
(2006) 01 CAL CK 0026
In the Calcutta High Court
Case No : C.R.A. No. 344 of 1998

Shankar Jaiswara

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 30-01-2006

Acts Referred:

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 302, 304, 304A, 85, 86

Citation : (2006) 2 CHN 210

Hon'ble Judges : Sankar Prasad Mitra, J; Amit Talukdar, J

Bench : Division Bench

Advocate : Soubhik Mitra, Amicus Curiae, for the Appellant; Ranjit Kr. Ghosal and Minoti Gomes, for the Respondent

Final Decision : Dismissed

Judgement

Amit Talukdar, J.—Impact of Section 86 of the Indian Penal Code (for short, the IPC) if felt, then it would be a primordial consideration in this appeal. If not, it has to be decided on the basis of merit.

2. The appellant has been sentenced to suffer imprisonment for life and to pay a fine of Rs. 5,000/-, in default, to suffer further rigorous imprisonment for six (6) months on account of his conviction in respect of the charge of Section 302 of the IPC which has been passed by the learned Additional Sessions Judge, 6th Court, Alipore on 15.7.98 in Sessions Trial No. 1 (5) 1997. The same persuaded the appellant to prefer this jail appeal.

3. Before proceeding further to the actual logistic we find way back in 23.11.98 a Division Bench of this Court admitted the jail appeal after condoning the delay and directed the learned Public Prosecutor "to engage one learned Advocate for the appellant from the State panel".

4. The appeal matured for hearing in the Board on 28.11.2005 with an Office Report dated 24.11.05 showing:

L.C records received.

Paper-books have been prepared and served upon the State.

None has entered appearance on behalf of the appellant in jail.

The appeal is otherwise ready for hearing.

5. As such, we requested a learned Senior Panel Lawyer of the State to inform the learned Public Prosecutor about the contents of the Office Report that although the paper books have been served on the State yet none has been engaged to represent the appellant. Since even after seven years none was engaged as State Defence we accordingly requested Shri Soubhik Mitra to assist us as an "Amicus Curiae", which he readily agreed and after adjourning the matter we heard the appeal with the able assistance of the learned Amicus and Shri Ranjit Kumar Ghosal for the State and concluded the hearing.

6. Learned Amicus has relied on the fact that the appellant at the time of commission of crime was heavily intoxicated, as such, he was unable to comprehend his action. He categorized the entire sequence of events as (a) conduct prior to incident which includes the evidence of P.W.I, who found him shouting under the influence of liquor and abusing his brother Tarak; (b) conduct during the incident showing before the entrance gate the appellant was shouting that whoever comes before him would be done to death and the abnormal manner in which he moved about and hurling abuses in general not aiming to the deceased in particular bereft of any motive and (c) conduct after the incident which is seen from the cross-examination of P.W. 9, Mongala Prosad Lala (Sadhu) a friend of the appellant in whose house he had kept his wearing apparel (Mat. Exts. XII & XIII) and weapon of offence (Mat. Ext. XI) that Shankar was under the influence of liquor and the statement (Ext. 18) recorded by P.W. 19, Supriya Kumar Pal the Investigating Officer leading to the discovery of the Mat. Exts. XI, XII & XIII from the house of P.W. 9 Mongala Prosad Lala (Sadhu).

7. Referring to the aforesaid serial of events learned Amicus sought to build up a case that as it is evident the appellant was under the influence of liquor the injuries inflicted by him on deceased Tarak was devoid of any intention, apart from the fact that he was unable to understand the result of his action; as such, he was squarely covered within the purview of Section 86 of the IPC and the conviction against the appellant in respect of Section 302 IPC could not be sustained.

8. Learned Amicus further took us through the evidence and was of the opinion that the conduct of the appellant itself shows that he did not have any control over himself and as he had gone berserk prior to the incident and was running about in an intoxicated manner as told by P.W. 1, Bhola Jaiswara, elder brother of the deceased Tarak that he gave out a call whoever comes before him would be done to death and when the deceased Tarak asked him to move away from the place the blow was struck. Learned Amicus delineating with particular emphasis

the evidence of P.W. 1 showing the conduct of the appellant prior to the incident submitted that neither the appellant bore any particular grudge against the said deceased Tarak nor he had any intention. It is only under the spell of intoxication the act was committed.

9. As a part of his submission learned Amicus read out from Section 86 of the IPC and has asked us to look into the decisions of the Supreme Court in Mukesh Vs. State of Madhya Pradesh, and Basdev Vs. The State of Pepsu,

10. Learned Amicus referred to the decision of Mukesh v. State of Madhya Pradesh (supra) to illustrate his point that as the accused was under the influence of liquor the conviction in the fitness of things should be altered to that of Section 304 Part-I of the IPC and also referred to the decision of Basdev v. State of Pepsu (supra) to show that as the appellant did not have any intention the offence cannot come within the purview of Section 302 of the IPC.

11. Moving on to the other aspect of the prosecution case learned Amicus copiously quoted from the FIR (Ext-1), lodged by P.W.I, Bhola Jaiswara and submitted that he made a departure from his earlier version given before the police and he should not be fully relied. Seeking to dissipate the veracity of the evidence of P.W.I Bhola Jaiswara and P.W. 3, Mohan Jaiswara (eye-witnesses) and other connected witnesses he took us to the evidence of P.W. 19, Supriya Kumar Pal and submitted all these witnesses departed from their earlier version before the investigating agency and as such, much credence should not have been given to their version.

12. Learned Amicus further pointed out from the evidence on record that it would be unsafe to endorse the finding of the learned Trial Court on the basis of the materials which have been perceived before us.

13. Shri Ranjit Kumar Ghosal with Smt. Minoti Gomes appearing for the State has submitted Section 86 of the IPC would have no manner of application for the purpose of the decision of this appeal. Shri Ghosal read out from the evidence of P.W. 1 and submitted, even if the appellant was under the influence of liquor, he was absolutely conscious about the consequences of his act. According to Shri Ghosal not only was the appellant fully capable of understanding the consequences of his act it is after the incident he walked a distance to the house of P.W. 9, Mongala Prosad Lala (Sadhu) and concealed the weapon of offence and wearing apparels which was nothing but manifestation of a clear mind.

14. Shri Ghosal submitted the appellant was never under such intoxication that he was devoid of his power of comprehension and he had full control over his senses as he fled away after the incident and calculatedly concealed the articles in the house of P.W. 9, Mongala Prosad Lala (Sadhu) which was recovered leading to his discovery at the instance of P.W. 19, Supriya Kumar Pal. Shri Ghosal discounted the learned Amicus in this regard and submitted the appellant cannot be covered by Section 86 of the IPC as definitely he had intention to commit the assault on deceased Tarak.

15. Shri Ghosal referred to the evidence of the Autopsy Surgeon (P.W. 5), Prof. Bhupal Chandra Mazumdar, Professor & Head of the Department of Forensic Science & State Medicine, Sir Nil Ratan Sircar Medical College & Hospital, Calcutta. Shri Ghosal read out from the findings of Prof. Mazumdar (P.W. 5) and showed that Prof. Mazumdar found at least 7 injuries which according to Prof. Mazumdar was the cause of death being ante mortem and homicidal in nature. Further Shri Ghosal took us to the cross-examination of Prof. Mazumdar (P.W. 5) to the fact that injury Nos. 4 and 7 might have been caused while the victim was defending himself, which according to Shri Ghosal shows the deprave nature and veracity of the attack manifesting clear intention of the appellant and there was no question of the appellant being out of his senses on account of intoxication.

16. Coming to the merit of the case Shri Ghosal wondered how could the evidence of P.W.I, Bhola Jaiswara and P.W. 3, Mohan Jaiswara, being the eyewitnesses, be disbelieved as their evidence fitted with the other attending evidence and circumstances. Shri Ghosal has submitted that the defence could not take any contradiction about the manner of assault, place of occurrence, time of occurrence and the weapon used. Shri Ghosal submitted that the evidence of P.W. 12, Dr. Sruti Kr. Bose, Emergency Medical Officer of R.G. Kar Medical College & Hospital before whom the patient was brought dead, deposed that the statement of Bhola Jaiswara (P.W. 1) showed the patient was severely stabbed by the appellant with a sword / knife. Shri Ghosal also referred to the evidence of P.W. 6 the Deputy Manager, Systems Control of Calcutta Electric Supply Corporation Ltd. (CESC), who in his Report (Ext. 6) proved that the power supply was not interrupted on the relevant time in the place of occurrence; as such, the appellant was easily identified by the eye-witnesses and as it was a case, based on ocular evidence question of motive was not required. Summing up, Shri Ghosal was of the view apart from the evidence of PW-1, Bhola Jaiswara and P.W. 3, Mohan Jaiswara, who were the eye-witnesses, fact of recovery of the wearing apparels and the weapon of offence from the house of P.W. 9, Mongala Prosad Lala (Sadhu) itself proved the prosecution case against the appellant and there was no escape for him from the conviction imposed by the learned Trial Court.

17. We have had the very able assistance of the learned Amicus, who, we must say, rendered us invaluable help in deciding the appeal and as also the elaborate submissions of Shri Ghosal for the State, who took much pains to present the case on behalf of the State in a very methodical manner.

18. At the outset we propose to deal with the question of application of Section 86 of the IPC in the light of the learned Amicus. For profitable discussion we set out the provisions of Section 86 of the IPC which read as follows:

86. Offence requiring a particular intent or knowledge committed by one who is intoxicated.?In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which

intoxicated him was administered to him without his knowledge or against his will.

19. We have to at first address ourselves with regard to the correct legal position in the light of the authorities which we can lay our hands on. Both Sections 85 and 86 deal with such type of cases in which an offence has been committed by a person who is under a state of intoxication.

20. Section 85 of the IPC deals with those type of cases in which by reason of intoxication a person is incapable of knowing the nature of the act or that he is unable to comprehend what is either wrong or contrary to law; whilst Section 86 of the IPC speaks of a person, who has voluntarily got intoxicated he will be deemed to have the same knowledge as he would have had if he had not consumed liquor. Section 86 of the IPC consists in the first instance of knowledge or intent as an ingredient whereas in the second instance it refers only to knowledge. Intention is the basic question while interpreting Section 86 of the IPC. The said question has to be determined in individual cases on the basis of the particular fact situation which had been proved by way of evidence in terms of accepted general principles of law. A person who has consumed liquor on his own volition would be presumed to have intended the natural consequences of his act. But, however, this presumption is a rebuttable presumption if it is established that during the time of commission of the act the mind of the person who has voluntarily got drunk was so affected by alcohol which he had taken himself that he was incapable of forming a cognate understanding which can be translated as intention necessary for constituting the act which has been alleged against him.

21. The classic interpretation of the House of Lords in the famous Beard's case [Director of Public Prosecutions v. Beard (1920) All E.R. 21], which has been noted with approval by our Supreme Court as well as the Division Bench of the Lahore High Court. The House of Lords composed of L.C., Earl of Reading, CJ, Viscount Haldane, Lord Dunedin, Lord Atkinson, Lord Sumner, Lord Buckmaster and Lord Phillimore laid down the law with regard to drunkenness as a defence which has been quoted with approval by our Supreme Court in Basdev v. State of Pepsu (supra), shown by the learned Amicus, as also in the Divisions Bench decisions of the Lahore High Court Bishan Singh v. King Emperor AIR 1929 Lah 637 and Sheru and Anr. v. King Emperor AIR 1926 Lah 232, which we would have occasion to appreciate.

22. Earlier 3-Judge Bench of the Supreme Court in Sadhu Singh Harnam Singh Vs. The State of Pepsu, Mehr Chand Mahajan, J. (as the learned Chief Justice of India then was) speaking for the 3-Judge Bench of the Supreme Court consisting of Mehr Chand Mahajan, J. (as the learned Chief Justice of India then was), Bijan Kumar Mukherjea (as the learned Chief Justice of India then was) and B. Jagannadha Das, J. held :

...he had any intention of firing at the Mahant. He seems to have pulled the

trigger without aiming at the Mahant in a state of intoxication in order to see that by the gun fire the Mahant was prevented from leaving his place. It was a wholly rash and negligent act on his part or at the worst was an act which would amount to manslaughter. It could not be held to constitute an offence or murder. No intention of causing death or an intention of causing such bodily injury as being sufficient in the ordinary course of nature to cause death could be ascribed to the accused or readily inferred in the circumstances of this case.

23. Their Lordships in the 3-Judge Bench decision in *Sadhu Singh Harnam Singh v. State of Pepsu* (supra) holding in the aforesaid line converted the conviction one u/s 304A of the IPC.

24. As we have found intention is a sine qua non which has to be decided in the fact situation of each case for deciding whether drunkenness can come as a rescue to bring the act of the offender within the purview of Section 86 of the IPC.

25. Intention in the backdrop of the present case would have to be understood in the light of the ocular evidence of P.W.I & P.W. 3, who saw the appellant stabbing the defenceless victim Tarak. Obviously the ocular evidence suggests that the weapon of murder (Mat. Ext. XI) was very much a baggage of the appellant. Unless he had the intention before going on a murderous spree it would not be a philosopher's dilemma to comprehend as to why he was carrying the said weapon of offence (Mat. Ext. XI). Intention can easily be read from this portion of the evidence which very much dissipates the force of Section 86 of the IPC.

26. In the Division Bench decision of the Lahore High Court in *Bishan Singh v. King Emperor* (supra) through Sir Cecil Fforde speaking on behalf of the Division Bench of Sir Cecil Fforde and G.C. Hilton, JJ., relying on the House of Lords decision in *Director of Public Prosecutions v. Beard* (supra) held that simple evidence of drunkenness falling short of a proved incapacity of the accused to form the intent necessary to constitute the crime is not sufficient merely establishing that the mind of the accused was affected by drink so that he more readily gave way to some violent passion, does not rebut the presumption that a man intends to natural consequences of his act.

27. The Lahore High Court in another Division Bench decision of *Sheru and Anr. v. King Emperor* (supra) consisting of Sir Shadi Lal, C.J. and Walter Aubin Le Rossignol, J. also took note of the decision of the House of Lords in *Beard's* case (supra) held in similar lines that unless it can be established that the drunkenness of the accused fall short of a proved incapacity of the accused to form the intent necessary to constitute the crime simple evidence of drunkenness merely showing that the mind of the accused was affect by the drink is not sufficient.

28. In another Division Bench decision of the Lahore High Court in *Samman Singh Thakar Singh v. King Emperor* 43 Cr.LJ 1942, the Division Bench of the Lahore High Court (consisting of Bhide and Ram Lall, JJ.) that the question with

regard to capability of the accused for forming such an intention has to be determined in the context of his word or conduct at the time of the occurrence and that a voluntary drunkard like every other person is in the first instance presumed to have intended the natural consequences of his act, however, the presumption is a rebuttable one if it can be shown that at the time he did the act his mind was so affected by the drink he had taken that he was incapable of forming the intention requisite for making his act the offence charged against him.

29. From an assessment of the evidence we find that the appellant, no doubt, was under the influence of liquor, as spoken by P.W. 1. We find from his evidence that the appellant before the incident was shouting in front of the entrance gate of P.W. 1's residence and giving out some threats; thereafter on his way when he was asked by deceased Tarak to leave the place then the appellant abused Tarak and struck him with a knife. Read with this piece of evidence we have the evidence of P.W. 9, Mongala Prosad Lala (Sadhu), who in his cross-examination admitted that the appellant visited his house "under influence of liquor".

30. Simply these two stray materials showing the intoxication of the appellant and nothing more is found on record.

31. The deceased Tarak was brought dead before the R.G. Kar Medical College & Hospital where P.W. 12, Dr. Sruti Kumar Bose, Emergency Medical Officer after examining him found him brought dead with multiple stab injuries on his person. His evidence further shows history of assault, by the appellant, was given by P.W.I, Bhola Jaiswara.

32. Now, for a moment we have to refer to the evidence of P.W. 5, Prof. Bhupal Ch. Mazumdar, who at the relevant time was the Professor and Head of the Department of Forensic Science and State Medicine at Sir Nil Ratan Sircar Medical College & Hospital. Prof. Mazumdar at the time of autopsy found seven serious injuries which according to him was sufficient to cause death in ordinary course of nature. That apart, from the cross-examination of Prof. Mazumdar we also note that the 4th and the 7th injuries, noticed by Prof. Mazumdar, were caused while the victim was trying to defend himself.

33. We have also in our own way perused the evidence of Prof. Mazumdar (P.W. 5), the Autopsy Surgeon that the gravity of the injuries, dealt relentlessly, shows the desperate manner in which the same was dealt with. We do not feel inclined even for a moment to be persuaded by the fact that the appellant was devoid of his actual senses and he was unable to comprehend his action. On the contrary, we are on the opinion that he was quite conscious of the consequences of his act.

34. As we find from both the ocular evidence of P.W. 1 & P.W. 3 that after the incident the appellant fled away in a particular direction. We also find from the evidence of P.W. 19 Supriya Kumar Pal that pursuant to the statement of the appellant (Ext. 18) during police remand there was a recovery of the wearing apparels (Mat. Exts. XII and XIII) and as also the weapon of offence (Mat. Ext.

XI) all were seized under the Seizure List (Ext. 17) from the house of P.W. 9, Mongala Prosad Lala (Sadhu). This definitely shows the appellant was aware of the consequences and had control over his senses which make good his escape after the incident and in a calculated manner go and deposit his wearing apparels (Mat. Exts. XII & XIII) and the weapon of offence (Mat. Ext. XI) in the house of P.W. 9, Mongala Prosad Lala (Sadhu).

35. We will have more about the factum of recovery pursuant to the statement of the appellant (Ext. 18) in a later sequence of our decision. For the present it is suffice to show that the appellant was not devoid of his sense.

36. As noticed by us hereinabove, simply intoxication by the appellant, as spoken by P.W. 1 in his evidence, in our view, is not sufficient to show that he was out of his mind so as to denude him for forming an intention. We feel sorry we cannot accept the suggestion of the learned Amicus in the light of the fact situation of the present case and on deep consideration of the decision of the House of Lords, *Director of Public Prosecutions v. Beard* (supra) which had been quoted with approval in the decision of *Basdev v. State of Pepsu* (supra), shown by the learned Amicus as also the decision of the Supreme Court in *Mukesh v. State of Madhya Pradesh* (supra) and the Division Bench decisions of the Lahore High Court in *Bishan Singh v. King Emperor* (supra) and *Sheru and Anr. v. King Emperor* (supra) we are sorry that we are unable to find that the appellant would be covered within the purview of Section 86 of the IPC.

37. The decision of *Mukesh v. State of Madhya Pradesh* (supra), in our humble opinion, cannot be squarely applicable in the fact situation of the instant case, which we have noticed earlier. The ratio of *Mukesh's* case (supra), in our most humble view, is quite distinguishable from the present case, being dealt by us.

38. The celebrated decision of *Basdev v. State of Pepsu* (supra), also shown by the learned Amicus, in our considered view, would be also inapplicable in the present case in the light of the discussion held hereinabove as we find that it has not been proved beyond any reasonable doubt that the drunkenness of the appellant stole his senses and he was out of control.

39. Since we are unable to feel the impact of Section 86 of the IPC on the conviction, recorded by the learned Trial Court, we have now to proceed to appreciate the merit of the case in the light of the evidence on record with the assistance of the learned Amicus and Shri Ghosal for the State.

40. The substratum of the prosecution case has been spoken by the eyewitnesses P.W. 1, Bhola Jaiswara and P.W. 3, Mohan Jaiswara. We need not repeat the tenor of the same, as it has been elaborately dealt with by the learned Trial Court. What we see from the ocular evidence (P.W. 1 & P.W. 3) that they found the appellant stabbed the deceased. P.W. 1, Bhola Jaiswara found stab injuries on the throat, chest, abdomen of Tarak. P.W. 3, Mohan Jaiswara, another eye-witness spoke that the deceased Tarak was stabbed about 5/6 times. P.W. 12, Dr. Sruti Kr. Bose, Emergency Medical Officer of R.G. Kar Medical College &

Hospital before whom Tarak was brought dead on the date of occurrence found "multiple stab injuries". Dr. Bose (P.W. 12) further deposed that P.W.I gave a statement that Tarak was severely stabbed by the appellant.

41. It would be also worthwhile to move on to the evidence of P.W. 5, Prof. Bhupal Chandra Mazumdar, Professor and Head of the Department of Forensic and State Medicine, Sir Nil Ratan Sircar Medical College & Hospital, Calcutta, who held the post-mortem examination on the body of the deceased Tarak on 15.1.97 i.e. the next day of the incident. Prof. Mazumdar, as we have seen earlier, found as many as 7 injuries which consisted of an injury in the neck, chest, shoulder and arm and other places. Prof. Mazumdar was of the opinion death was due to the effects of such injuries which were ante mortem and homicidal in nature. Prof. Mazumdar in his cross-examination further stated that the injury Nos. 4 and 7 might have been caused while the victim was defending himself. Prof. Mazumdar was of the opinion that the injuries found by him might be caused by the weapon of offence (Mat. Ext. XI), which was shown to him.

42. We find the Medical Evidence and the ocular evidence absolutely match with each other giving the great strength to the prosecution case.

43. If we see along side the main thrust of the findings of Prof. Mazumdar, the opinion of Prof. Dr. Mazumdar (P.W. 5) that the victim "took his food just before his death", which has to be read in conjunction with the evidence of P.W. 3. Mohan Jaiswara who "found Tarak taking his meal sitting on his rickshaw..." just before death struck him.

44. Now, we have the evidence of P.W. 6, Goutam Roy, Deputy Manager, System Control, Calcutta Electricity Supply Corporation Ltd. who deposed that at the relevant night in the place of occurrence there was no power failure by proving the report of the then Manager, System Control (Ext. 6). As such, the question of any mistaken identity can also be safely ruled out.

45. The sketch map (Ext. 8) prepared by P.W. 8, Adhip Banerjee shows the geographical character of the place of occurrence as seen and spoken by the relevant witnesses.

46. Next in the line we have the evidence of P.W. 13, Dr. Ajay Kumar Ghosh, Assistant Director, Biology Division, State Forensic Science Laboratory; P.W. 14, Dr. Sipra Ray, Senior Scientific Officer, Biology Division State Forensic Science Laboratory and P.W. 15. Dr. Krishna Pal, Asstt. Serologist & Chemical Examiner who gave their opinion with regard to the samples of blood group and the alabams, examined by them serially which only goes to buttress the prosecution case.

47. Another very heart-rendering evidence would be found from P.W. 7, Amitava Roy Chowdhury, who was the owner of a school known as Divine Child English Medium School. P.W. 7 owned the cycle rickshaw, which was pulled by the deceased Tarak Jaiswara. He deposed that Tarak used to keep it with him and to

carry the children of his school. The photographs of the ill-fated cycle rickshaw (Mat. Exts. III, III/I, III/II collectively) were taken by P.W. 10, Nitin Kr. Biswas the Assistant Sub-Inspector of Police. The photographs, marked as Ext. 10, proved the seizure list in respect of the cycle rickshaw (Ext. 7).

48. Little did the deceased Tarak conceived in his slightest dream that the vehicle which he used to ply as a means of his avocation and on board he was having his last supper would convey his mortal remains to the North Subarban Hospital, as spoken by P.W.I, Bhola Jaiswara - "I removed my brother to the North Subarban Hospital by the rickshaw belonging to my brother"; as also by P.W. 3, Mohan Jaiswara, another eye-witness "Myself, Bhola and Haripada (not examined) who were there took Tarak Jaiswara to North Subarban Hospital, Cossipore by the same rickshaw which was being pulled by Tarak.

49. P.W. 16, A.K. Chatterjee, attached to Chitpur Police Station conducted the inquest over the deadbody of Tarak at the Dead House of R.G. Kar Medical College & Hospital on 15.1.97. The report was marked as Ext. 16.

50. We have an overview of the prosecution case relating to the involvement of the appellant. We have also the evidence of recovery of the wearing apparels (Mat. Exts. XII and XIII) of the appellant including the weapon of offence (Mat. Ext. XI) all seized by P.W. 19, Supriya Kumar Pal under a seizure list, prepared by him (Ext. 17), from the house of P.W. 9, Mongala Prosad Lala (Sadhu) on the basis of the statement (Ext. 18) leading to such recovery made by the appellant in police remand.

51. It would be carrying coal to Newcastle if we define the impact of such recovery in view of the trite position of law.

52. Suffice it to say that simple discovery of the said articles, seized under a seizure list (Ext. 17), would at the highest be a fact discovered at the instance of the appellant. Nothing more, in order to connect the appellant with the crime on the basis of such discovery it has to be shown that such articles have been used by him for commission of the crime. We have the evidence of P.W. 5, Prof. Bhupal Chandra Mazumdar, who has categorically stated that the injuries found by him could be caused by such type of a knife (Mat. Ext.XI). Further the ocular evidence of P.W. 1 & P.W. 3 also speak of the appellant carrying a knife. If we revert to the evidence of P.W. 13, Dr. Ajay Kumar Ghosh, Assistant Director, Biology Division, State Forensic Science Laboratory, who submitted his report (Ext. 12) found blood in the knife (Mat. Ext. XI). The report of P.W. 15 (Ext. 15), Dr. Krishna Pal, Asstt. Serologist & Chemical Examiner shows that in the wearing apparels, examined by her, she noted that there was stain with human blood; but, so far as the knife was concerned she was of the opinion: "The blood stains on the item Nos. 10, 13 are disintegrated and their origin cannot be determined."

53. As such, from the aforesaid sequence of materials before us it can easily be established that the weapon of offence (Mat. Ext.XI) has been used for the commission of the murder of Tarak Jaiswara by the present appellant. The

recovery, made u/s 27 of the Evidence Act, by P.W. 19, Supriya Kumar Pal from the house of P.W. 9, Mongala Prosad Lala (Sadhu) can easily be taken in evidence and very much goes against the appellant, even though, P.W. 17, Bimal Kundu, landlord of P.W. 9 turned hostile.

54. That apart, we find the recovery of the weapon of offence (Mat. Ext. XI) and other articles (Mat. Exts. XII & XIII), made by P.W. 19, Supriya Kumar Pal after preparing a seizure list (Ext. 18), has been amply supported by P.W. 18, Ujjal Mukherjee, who arrested the appellant from a place, called Jatindranagar. The house of P.W. 17, Bimal Kundu, we find, is also situated at Jatindranagar, wherefrom the recovery was made from the room of P.W. 9, Mongala Prosad Lala (Sadhu).

55. This evidence operates very strongly against the appellant and we find that the arrest of the appellant and the subsequent recovery have been borne out very effectively from the evidence of P.W. 18, Ujjal Mukherjee and P.W. 19, Supriya Kumar Pal, both the Investigating Officers, who could not be discredited in their cross-examinations.

56. On the basis of the appreciation of the evidence we are of the considered view that the prosecution has been able to bring home the charge against the appellant. We find there is no merit in the appeal and accordingly, dismiss the same.

57. Before we part, we would like to place on record our deep sense of appreciation of the very able assistance received from the learned Amicus, who has been of immense help.

58. Keeping in mind the fact that this is a jail appeal now it is requested that the learned Registrar will forthwith communicate a copy of this order to the appellant through the Superintendent of the concerned Correctional Home latest within a fortnight.

59. Appeal dismissed.

Sankar Prasad Mitra, J.

60. I agree.