
(2015) 05 CAL CK 0056
In the Calcutta High Court
Case No : CRA No. 146 of 2014

Shyam Sabar and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 07-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 161, 164, 174, 313
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2015) 3 CHN 713

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

Bench : Division Bench

Advocate : Somsubhra Ganguly, for the Appellant; Ranbir Roychowdhury and Pawan Kumar Gupta, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Debasish Kar Gupta, J.—This appeal is preferred by the appellants assailing a judgment and order of conviction dated December 10, 2013 and sentence dated December 11, 2013 passed by the learned Additional District and Sessions Judge, Fast Track 2nd Court, Purulia in Sessions Trial No. 46/13 arising out the Sessions Case No. 254/11. By virtue of the impugned judgment and order of conviction dated December 10, 2013 the appellants were held guilty of the offence punishable under Sections 302/34 IPC and convicted thereunder and sentenced each of them to suffer rigorous imprisonment for life and to pay fine of Rs. 10,000/- only to the de facto complainant, for each of the convict and in default of payment of such fine, to suffer a further period of rigorous imprisonment of one year, for each in connection with the offence under Section 302 IPC.

2. The prosecution case, in brief was as under:-

3. A written complaint dated August 27, 2011 was lodged in Manbazar Police Station, District-Purulia at about 5/5.30 hours, by Bibhisar Sabar of village Jamda Bhasapara, stating therein that there was an altercation in between the

deceased (who was the father of the complainant), and the appellants. During the altercation and quarrel, the appellant No. 1 took a lathi and the appellant No. 2 took a tamna. Both of them assaulted the deceased on his head. The deceased fell down on the courtyard sustaining bleeding injury. After returning home the complainant and P.W. 7 (the brother of the complainant) saw that their father was lying on the courtyard having bleeding injury. They removed the deceased to Manbazar Gramin Hospital by the car of one "Bharat". The doctor of the hospital declared the aforesaid father of the petitioner dead. Therefore, they went to Manbazar Police Station, Purulia. Since the complainant could not write Bengali, one Nepal Chowdhury son of Biswanath Chowdhury, the subscribe, wrote the complaint. The above letter of complaint was treated as First Information Report No. 39/11 dated August 27, 2011 in connection with Manbazar Police Station U/ D. case No. 33 dated August 27, 2011.

4. An investigation report dated August 27, 2011 was prepared in presence of witnesses. P.W. Nos. 1, 5 and Dharendra Nath Murmu were the witnesses of the above investigation report. Thereafter the P.W. 11 made over the dead body to P.W. 6, a constable attached to Belarampur Police Station for sending the same to Purulia Sadar Hospital for post mortem examination on the above dead body.

5. On August 27, 2011, blood stained earth was collected from the place of occurrence. Seizure list was prepared. P.W. Nos. 1 and 5 put their signatures on the seizure list as witnesses. A rough sketch map of the place of occurrence was also prepared by P.W. 11.

6. On August 28, 2011, the P.W. 8, medical officer (Medico Legal) attached to Purulia Sadar Hospital had conducted the post mortem examination over the above dead body and prepared the post mortem report. According to the above post mortem report following injuries were detected on the body of the deceased:-

- i) Lacerated fresh injury transverse, 1" x 1/2" bone deep at upper occipital region,
- ii) Subcutaneous haematomas occipital region,
- iii) Intra-cerebral haemorrhage occipital and base of brain was present.

7. Out of the aforesaid three injuries, there was one external injury (Sl. No. i) on the dead body. The other two injuries (Sl. No. ii and iii) were internal in nature. According to the above post mortem report, the cause of death was shock and haemorrhage due to above injuries which were ante mortem and homicidal in nature.

8. The appellant No. 2 was arrested on August 28, 2011. On the basis of the information given by the above appellant, the P.W. 11, the investigation officer, he had been brought to his house at Jamda Bhesapara on the same day and seized one Tamna with wooden handle (one of the weapon of offence) from bamboo made macha of that house. Blood stain and mud particles were detected on the metal portion of the above Tamna. It was seized and the signature of the

appellant No. 2 was obtained in that seizure list. P.W. No. 1 put his left thumb impression and P.W. 5 put his signature on the above seizure list as witnesses.

9. The appellant No. 1 was arrested on September 15, 2011. On the basis of information of the above appellant one Tal-Bagra Lathi with blood stain was recovered. Seizure list was prepared. The appellant No. 1 put his left thumb impression on it and P.W. 5 put his signature as witnesses.

10. On January 16, 2012, charge was framed against the appellants under Sections 302/34 IPC.

11. Eleven (11) prosecution witnesses were examined out of which P.W. 1 was the son of the deceased, P.W. 2 was the mother of the deceased, P.W. 3 was the another son of the deceased, P.W. 4 was the wife of the deceased, P.W. 5 was the daughter-in-law of the deceased and the P.W. 7 was the another son of the deceased. The other witnesses were the official witnesses of the prosecution. After taking into consideration the First Information Report, surathal report, charge-sheet as also the supplementary charge-sheet, FSL report and the evidences adduced 11 prosecution witnesses, the impugned judgment and order of conviction and sentence were passed.

12. It is submitted by Ms. Somsubhra Ganguly, learned Advocate appearing on behalf of the appellants, that the impugned judgment and order of conviction and sentences cannot be sustained in law for the following reasons:-

(i) P.W. 1 was not present at the place of occurrence at the material point of time. He was informed of the incident by P.W. Nos. 2 and 3. According to above informations, appellant No. 1 assaulted the deceased with tal-bagra lathi and the appellant No. 2 struck on his head with tamna kodai. But according to the post mortem report, one external injury was detected on the dead body. Therefore, according to Ms. Ganguly, the finding of the learned Court below was erroneous so far as the corroboration of his evidence with prosecution case was concerned.

(ii) It was evident from the letter of complaint dated August 27, 2011, that one Gopal Chowdhury, son of Biswanath Chowdhury scribed the same. But one Nepal Chowdhury, son of Biswanath Chowdhury was P.W. 9, who had scribed the above letter of complaint.

(iii) The learned Court below was in error in giving weightage to the statement of the P.W. 2 made under Section 164 Cr.P.C. She was declared hostile.

(iv) Considering the distance of tube-well from the place of occurrence as appeared in the rough sketch map, it was not possible for the P.W. 3 to hear the quarrel in between the deceased and the appellants or to see the incident of assaulting the deceased by the appellants.

(v) The learned Court below found that the P.W. 5 was a neighbour of the deceased but the deceased was his uncle-in-law.

(vi) P.W. 5 was one of the witnesses of the investigation report prepared under

Section 174 Cr.P.C. According to him, the police obtained his signature on the above report in Manbazar Police Station. But according to the above report, the same was prepared in Manbazar Rural Hospital, (vii) P.W. Nos. 1 and 5 were the witnesses of the seizure lists. They were relations of the deceased.

(viii) P.W. 7 was not present at the place of occurrence. According to him, he gathered the informations from P.W. Nos. 2, 3 and 4. But according to P.W. 4, he arrived at the place of occurrence after the P.W. 7 had come to the above place.

(ix) The report of matching of blood group of the deceased with the blood stain found on the weapon of offence was not done.

13. According to Ms. Ganguly, the learned Court below did not take into consideration the aforesaid aspects of the matter for passing the impugned judgment and order of conviction and sentence.

14. Reliance is placed by Ms. Ganguly on the decisions of Sk. Yusuf Vs. State of West Bengal, AIR 2011 SC 2283 : (2011) 3 Crimes 1 : (2011) 6 JT 640 : (2011) 6 SCALE 511 : (2011) 11 SCC 754 : (2011) 8 SCR 83 : (2011) AIRSCW 3748 : (2011) 4 Supreme 331 and Mustkeem @ Sirajudeen vs. State of Rajasthan in support of her submissions.

15. It is submitted by Mr. Ranbir Roy Chowdhury, learned State advocate that though the P.W. 2 was declared hostile her entire deposition could not be ignored in view of the fact that the same corroborated the statements made by her under Section 164 Cr.P.C. It is also submitted by him that considering the materials on record that she had been treated by the doctor for sustaining injury at the place of occurrence by the appellant.

16. According to Mr. Roy Chowdhury, the deceased sustained one external injury as appeared from the post mortem report prepared by P.W. 8. It was corroborated with the deposition of the P.W. 8.

17. With regard to discrepancy in the evidences of the prosecution witnesses, it is submitted by him that those are minor in nature and according to settled proposition of law corroboration with mathematical niceties should not be expected in criminal cases. It is further submitted by Mr. Roy Chowdhury that according to the statements of P.W. Nos. 2 and 3 made under the provisions of Section 164 Cr.P.C., human blood was detected in the weapon of offence. It was corroborated by P.W. 8, the author of the post mortem report. So, matching of the blood group of the deceased with the blood stained on the weapon of offence was not required.

18. Mr. Roy Chodhury relied upon the decisions of Bhajju @ Karan Singh Vs. State of M.P., (2012) CriLJ 1926 : (2012) 2 JCC 1192 : (2012) 3 SCALE 438 : (2012) 4 SCC 327 : (2012) AIRSCW 1963 : (2012) 2 Supreme 439 , Leela Ram (Dead) Through Duli Chand Vs. State of Haryana and Another, AIR 1999 SC 3717 : (1999) 8 JT 274 : (1999) 6 SCALE 477 : (1999) 9 SCC 525 : (1999) 3 SCR 435 Supp : (1999) AIRSCW 3756 : (1999) 8 Supreme 631 , Ajayan alias

Baby Vs. State of Kerala, (2011) 3 Crimes 247 : (2011) 1 ILR (Ker) 1 : (2011) 1 KLJ 34 : (2011) 1 RCR(Criminal) 543 and Alamgir Vs. State (NCT, Delhi), AIR 2003 SC 282 : (2003) 95 CLT 579 : (2003) CriLJ 456 : (2002) 9 JT 347 : (2003) 1 SCC 21 in support of his above submissions.

19. We have heard the learned Counsels appearing for the respective parties and we have considered the facts and circumstances of this case.

20. The learned Court below took into consideration the evidences of P.W. Nos. 1, 2, 3, 4, 5 and 7 as also the statements made by the P.W. 2 under Section 164 Cr.P.C. to arrive at a conclusion that consequent upon a hot altercation between the deceased and the appellants, the appellant No. 1 stuck on the head of the deceased on his head with a tal-bagra lathi and the appellant No. 2 assaulted the deceased by a tamna kodai.

21. According to the learned Court below, only one external injury and two other internal injuries were evident from the post mortem report. Those injuries were corroborated by the evidence of P.W. 8, who had conducted post mortem examination over the dead body. According to the learned Court below, that external injury and the internal injuries were different in nature due to difference in the weapon of offence. One was tamna kodai. The other one was hard and blunt substance causing internal injuries which could only be detected in course of post mortem examination. After considering the post mortem report as also the evidence of P.W. 9 we find no substance in the submission of Ms. Ganguly that there was discrepancy with regard to the injuries sustained by the deceased.

22. After considering the letter of complaint from lower Court records, we find that the name of scribe was Nepal Chowdhury, son of Biswanath Chowdhury. The same was typed in the paper book erroneously.

23. With regard to the credibility of the confessional statement of the witness who was declared hostile, we find substance in the submissions made by Mr. Roy Chowdhury. When a prosecution witness deposes contrary to the stand of the prosecution, the Court may allow the prayer of the prosecutor to declare that witness hostile and to cross-examine such witness. In that event there is limited examination-in-chief, cross-examination by the prosecutor and cross-examination by the learned Counsel of the accused. The entire evidence of such witness cannot be treated as washed off the record. According to the settled proposition of law, it is admissible to use the examination-in-chief as well as cross-examination of that witness in so far as it supports the case of the prosecution. There is no bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. Reference may be made to the decision of Bhajju @ Karan Singh (supra) and the relevant portion of the above decision is quoted below:-

"19. Now, we shall discuss the effect of hostile witnesses as well as the worth of the defence put forward on behalf of the appellant/accused. Normally, when a witness deposes contrary to the stand of the prosecution and his own statement

recorded under Section 161 of the Criminal Procedure Code, the prosecutor, with the permission of the Court, can pray to the Court for declaring that witness hostile and for granting leave to cross-examine the said witness. If such a permission is granted by the Court then the witness is subjected to cross-examination by the prosecutor as well as an opportunity is provided to the defence to cross-examine such witnesses, if he so desires. In other words, there is a limited examination-in-chief, cross-examination by the prosecutor and cross-examination by the counsel for the accused. It is admissible to use the examination-in-chief as well as the cross-examination of the said witness in so far as it supports the case of the prosecution. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. Section 154 of the Act enables the Court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party. The view that the evidence of the witness who has been called and cross-examined by the party with the leave of the court, cannot be believed or disbelieved in part and has to be excluded altogether, is not the correct exposition of law. The Courts may rely upon so much of the testimony which supports the case of the prosecution and is corroborated by other evidence. It is also now a settled canon of criminal jurisprudence that the part which has been allowed to be cross-examined can also be relied upon by the prosecution. These principles have been encompassed in the judgments of this Court in the cases:

- a. Koli Lakhmanbhai Chanabhai Vs. State of Gujarat, (2000) CriLJ 408 : (1999) 3 Crimes 256 : (1999) 9 JT 133 : (1999) 7 SCALE 127 : (1999) 7 SCALE 113 : (1999) 8 SCC 624 : (2000) 1 UJ 9 ;
- b. Prithi Vs. State of Haryana, (2010) 7 JT 567 : (2011) 1 RCR(Criminal) 262 : (2010) 7 SCALE 344 : (2010) 8 SCC 536 : (2010) 9 SCR 33 ;
- c. Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi), AIR 2010 SC 2352 : (2010) 4 JT 107 : (2010) 4 SCALE 1 : (2010) 6 SCC 1 : (2010) 4 SCR 103 : (2010) 3 UJ 1650 ;
- d. Ramkrushna Vs. State of Maharashtra, (2007) CriLJ 3431 : (2007) 6 JT 637 : (2007) 6 SCALE 247 : (2007) 13 SCC 525 : (2007) 5 SCR 818

(Emphasis supplied)

24. The above proposition of law was repeated and reiterated by Hon''ble three Judges Bench of Supreme Court in the matter of Periyasami Novanagar Vs. State, (2014) AIRSCW 2223 : (2014) CriLJ 2350 : (2014) 5 JT 7 : (2014) 4 SCALE 601 : (2014) 6 SCC 59 and the relevant portion of the above decision is quoted below:-

"27. It was submitted that the evidence of P.W. 15 Periyasamy must be rejected because he turned hostile. It is trite that the evidence of a hostile witness need not be completely discarded. The prosecution can use that part of his evidence which is corroborated by other evidence on record (see Bhajju v. State of M.P.) Moreover, in this case, the facts are peculiar. From 13-9-1996 when P.W. 15 Sevi Periyasamy was first examined in the court till 25-9-1998, he supported the prosecution. When after five years he was recalled on 19-9-2001, he resiled from his previous statement only to some extent. On 28-9-2001, he confirmed some portion of his earlier statement but resiled to a large extent from his earlier statement. It is obvious that the recording of his evidence was not continuous. There was huge gap of five years between recording of his examination and re-examination. It is also pertinent to note that on 13-9-1996, 3-11-1997, 5-2-1998 and 25-9-1998, when he narrated the sequence of events and explained the role of the accused, he was not cross-examined at all. It is clear from this that recording of his evidence was unduly prolonged, and in that period, an effort was made to win him over. These facts will have to be taken into consideration while considering the evidentiary value of his evidence. We are of the opinion that it would be safe to rely on that part of the evidence of this witness, which is corroborated by other evidence on record."

(Emphasis supplied)

25. We find that the learned Trial Judge relied upon the statements made by the P.W. 2 under Section 164 of Cr.P.C. and also the evidence adduced by the above witness to the extent which were corroborated by P.W. Nos. 3, 4, 5 and 7 as also the post mortem report. Therefore, the above part of the impugned judgment does not require our interference.

26. The learned Trial Judge took into consideration the Ext. 15 ("G") to arrive at a finding, amongst other, that the location of the tube-well under reference was just on the other side of the road adjacent to the southern side of the house of Kisto Sabar and P.W. 3 could see the incident. The corroboration of the evidence of P.W. 7 was also taken into account by him to come to the above finding. We do not find any error with regard to the above finding of the learned Court below.

27. Regarding error in treating the P.W. 5 as neighbour and the place of obtaining of signature of P.W. 5 on the investigation report prepared under Section 174 Cr.P.C., we find that the learned Court below took into consideration the evidences of P.W. 11 and Ext. 1 to come to a conclusion the signature of P.W. 5 as witness was obtained on the above investigation report in Manbazar Rural Hospital. So, the above discrepancies were minor in nature and the contradictions were not of a material diamention on the finding of the learned Court below on the basis of the settled proposition of law should not be interfered with. Reference may be given to the decision of State of U.P. Vs. M.K. Anthony, AIR 1985 SC 48 : (1985) CriLJ 493 : (1984) 2 SCALE 728 : (1985) 1 SCC 505 and the relevant portion of the above decision is quoted below:-

"10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals."

(Emphasis supplied)

28. The alleged discrepancy with regard to time of arrival of P.W. 7 and the place of occurrence, we are of the opinion that the same had no adverse effect on the finding of the learned Court below in view of the settled principle of law in respect of minor discrepancy as decided in the matter of M.K. Anthony (supra).

29. That apart, it is the settled principle of law that the reliability of a witness cannot be questioned on the ground that he is an interested witness. The test of creditworthiness ought to be the guiding factor. Reference may be made to the decision of Alamgir (supra) and the relevant portion of the above decision is quoted below:-

"13. The circumstances noticed above, if read with the evidence of PW. 6, Shamim Bono as to the date of departure of the accused with his wife Hazra @ Halima from Bombay to Delhi and the telephonic message after two days that Halima had died in a bus accident and that she had been cremated at a cremation ground in Nizamuddin - this piece of evidence, as noticed above, if read along with the circumstances noticed above, would form a chain without there being any snap. Strenuous submissions have been made as regards the admissibility of the Handwriting Expert's opinion as also a challenge thrown to the non-admissibility of the entire evidence of Shamim Bono, PW. 6. This evidence of Shamim Bono has been challenged on two counts: on the first Shamim Bano, being the sister of Halima, was an interested witness and secondly, she did not say so in a statement before the police under Section 161 Criminal Procedure Code Interested witness by itself cannot possibly be a ground

to reject the evidence on record. The test of creditworthiness or acceptability, in our view, ought to be the guiding factor and if so, question of raising and eye-brow on the reliability of witness being an interested witness would be futile-in the event the evidence is otherwise acceptable, there ought not to be any hindrance in the matter of prosecutor's success. The evidence must inspire confidence and in the event of unshaken credibility, there is no justifiable reason to reject the same. It is on this score the issue of interested witness thus stands negated, as raised by the appellant. The second limb pertains to the statement under Section 161 Criminal Procedure Code. Admittedly, this piece of evidence was not available in the statement of the witness under Section 161 Criminal Procedure Code, but does it take away the nature and character of the evidence in the event there is some omission on the part of the police official. Would that be taken recourse to as amounting to rejection of an otherwise creditworthy and acceptable evidence - the answer, in our view, cannot but be in the negative. In that view of the matter, the evidence of PW. 6 thus ought to be treated as creditworthy and acceptable and it is to be seen the effect of such an acceptability."

(Emphasis supplied)

30. The next question which requires our consideration is requirement of obtaining report of matching blood group of the deceased with the blood stain found on the weapon of offence.

31. In the event the proof of guilt of the accused depends solely on circumstantial evidence, a determining link in completing the chain of circumstantial evidence is essential with must admit no other hypothesis than that of guilt of the accused. Reference may be made to the decision of *Matru alias Girish Chandra Vs. The State of Uttar Pradesh*, AIR 1972 SC 1050 : (1971) CriLJ 913 : (1971) 2 SCC 75 : (1971) SCC(Cri) 391 : (1971) 3 SCR 914 and the relevant portion of the above decision is quoted below:-

"19. The appellant's conduct in absconding was also relied upon. Now, mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime such is the instinct of self-preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence of sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused. In the present case the appellant was with Ram Chandra till the F.I.R. was lodged. If thereafter he felt that he was being wrongly suspected and he tried to keep out of the way we do not think this circumstance can be considered to be necessarily evidence of a guilt mind attempting to evade justice. It is not inconsistent with his innocence."

(Emphasis supplied)

32. But, the proposition of law in a case of proving guilt of an accused on the basis of evidence of eyewitness, it is just the other way. Non-ascertainability of the blood group cannot be made a basis to discard the evidence of the witness who otherwise inspire the confidence of the Court and are believed. Reference may be made to the decision of Keshavlal Vs. State of Madhya Pradesh, AIR 2002 SC 1221 : (2002) CriLJ 1776 : (2002) 2 Crimes 92 : (2002) 2 JT 628 : (2002) 2 SCALE 410 : (2002) 3 SCC 254 : (2002) AIRSCW 1007 : (2002) 2 Supreme 184 and the relevant portion of the above decision is quoted below:-

"4. After going through the judgment of the trial court we find that the High Court was justified in setting aside the same because the judgment of acquittal is based upon surmises, conjectures and assumed contradictions. The High Court rightly found that in fact there was no contradiction in the depositions of the eyewitnesses and omissions or improvements noticed by the trial court did not amount to contradictions for the purposes of discarding the testimony of otherwise trustworthy natural witnesses. The trial court totally ignored the testimony of the eyewitnesses while holding that they had not seen the injury because, according to the FIR, the injury allegedly had been inflicted on the nose of the deceased. All the witnesses had deposed in the court that the injury was caused on the body of the deceased from behind near the right shoulder and the force with which it was caused resulted in the cutting of the vital inner parts of her body. Non-examination of the fingerprint expert has not, in any way, affected the case of the prosecution because it has come on record that before the seizure of the weapon of offence many person had handle it. Though the report of the Serologist is not available on the record, yet the report of the Chemical Analyser clearly and unequivocally shows that the clothes of the appellant and the weapon of offence were stained with human blood. Non-ascertainability of the blood group cannot be made a basis to discard the evidence of the witnesses who otherwise inspire the confidence of the court and are believed. No fault can be found with the judgment of the High Court by which the finding of the acquittal recorded by the trial court were set aside."

33. We find that the learned Court below took into consideration the evidence of P.W. 3, who was one of the eyewitness and corroboration of the nature of injuries recorded in post mortem report as also the opinion of P.W. 8, who had conducted the post mortem examination.

34. Noteworthy that after completion of the prosecution evidence the appellants were examined under Section 313 Cr.P.C. The detection of human blood on the weapon of offence was disclosed to the appellants (Question No. 146 in both the documents). They did not put-forth any substantial plea except a bald denial. They did not chose to adduce any evidence. The learned Court below took into consideration the above fact.

35. Therefore, we do not find any substance in the submissions of Ms. Ganguly

with regard to non-ascertaining of blood group of the blood stain detected on the weapon of offence.

36. We do not find that the decision of Sk. Yusuf (supra) helps the appellants. According to the above decision in absence of any report of serologist as to the presence of human blood on the weapon of offence may make the conviction of the accused unreasonable. The report with regard to the presence of human blood was obtained in the case in hand. For the same reason, the decision of Mustkeem @ Sirajudeen (supra) does not help the appellants.

37. This appeal is, thus, dismissed.

38. Copy of this judgment along with the lower Court records be sent down to the trial court immediately.

39. Urgent photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

Md. Mumtaz Khan, J.

I agree.