

(2002) 03 CAL CK 0056
In the Calcutta High Court
Case No : Crl Appeal No. 371 of 1991

Sri Uday Murmu and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 11-03-2002

Acts Referred:

Evidence Act, 1872 — Section 134, 3, 45
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2003) 1 ALT(Cri) 23 : (2002) 2 CALLT 65 : (2002) 2 CHN 348

Hon'ble Judges : Nure Alam Chowdhury, J; Jyotosh Banerjee, J

Bench : Division Bench

Advocate : Minati Gomes, for the Appellant; R.K. Ghosal, for the Respondent

Final Decision : Dismissed

Judgement

1. Banerjee, J.—By the judgment and order dated 25.7.91, the Additional Sessions Judge, Midnapore convicted all the three appellants under Sections 302/34 IPC and sentenced them to suffer life Imprisonment and also to pay fine of Rs. 2000/- each in default R.I. for one year each. The appellants/accused have filed this appeal challenging the said judgment and order.

2. The prosecution case, shorn of unnecessary details, may be stated thus. The deceased Bhadra Hansda, the husband of the informant Ralmani Hansda had taken the sister of the accused persons as his first wife. But the said first wife at the relevant point of time was not allowed to live with the victim Bhadra and she had to live in her father's house. Over this there was altercation between the accused/appellants in one side and the victim in the other wherein the accused/appellants wanted to know why the victim was not living with his first wife and why such first wife had to live in her father's house. Then in the night of 19/20.10.86 at about 1/2 A.M. when the informant along with her two sons and husband were lying in her room, appellant/accused Budhla Murmu called the victim and asked him to go to his house (house of the accused) in order to settle the altercation and mutual assault over the aforesaid Issue. Victim Bhadra

expressed his unwillingness to go there at that hour of the night and told him that he would go in the morning. At this accused Budhia entered into the room and forcibly took out Bhadra of the room. The informant followed them with a light and found that the other two appellants/accused Uday Murmu, Budhia Tudu were standing there with two daggers in their hands. The informant followed the appellants/accused, who dragged her husband. In this way, the Informant went near the varandah of Budhia and found that her husband Bhadra was laid down facing sky while Budhia caught hold of his hands and other two accused, namely, Uday and Budhia Tudu were cutting throat of Bhadra with daggers. On seeing this, the informant raised alarm and rushed towards her house. Then she Informed some of the witnesses and after that came to the house of Budhia with these persons to whom the Informant reported what had been seen by her. But coming to that spot she could not find anybody there. But at that point of time, they found marks of blood at the spot. In the morning a search was launched and following the marks of blood they discovered the deadbody of Bhadra floating in the Palanta canal.

3. On the basis of the aforesaid Information in the FIR Dantan P.S. started Case No. 6/20.10.86 and on completion of the investigation submitted the charge-sheet u/s 302/34/201/364 IPC. After the case was committed to the Court of Sessions, the learned trial Court framed charge u/s 302 read with section 34 IPC against the accused/ appellants and the trial proceeded when the appellants pleaded not guilty and claimed to be tried.

4. The only point for our determination here is whether the learned trial Judge was justified in his decision of conviction and the sentence awarded on the basis of such conviction upon the appellants?

5. In order to bring home the charge, the prosecution has examined in all 10 witnesses. PW1 Smt. Raimani Hansda is the wife of the informant and informant of the case. PW2 Lepa Hansda, is younger brother of the victim Bhadra. PW3 Panu Murmu is mother of the Informant PW4 Bartang Murmu at the relevant point of time was a member of the Anchal Panchayat to whom the Informant (PW1) and another reported the Incident. PW5 Smt. Mukhl Murmu is the wife of accused/appellant Uday Murmu. PW6 Dr. S.K. Jamal at the relevant point of time was attached to Midnapore Sadar Hospital as the Medical Officer. He held the P.M. examination over the dead body of the victim. PW7 Haripada Bhuina at the relevant point of the time was the Pradhan of the panchayat, who found the deadbody of the victim in the morning of 20.10.86 while he was passing by the side of the canal and claimed that he heard from the PW1 that appellants/accused were responsible for killing her husband. PW8, S.I, Bijay Kr. Mondal as O.C. of Dantan P.S. who took up the further investigation of the case. According to him, the Investigation had already been completed before he took up the further investigation and the same kept pending only for the purpose of F.S.L. report. He submitted the charge-sheet on getting such report and after obtaining permission from his superior officer. PW9 Sri Biswas as S.D.J.M., Midnapore

recorded the statement of Mukhi Murmu (PW5) u/s 164 Cr.PC. PW10-SI Lutfar Rahaman was O.C. Dantan P.S. on 20.10.86 he recorded the FIR on the basis of the oral statement of the PW1 Raimani Hansda and started the PS case, he himself took up the Investigation of the case. He visited the P.O. seized weapon of assault recovered the dead body of the victim from the water of the canal, held the inquest over the dead body in presence of the witnesses, sent the deadbody to Midnapore Sadar Hospital through a constable for the purpose of P.M. examination. Seized some articles including old check lungi (blood stain) and also examined witnesses and recorded their statement u/s 161 Cr.PC. He also stated that he made several attempts to arrest the accused persons, but failed.

6. In this case, PW1 Raimoni Hansda, is the most important witness from the side of prosecution, as such evidence supplies the background of the Incident of murder and also some important subsequent events which clearly lead us to a finding that appellants/accused were the persons, behind the murder of the victim, Bhadra Hansda. According to her, in the night of incident, her husband, she herself with their child were sleeping in their room, when all the appellants/accused called Bhadra for a settlement of a quarrel, which took place in the afternoon. Witness of that time woke up and heard her husband telling the appellants that he would go in the following morning. But the appellants insisted that he should go with them at once.

7. It is further evidence that the appellants were insisting on the victim's going for a settlement at that point of time and when the victim disagreed the appellants dragged him away from the place where the witness and her family were sleeping. The accused persons took the victim in the house of Budhia Murmu. The witness followed them with a lantern in her hand. The witness found that Budhia Murmu caught hold the hands of the victim and the other appellants, namely, Uday and Budhia Tudu cut the throat of the victim. It was also her evidence that Uday and Budhia Tudu had daggers with them. The witness seeing this raised alarm, but apparently such alarm failed to evoke any response. The appellants on the other hand dashed her aside, when she came back home and narrated the incident to Lepa (PW2). Balat (not examined), and Mungli, Lepa's wife. They went to the house of Budhia Murmu. Going there they found that the room had been kept under lock and key. They also found blood mark in the Varandah in the light of the lantern. Then the witness along with her companions went out to search out the appellants, but could not get them. In the following morning they had been to the canal following blood marks and found the dead body of her husband. Therefore, the witness had been to the police station and narrated the incident to the Police Officer who noted down the same. It was read over and explained to her and she affixed her L.T.I. She also added in her evidence that there was a quarrel between appellant/accused uday Murmu and the victim Bhadra in the afternoon on the Issue that Bhadra had deserted his first wife, the sister of accused Uday. It further transpires that the evidence of PW1 is substance in the same line, as depicted in the FIR on the relevant point of

implicating the appellants/accused with the offence complained of. It is the specific evidence of PW2, the brother of the victim that in the night of Incident he woke up hearing cries of the victim. He saw PW1 who reported to him that all the three appellants took away the victim Bhadra in the evening and that the accused persons were cutting Bhadra in the house of Budhia. He also added that then he along with PW1 had been to the house of Budhia Murmu and found blood. At that time they searched for the victim but did not get him. In the morning following the blood marks they had been to the canal and found the dead body of the victim.

8. PW3, the mother of PW1 stated in her evidence that in the night of incident she woke up from her sleep hearing the cries of Bhadra and PW1 her father-in-law and others came to her house in that very night to search for the victim. At this stage the witness was allowed to be cross-examined by the prosecution.

9. PW4 saw the dead body of the victim in the canal and further added that in the morning time PW1 along with Balai had been to his house and Balai reported him that Bhadra, the victim had been to his father-in-law's house in the night, but he did not return and in the morning they discovered his dead body in the canal. He came to learn from PW1 that in the afternoon there was an altercation and in the night, appellant, Budhia Murmu had been to the house of the victim to call him and victim had been taken away by appellant Budhia.

10. PW5, Mukhi Murmu as the wife of appellant/accused Uday she did not state anything in her evidence which could implicate the appellants with the offence complained of. But admitted that her statement was recorded by the Magistrate. At the same time, she added that she did not say anything to the Magistrate.

11. PW6 Dr. S.K. Jaman as the Medical Officer attached to Midnapore Sadar Hospital, held the P.M. examination over the dead body of the victim Bhadra Hansda on 21.10.86. He found clear cut wound 5"x3" in the front of the neck deep upto trachea oesophagus and both carotid artery and also abrasions on both elbows 3"x2" and over both knees 4"x3" and also over heel joint and over the back and a cut mark 3" x 2" in the right ear. Death in his opinion was due to asphyxia and haemorrhage as noted in the report. He further opined that the injuries were possible by sharp cutting weapon and such injuries might be caused by a weapon like sickle.

12. PW7, Harlpada Bhuiya, who at the relevant point of time was a member of the panchayat deposed that PW1 had reported to him that the appellants had killed her husband. In the cross-examination, the witness further disclosed that in the morning he found two appellants, namely, Uday and Budhta who were escaping but the witness did not try to catch them, as it was unknown to him till then that they were Involved in murder.

13. PW8, S.I., Bijoy Mondal submitted charge-sheet on the basis of the earlier investigation, on receipt of the FSL report.

14. PW9, P.K. Biswas, who was S.D.J.M., Midnapore recorded the statement u/s 164 Cr.PC of the witness PW5, Mukhi Murmu.

15. PW10, S.I. Lutfar Rahaman actually Investigated the case and for that purpose visited the spot examined the witness u/s 161 Cr.PC; sent the deadbody of the victim for P.M. examination.

16. In this way, it is evident that in the Instant case, prosecution had to rely heavily on the evidence of PW1 to bring home the charge against the appellants. If her evidence is found to be trustworthy and is acceptable, then it can be said that relying on such evidence which gets corroboration from the other oral testimonies including the evidence of the doctor, that prosecution has proved the charge beyond reasonable doubt. The learned Advocate for the appellant has criticised the evidence of PW1 by pointing out that there is contradictions between the stand taken by PW1, the author of the FIR in such FIR and her evidence before the Court. She has pointed out that while the specific allegation raised in the FIR was that appellant/ accused Budhia Murmu alone entered in the room where she along with her husband and child were lying, in the evidence she stated that all the three appellants had entered such room for the purpose of taking away her husband. But in our considered opinion, the contradiction thus pointed out is not a very vital one..In fact both in the evidence of PW1 and the FIR lodged by her she clearly indicated that all the appellants had been to their house for the purpose of taking her husband away. The only difference between the two is that while in the FIR the specific allegation was that it was appellant Budhia Murmu who on entering the room lifted her husband and took her out of the room closely followed by the informant and the Informant coming out of the room found that the two other appellants with daggers were standing out side the room. In the evidence, PW1 did not state very clearly who amongst the appellants entered Inside the room where they were sleeping but gave enough Indication that all the three had come to their house for the purpose of taking away her husband forcibly. Therefore, it cannot be said that there is any contradiction between the stand taken by the informant in the FIR and such stand taken in her evidence on being examined as PW1 which can raise a serious doubt about the truth of the entire allegation. The fact remains that a consistent stand taken by the Informant was that all the three appellants had been to her house for the purpose of forcibly taking her husband away. In this connection. It should also be pointed out that the learned Advocate for the appellant has drawn our attention to the fact that in the FIR as well as in the evidence, the weapon of assault was specifically mentioned as the dagger, but before the doctor only a sickle had been produced as a weapon of assault. This too fails to convince us that for the aforesaid circumstance the very basis of the prosecution case would be shaken. We should not forget that the parties here are rustic illiterate tribals. Since both the weapons are somewhat sharp cutting weapon, this cannot be treated very material for the purpose of coming to a decision that the incident complained of did not take place in the manner as alleged by the prosecution. This is more so in view of the evidence of PW 6, doctor who held P.M.

examination, who clearly stated that the injuries seen in the person of the victim could be caused by sickle and also by dagger. So if the injuries seen in the person of the victim at the time of the P.M. examination over his dead body could be caused by both the weapons then we should not give much Importance to see actually which specific weapon was used to Inflict the injuries. Suffice it to say that the weapons being similar in nature, when the medical evidence clearly indicated that same type of injuries as found in the person of the victim could be caused by both the weapons, the contradiction as to the nature of the weapon of assault found in the FIR and the evidence of PW1 and the actual weapon seized would not be vital and cannot go to the root of the prosecution case.

17. Learned Advocate for the appellants thereafter wanted to criticise the prosecution for non-examination of some witnesses named in the FIR and non-examination of some neighbours who were sleeping in their respective houses. Therefore, according to her, adverse presumption should be drawn against the prosecution for such failure. We are not inclined to accept the contention. From the trend of evidence, it is explicit that those witnesses were not eye witness to the occurrence. According to the FIR they were post occurrence witnesses to prove the complicity of the appellants in the crime. Non-examination of such witnesses does not appear to us to be fatal to the prosecution case. We have already found that PW1, an eye witness to the occurrence is an absolutely trustworthy and reliable evidence. There is no infirmity in her evidence which calls for further corroboration from the witness mentioned in the FIR as well as some neighbouring witnesses who were not examined. In this connection, it should be mentioned that in *Pal Singh and Others Vs. State of U.P.*, the Supreme Court held that after the High Court had believed the eye witnesses and found that their testimony was absolutely creditworthy and truthful, it could not be rejected the prosecution case merely because some of the eye witnesses mentioned in the FIR were not examined. In such case, the question which has to be determined is not whether the absence of Independent witnesses would vitiate the prosecution case by itself, but whether the evidence actually produced is reliable or not. In this case as we have already seen that besides the evidence of PW1 who was present at the place wherefrom the victim was taken away and who followed the accused persons to the spot and thereafter returning home reported the incident to her relations and neighbours, got corroboration from the evidence of PW2, the brother of the victim. Even PW3 Panu Murmu who was declared hostile by the prosecution and her evidence indicated that in the night of incident she woke up hearing cries of the victim. Later on her daughter PW1 and others came to her house in search of the victim, PW7, Harlpada Bhuia who was at the relevant point of time, the pradhan of the Panchayat stated in his evidence that on 20.10.86 at about 8 a.m. he found the deadbody of the victim in a gunny bag while he was passing by the side of the canal and at that time it was reported to him by the second wife of the deceased that the appellants had killed her husband. There is no Indication that the evidence of the witness on the point that he heard from PW1 that her husband had been killed by the

appellants, was a subsequent addition as no such statement was made by the police. Therefore, we do not find any cogent reason for not placing any reliance on the evidence adduced from the side of the prosecution.

18. In this way on consideration of the evidence on record, relevant facts and circumstances and also the submissions made by the learned Advocates for both sides, we do not find any reason to take a different view from that of the learned Additional Sessions Judge regarding his ultimate conclusion that the prosecution successfully brought home the charge levelled against the accused. Specially when credibility of the testimony, oral and circumstantial depends considerably on a judicial evaluation of the totality, not Isolated scrutiny. While it is necessary that proof beyond reasonable doubt should be adduced in all criminal cases, it is not necessary that it should be perfect.

In the result, the appeal must fail. It is accordingly dismissed.

N.A. Chowdhury, J.

19. I agree.