh and saw the dead body there. He has further deposed that in that very night Santosh Ghosh lodged a complaint at the Police Station to the effect that he went to the "Rather Mela" and during his absence his wife was killed. Bipad Taran Das (P.W. 7) unfortunately does not support Ajit Banerjee (P.W. 4) on the fact that the complaint was lodged by Ajit Banerjee (P.W. 4) or Santosh Kumar Ghosh to the police and the police visited the village and two constables were posted at the house of Santosh Kumar Ghosh.

19. It is difficult to believe that the police would ignore a report lodged by a person of the stature of Ajit Banerjee (P.W. 4) who was the Anchal Pradhan in respect of murder having taken place in the village and that Bipad Taran Das (P.W. 7) who was Sabhapati of the Panchayat did not take any interest in the matter in spite of the fact that Santosh Kumar Ghosh, the Appellant-accused, met him at the house along with Anchal Pradhan and other villagers. In our opinion, no credence can be given to the testimony of these witnesses before the Court and their evidence has to be merely discarded.

20. There is nothing on record to show that a complaint (oral or written) was lodged by Santosh Kumar Ghosh after the alleged phone call was made by Ajit Banerjee (P.W. 4), Anchal Pradhan, to the police and that police visited the village during the night or early hours of 7.7.1997. Considering that the Appellants-accused were the only persons present in the house along with their 90 years" old mother and if they were innocent, nothing prevented them from reporting the matter to police when they found Mrs. Arati Mukherjee @ Ghosh (claimed to be wife by Appellant-accused Santosh Kumar Ghosh and "Masima" by Pradip Ghosh) lying dead in the house with multiple bleeding injuries. This conduct can be considered as an adverse circumstance against them.

21. On the point of discovery of axe (Exbt. 4), the prosecution has examined Partha Das (P.W. 8) and Baroda Prasad Dey (P.W. 14). Partha Das (P.W. 8) deposed in his evidence to the effect that Darogababu visited the house of Santoshbabu but he could not say the date when he seized one mat, controlled earth, white earth and a blood stained pillow from the bed room of Santoshbabu.

He voluntarily said that the Darogababu seized one axe from the said room but when it was put to him he said that the Darogababu did not seize the axe at that time. Darogababu prepared one seizure list on which he signed which came to be marked Exhibit - 2 who when denied to say whether he signed the paper on 7.7.1997. He further denied that he did not see Darogababu visited the house of Santoshbabu on 8.7.1997, but admitted that at the time of visit of Darogababu, Santoshbabu was present in the house. Due to stand taken by the witness, he was declared hostile. When it was confronted with the seizure list (Exbt. 3) he admitted that this was his signature prepared by Darogababu after seizure of the axe.

22. On the other hand, the Investigating Officer Baroda Prasad Dey (P.W. 14), in his evidence has deposed to the effect that after recording the statement of witnesses, he searched for accused persons but they were not available, so he returned back to P.S. after completion of the day's investigation and on 8.7.1997 at 6.30 hours on the basis of the source information he went to the adjacent village of Pakhanna and held raid to search the accused person. He apprehended the accused persons at about 7.30 A.M. namely Santosh Ghosh and Pradip Ghosh from the house of their relative. Their statement came to be recorded and the Appellants-accused Santosh Ghosh and Pradip Ghosh disclosed before him that if he carried them to their house at Pakhanna village, they will bring out the axe from the house. This information with their statement as regards the axe in their house has been marked as Exbt. 11 and 11A. Thereafter, he along with the accused persons went to the house of Appellants-accused in Pakhanna village. He further deposed that according to the leading statement of Santosh Ghosh and Pradip Ghosh he recovered that axe from their North-West corner of store room where coal and cow dung (ghutay) were stored and from inside that room Appellant-accused Pradip Ghosh took out that axe from the stack of ghutay and, thereafter, he seized the axe from that place and prepared the seizure list which bears the signature of the accused Pradip Ghosh (Exbt. 12) and signature of Santosh Kumar Ghosh (Exbt. 12A). He also seized one plate or bowl of cow dung from the stack of cow dung from that room. This was done in the presence of Partha Das (P.W. 8), Abhijit Ghosh and Constable Sunil Roy.

23. This shows that the axe (Mat. Exbt. 4) was not seized by the police on the day, i.e., 7.7.1997 when police had gone to the house of Santosh Kumar Ghosh for the first time and saw the dead body of Mrs. Arati Mukherjee @ Ghosh and prepared the inquest report as no axe was lying near the dead body of the victim, as stated by some of the witnesses who have been declared hostile. Otherwise, there is no reason why it would not have been seized at the time the inquest report (Exbt. 7) came to be prepared. In the inquest report we have already noted in Column 8 which provides discovery of clothes, ornaments, weapons and other articles found near the dead body and came to be seized but there is no mention of axe. The fact remains that an axe came to be seized from the house of the accused persons on the next day, i.e., 8.7.1997 by the police which was stained with blood. The nature of injury found on the dead body of

Mrs. Arati Mukherjee @ Ghosh in the opinion of Dr. Jnanendra Nath De (P.W. 9) may be caused if any one is assaulted on the backside of an axe, sufficiently corroborates the prosecution's case that the injuries found on the dead body of the victim was caused by axe (Mat. Exbt. 4).

24. We, therefore, find that the prosecution has established that Mrs. Arati Mukherjee @ Ghosh left her house with Santosh Kumar Ghosh on 6.7.1997 for going to village Pakhanna. Mrs. Arati Mukherjee @ Ghosh was in the house of Appellant-accused Santosh Kumar Ghosh along with his son Pradip Kumar Ghosh and 90 years" old mother of Santosh Kumar Ghosh and that she was murdered in between the night of 6.7.1997 and 7.7.1997. The Appellants-accused have failed to report the homicidal death of Mrs. Arati Mukherjee @ Ghosh to police and on their arrest the axe (Mat. Exbt. 4) came to be seized at their instance and they have not given any plausible explanation as to in what circumstances she came to be murdered. All these circumstances cumulatively do not admit of any inference except the guilt of the Appellants-accused and sufficiently establish that the Appellants-accused have in all probability committed murder of Mrs. Arati Mukherjee @ Ghosh for the reasons best known to them. Merely because motive has not been established by the prosecution does not help the Appellants-accused in any manner. The prosecution has made a feeble attempt to explain in what circumstances she came to be assaulted by Pradip Ghosh and father Santosh Kumar Ghosh by way of extra judicial confession made by Santosh Kumar Ghosh as spoken of by the witnesses in their evidence before the Court i.e., Mrs. Mira Rani Acharya (P.W. 1), Durgapada Acharya (P.W. 2), her son, Siddheswar Nanda (P.W. 3), nephew. On inquiry from Pradip Ghosh and Santosh Ghosh they stated that there was a quarrel at about 11 P.M. in the preceding night and Santosh Ghosh stated that her sister had been murdered by his son Pradip Ghosh and Santosh Ghosh grabbed her and Pradip Ghosh assaulted with an axe. This extra judicial confession has been made, according to the prosecution, not only in the presence of the complainant Mrs. Mira Rani Acharya (P.W. 1) and other two witnesses viz., Durgapada Acharya (P.W. 2) and Siddheswar Nanda (P.W. 3) but also in the presence of the villagers viz., Dasarath Ghosh (P.W. 5) and Dharmadas Mondal (P.W. 6) and others who were present. We have no hesitation in accepting that the Appellants-accused did confess that they assaulted the victim causing injuries resulting in her death. The said confession being made voluntarily, stands corroborated by the aforesaid circumstances, and it lends assurance to the prosecution's case.

25. As regards contention of the learned Counsel for the Appellants-accused that there was delay in forwarding the first information report to the nearest Magistrate is concerned, the prosecution's case becomes suspect, in support of which reliance has been placed in the cases of Ishwar Singh Vs. State of U.P., and Balaka Singh and Ors. v. State of Punjab 1975 SCC 601. In our opinion, mere delay in sending the report to the Magistrate, however, would not vitiate the trial, in the absence of prejudice caused to the Appellants-accused by such delay, as in this case report was promptly lodged and it was recorded as FIR and

the investigation was immediately started by the police visiting the place of occurrence. The delay was caused due to lapse of the Investigating Officer.

26. In respect of another deficiency pointed out by the learned Counsel for the Appellants-accused which has been brought on record by examining a defence witness by them as regards the non-production of station diary entries, general diary entries and the arrest register by summoning D. P. Mukherjee, Inspector of Police who stated that he tried to trace the copy of these register form his office during the period 6.7.97 to 8.7.97 but he could not find out the same. According to him as per rule after 5 years these are destroyed but he could not find any destruction register. This was specifically requisitioned to show that by a non-production of general diary covering the period 6.7.97 the prosecution has deprived the accused persons to show that the investigation of the case was tampered and in spite of the fact that report was lodged at the Police Station by Ajit Banerjee (P.W. 4), Anchal Pradhan, on telephone as well as by Santosh Kumar, the Appellant-accused, and police was posted at the house of Santosh Kumar before complaint came to be lodged by Mrs. Mira Rani Acharya (P.W. 1) on 7.7.97 adverse inference can be drawn against the prosecution as it reflects innocence of the accused persons. Secondly, there has been manipulation in the dates as regards the arrest of the accused persons which would also cast on the prosecution case as to the recovery of the axe at the instance of the accused persons on 8th July, 1997.

27. In our opinion, no such adverse inference can be drawn. If Appellants-accused were innocent and they had actually reported the matter, after their arrest in their case they had several opportunities to agitate the issue before the learned Magistrate as and when they were produced for seeking their remand. None of the villagers other than the witnesses who have turned hostile have questioned the investigation of the case. None of the witnesses examined by the accused in their defence has spoken about it.

28. We find no merits in the appeal. The appeal is dismissed.

I agree.