
(2012) 04 CAL CK 0005

Calcutta High Court

Case No: C.R.A. No. 755 of 2004 with C.R.N. No. 440 of 2006

Dilip Kamti

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: April 27, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 201, 302, 34, 364

Citation: (2012) 3 CHN 323

Hon'ble Judges: Asim Kumar Ray, J; Ashim Kumar Roy, J

Bench: Division Bench

Advocate: Asish Das in C.R.A. No. 755/04 and Sundarwar Lal in C.R.A. No. 440/06, for the Appellant; Debasish Roy, Ld. P.P. for the State, for the Respondent

Final Decision: Dismissed

Judgement

Ashim Kumar Roy, J.

These criminal appeals are directed against the judgment and order passed by the learned Additional Sessions Judge, Fast Track, 2nd Court, Sealdah, 24-Parganas (South) convicting the appellants under sections 364 /302 /34 of the Indian Penal Code and sentencing them thereunder to suffer rigorous imprisonment for 10 years and imprisonment for life respectively with fine and default clause. The case of the prosecution in brief is as follows:

The deceased Vyas Thakur had a VCD Shop situated besides the Central Dairy. On November 14, 2002 at about 7.30 p.m. the deceased along with Raj Kumar Singh PW/12 and Bablu Shaw PW/13 were sitting together in his said shop and were gossiping. At that time both the appellants came to the shop together and asked the deceased for a VCD Player and CDs. Since the deceased expressed his inability to supply them VCD player and CDs as the same were not available with him, the appellants started abusing them filthily and forcibly dragged him out from his shop and took him to some unknown destination. Soon thereafter the mother of the

victim came there and she was informed about such incident by the PW/12 and PW/13. She then in turn reported the incident to the local police station and a specific case for an offence punishable under sections 364 /34 of the Indian Penal Code was registered against the appellants. On the next morning around 8.40 hours the dead body of victim Viyas was found in the railway track near Santi Colony. The dead body was found truncated into three pieces.

2. In the trial the appellants were charged under sections 364 /302 /201 /34 of the Indian Penal Code and the prosecution to prove its case examined as many as 19 witnesses.

Out of the said 19 witnesses examined by the prosecution, PW/1 and the PW/2 are the official photographer and plan maker attached to the Calcutta Police. The PW/3 is also a photographer who took the photographs of the dead body and PW/4 is the owner of the studio. The PW/5 and the PW/6 are the seizure witnesses. The PW/7 is the Autopsy Surgeon. The PW/8 was the doctor attached to the R.G. Kar Medical College and Hospital where the dead body was first taken. The PW/9 is a police constable. The PW/10 is a police officer held the inquest. The PW/11 is the mother of the victim. The PW/12 and PW/ 13 are the friends of the deceased and the PW/14 is his elder brother. The PW/ 15 and PW/16 are the witnesses to the inquest. The PW/17 is an Officer attached to the Calcutta Electric Supply Corporation. The PW/18 and PW/19 are the Investigating Officers of the case.

3. The learned counsels appearing on behalf of the appellants assailed the order of conviction and sentence on the following grounds:

(a) Both the PW/12 and PW/13 are the friends of the deceased, although claimed to be present at the time when he was allegedly abducted by the appellants but they neither tried to resist the appellants nor sought for help from the member of the public to save his life, which shattered their credibility.

(b) No evidence was laid by the prosecution to show that it is the appellants who after allegedly abducting the deceased killed him and laid his dead body in the railway track.

(c) The doctor who held the post-mortem examination never stated anything as to the cause of death.

(d) The evidence of "last seen" is a very weak piece of evidence and cannot be the basis of any conviction.

(e) The PW/12 and PW/13 both are chance witnesses therefore cannot be relied upon.

4. The learned counsel for the appellants in support of its contention that the evidence of "last seen" is a very weak piece of evidence relied on a decision of the Hon"ble Delhi High Court in the case of [Raju @ Ranthu @ Raju Kr. Vs. State](#), and on

two more decisions of the Hon"ble Apex Court viz. in the case of [Roopsena Khatun Vs. State of West Bengal](#), and in the case of Sk. Yusuf vs. State of West Bengal, reported in AIR 2011 SC 2283. The learned Counsel also referred the aforesaid decisions of the Hon"ble Apex Court to show what are the essential requirements to prove a criminal case based on circumstantial evidence.

It is vehemently contended that the case against the appellants has not been proved beyond all reasonable doubt and the appellants are entitled to acquittal.

According to the learned Public Prosecutor that there is no illegality or infirmity in the impugned judgment. He contended that the case against the appellants has been proved beyond all shadow of doubt on the evidence of the PW/12 and PW/13 and their evidence could not have been shaken in their lengthy cross-examination. He contended that these appeals have no merit and liable to be dismissed.

5. This is a case entirely based on circumstantial evidence. There is no controversy to establish a case against an accused on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should be fully established and the facts so established on the circumstances relied upon by the prosecution must always be consistent only with the hypothesis of the guilt of the accused and not with his innocence. It is true that the circumstances of last seen" together is alone not sufficient to conclude the guilt of the accused. However, in this case the evidence of PW/ 12 and PW/13 is not merely that the deceased was found alive for the last time in the company of the appellants before he was found dead. On the other hand, it is the evidence of the aforesaid two witnesses that in their presence both the appellants came to the shop of the deceased together and demanded the VCD player and CDs and as the deceased expressed his inability to fulfill their demand because of non-availability of those things they started filthily abusing him and then forcibly dragged him out from his shop. The said incident was also reported by the said two witnesses to the mother of the deceased and following that she lodged a FIR to the local police station intimating the aforesaid incident where the appellants have been named as the miscreants and on the next morning the dead body of the victim Viyas Thakur was found in the railway track in a truncated condition. Both the said witnesses were cross-examined at length but nothing was brought out from their cross-examination to doubt their credibility. The learned Counsel for the appellants has not been able to point out any contradiction in the testimony of these two witnesses, on whose evidence the prosecution case rests. The defence has also not come out with any explanation what happened after the victims were dragged out by the appellants. We do not find any merit on the submissions of the learned Counsel of the appellants that it has not been proved that the appellants suffered a homicidal death, in this regard the relevant portion of the evidence of PW/7 the doctor who held the postmortem is extracted below;
Responding to the query of I.O. vide letter dated 4.12.02 I passed the following opinion :-

1) The injuries mentioned in the PM report are not inconsistent to the injuries which might have been produced if the victim was forcibly placed or pushed by person or persons over the railway track in front of a running train and this can be proved by circumstantial evidences.

2) Whether the subject was intoxicated by alcohol or the subject was given alcohol for unconsciousness before he sustained the railway injuries, can be ascertained by the examinations of the blood which has been sent to FSL for examination.

We further find from the evidence of the post-mortem doctor that the victim Viyas Thakur died sometime between 12 to 14 hours from the time of postmortem and post-mortem was held on November 15, 2002 at around 3.30 p.m., while according to the PW/12 and PW/13 the victim was abducted at around 8 p.m. in the night of the previous day, which clearly established the complicity of the accused in the commission of the crime.

For the reasons stated above, we are of the opinion the Trial Court was fully justified in coming to the conclusion as to the guilt of the appellants and accordingly the order of conviction and sentence does not deserve any interference.

In the result both the appeals fail and stand dismissed.

The office is directed to send down the records together with the copy of this order at once.

Criminal Section is directed to deliver urgent Photostat certified copy of this judgment to the parties, if applied for, as early as possible.

Ashim Kuma Ray, J.

I agree.