
(2016) 02 CAL CK 0150
In the Calcutta High Court
Case No : C.R.A. No. 668 of 2006

Sri Hemanta Roy

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 29-02-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2016) 4 AICLR 942 : (2016) 3 CalCriLR 715

Hon'ble Judges : Ashim Kumar Roy and Malay Marut Banerjee, JJ.

Bench : Division Bench

Advocate : Mr. Dilip Chatterjee, Mrs. Chandreyee Alam, Mr. Supriyo Roy Chowdhury, Advocates, for the Appellants; Mr. Subir Banerjee, Ms. Sreyashee Biswas, Advocates, for the State

Final Decision : Allowed

Judgement

Ashim Kumar Roy, J.—This criminal appeal is directed against an order of conviction of the appellants, Hemanta Roy and Jagadish Roy for having committed offences punishable under Sections 302/201 IPC simpliciter and sentence to suffer imprisonment for life and to pay fine with default clause, without imposing any separate sentence for their conviction under Section 201 IPC.

2. The prosecution case, as was unfolded from the First Information Report lodged by one Narben Ray (PW/1), the husband of the victim Gata Bala Roy, in a nutshell was as follows:-

3. The wife of the informant to sell "Chira" went to Siliguri on the fateful day, April 5, 2000 in the morning and thereafter although she was found in their village Ambari by Upen Roy (PW/13) in the evening but she did not return home. The informant with the help of the other villagers vigorously searched for her at different places but she could not be traced out and on the next morning at about 7 A.M. her dead body was found floating in the pond of one Nirmal Goldar

with sharp cutting injuries on her person.

4. During investigation police found complicity of the present appellants in the commission of the offence and accordingly they were charge-sheeted under Sections 302/201 IPC and was placed on trial before the Learned Additional Sessions Judge, 2nd Fast Track Court, Jalpaiguri to answer charges for the selfsame offences.

5. The prosecution examined as many as 16 witnesses to establish the charge brought against the appellants. However, defence examined none and took a plea of innocence and false implications.

6. Now, going through the evidence on record and other materials collected during investigation, we find that the case of the prosecution rests essentially on the evidence of Binoy Roy (PW/10), sole eyewitness to the occurrence. We therefore propose to begin with his evidence.

7. According to the Binoy Roy (PW/10), on the fateful night at around 8/8-30 P.M., in the evening while he was returning home he found the appellants standing near his house, in front of the dead body of his aunt Gata Bala Roy, lying in a pool of blood. Thereafter, the appellants tied the dead body with a rope and dragged and abandoned it in a pond, wherefrom on the next day the same was recovered. The witness although claimed that he was threatened by the appellants with dire consequences, if he disclosed the incident to anyone, still we find from his evidence, on the next morning, his elder brother, his sister and uncle were informed. We also find from his evidence that he was present on the next morning when police came and held the inquest.

8. Amongst his relations, to whom, the Binoy Roy (PW/10) claimed to have disclosed the incident, only two of them, Narben Roy and Bulbul Roy were examined as PW/1 and PW/4 during the trial but not his elder brother.

9. Narben Roy (PW/1) was the husband of victim Gata Bala Roy and the maker of the FIR. It appears from the records that the incident was reported by him to Ambari, Falakata Outpost at 9-35 A.M., on the next morning after the dead body of the victim was discovered floating in a pond against unknown persons obviously because till that time the involvement of the appellants in the crime was not known to him. It is also pertinent to note that the Narben Roy (PW/1) in his evidence in court never claimed to have heard anything about the incident from Binoy Roy (PW/10). On the other hand Narben Roy (PW/1) admitted during his cross-examination that Binoy Roy (PW/10) was all through with him, while he was searching for his wife and therefore, if at all the incident, which was claimed to have been witnessed by the PW/10, showing the appellants' involvement in the commission of the crime was informed to him by the PW/10 then there is no reason for PW/1 not to disclose such fact in the FIR and even in court. This non-disclosure of the alleged incident by the Binoy Roy (PW/10) to Narben Roy (PW/1), the husband of the victim completely shattered the reliability of the PW/10, only eye-witness to the occurrence. In addition to that the PW/10 has

been contradicted with reference to his statement made to the second investigating officer of the case PW/12 in accordance with the provisions of section 145 of the Evidence Act with regards to the fact of informing PW/1 and PW/4 about the incident.

10. The next witness to whom the PW/10 claimed to have disclosed about the incident and was examined during the trial was his sister Bulbul Roy (PW/4). Although, this witness claimed that her elder brother Binoy Roy (PW/10) saw who committed the murder of his mother but during cross-examination she admitted such fact was not told to the investigating officer of the case. Undoubtedly, this is a very vital and material omission and what has been claimed by the witness in her evidence cannot at all be safely acted upon.

11. Furthermore, admittedly Binoy Roy (PW/10), the sole eyewitness to the occurrence, nearly 3 months after the alleged incident for the first time disclosed to the police that the appellants were behind the murder of the victim Gata Bala Roy. Of course it is true it cannot be held as a rule of universal application that the testimony of a witness becomes unreliable merely because there is delay in informing the police about an incident of murder, which the witness claimed to have seen and each particular case has to be examined on its own merits. However, in the case in hand, his explanation for this inordinate delay is not at all acceptable. According to him, after informing PW/1 and PW/4 and another he left for his place of employment. Already we have elaborately discussed why we are not inclined to accept his claim that soon after the incident, the said witness informed both PW/1 and PW/4 about the involvement of the appellants in the crime. It is from the cross-examination of the witness Binoy Roy (PW/10) himself we find there is sufficient indication that he was present when police visited the spot and held the inquest. Therefore, the witness had enough opportunity to inform the police about the incident and the author of the crime. Thus, his failure to inform the police and to remain silent for long 3 months must be read against him and undoubtedly this sole eye-witness to the occurrence is completely unworthy of credence.

12. It goes without saying a conviction can very well be recorded on the evidence of sole eye-witness to the occurrence but that must be subject to a close scrutiny and only when is found completely free from any shadow of doubt and credible. But, for the infirmities pointed out herein above, the evidence of PW/10, the sole eye-witness to the occurrence, cannot said to have qualified the test of reliability.

13. In this regard the ratio of the following decisions is quite relevant.

(1) Balakrushna Swain v. State of Orissa, reported in AIR 1971 SC 804,

(2) Bhagwan v. State of M.P., reported in AIR 1980 SC 1750,

(3) Ganesh Bhavan Patel v. State of Maharashtra, reported in AIR 1979 SC 135.

14. We find, the trial court put much reliance on the evidence of Prabhat Chandra Roy (PW/7) and Nipen Roy (PW/8), although none of them had any direct

knowledge about the incident and their evidence attracted the mischief of section 60 of the Evidence Act and therefore inadmissible. While PW/7 claimed that he was told by Debaru Roy (PW/15) and Nipen Roy (PW/8) that the appellants committed murder of Gata Bala Roy, according to Nipen Roy (PW/8), he was informed by Binoy Roy (PW/10) and Debaru Roy (PW/15) about the incident. Debaru Roy (PW/15) was declared hostile as he disowned his knowledge about the incident and Binoy Roy (PW/10) never included him as one of the persons who was informed by him about the incident. It may further be added that to the investigating officer of the case PW/21 both PW/7 and PW/8 did not disclose that they had heard about the incident from PW/8 and PW/10. The approach of the trial court was totally erroneous and not in accordance with law.

15. Now, having regard to above, we do not think that the trial court was justified to convict the appellants for having committed the murder of Gata Bala Roy, an offence punishable under Sections 302/201 IPC.

16. In the result, this appeal is allowed and the order of conviction and sentence is set aside. The appellants who are in custody at once be set at liberty, if not detained in connection with any other case.

17. Office is directed to send down the Lower Court Records at once.

Malay Marut Banerjee, J. - I agree.

18. Appeal is allowed by setting aside the conviction and sentence.