

**(2014) 12 CAL CK 0054**

**Calcutta High Court**

**Case No:** CRA 839 of 2006

Nandalal Das

APPELLANT

Vs

The State of West Bengal

RESPONDENT

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**Date of Decision:** Dec. 3, 2014

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 235
- Penal Code, 1860 (IPC) - Section 302, 34

**Citation:** (2015) 2 CALLT 443 : (2015) CriLJ 1183

**Hon'ble Judges:** S. Chatterjee, J; Nishita Mhatre, J

**Bench:** Division Bench

**Advocate:** Sanjoy Banerjee, Advocate for the Appellant; Pawan Kumar Gupta, Advocate for the Respondent

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**Judgement**

Nishita Mhatre, J.

On 6th November, 2003, the Beliaghata Police Station received an anonymous telephone call that a cardboard carton with a dead body in it was found near the Chaul Patti Road alongside Beliaghata canal. The S.I., who received the phone call, went to the spot and found a Samsung T.V. carton. A dead body was kept inside that box. The legs were amputated at the knees. The box was covered by a nylon gunny bag and the deceased was wearing a white shirt, half sleeve vest and a checked lungi. A gamcha was placed on the body. The lower limbs were found near the body. The police officers completed the requisite formalities after making the seizure. The written complaint was filed by S.I., Ujjal Roy, in which he mentioned the description of the body found in the carton. The body was photographed and sent for post mortem examination. Since there was no claimant of the body, a notice was published in a Hindi daily newspaper on 12th October, 2003 with the photograph of the deceased. On seeing this notice, one Brahmadeo Das-PW 19 informed the police that the deceased was Mitun Das and was his brother-in-law. The investigation was transferred to the Homicide Squad of the Detective Department. Ultimately the

investigation led to the arrest of the appellant herein on 15th November, 2004, almost a year after the body was found.

2. The appellant was tried by the Additional District and Sessions Judge, 2nd Fast Track Court, Sealdah, South 24 Parganas, in Sessions Case No. 63(4) of 2005. The charge framed against him was under Section 302 read with Section 34 of the IPC. The Trial Court has convicted the appellant and sentenced him for having committed an offence punishable under Section 302 read with Section 34 of the IPC and Section 235 of the Cr.P.C. He has been sentenced to suffer imprisonment for life with a fine of Rs. 5000/-, in default of payment of fine he has been sentenced to suffer further imprisonment for one year.

3. The charge framed against the appellant is that on 6th November, 2003 at about 7.35 a.m. he and his associate Binode Das in furtherance of their common intention murdered Mitran Das by throttling him after amputating both his legs below the knee joints. Binode Das has been absconding and was not tried.

4. In order to bring home the charge against the appellant, the prosecution has relied on the testimony of 21 witnesses, including the investigating officers. The complainant Ujjal Roy, S.I. of Beliaghata Police Station, has been examined as PW 14. He has spoken of receiving the anonymous telephone call informing him of a body being concealed in a carton. He has stated that he left for the scene of offence along with S.I., J. Jana - PW 20. He has described the state of the carton which they found near the Beliaghata canal. According to him the deceased was 56 years old and was strongly built. His left thigh was tied with a yellow electric wire whereas the right thigh was tied with a cotton thread and the legs had been amputated below the knee joints. This witness had conducted the inquest and the report has been exhibited. The body was photographed and according to this witness the photographs were shown to the persons in the locality. However nobody could identify the deceased. He has mentioned that the photograph was published in a Hindi daily newspaper on 12th October, 2003. He has spoken about the seizure of several articles including the cardboard carton and the gunny bag. He has identified the clothes that the deceased was wearing in Court and mentioned that a banian was stitched to the nylon gunny bag which covered the carton.

5. PW 1 is the plan maker. He has drawn the sketch map of the place of occurrence and its surroundings.

6. PW 2 is the photographer who took photographs of the deceased and later on 24.11.2004 he was directed to photograph a construction on 11 C, South Sealdah Road.

7. PWs 3 and 4 are witnesses to the inquest. They have spoken about an ash colour vest being seized from the place of occurrence.

8. PW 5 was a Senior Executive of Samsung India Electronics Limited. He has been examined as the carton, in which the dead body was found, bore the name of the aforesaid company and the model number of the television set which was packed in it earlier. A delivery challan in respect of the carton was seized from his office. It appears that the television set bearing model No. CV 20F 4K Samsung CTV 20" was delivered to Lapcon Electronics Private Limited on 25th April, 2001. The witness has conceded that on the same day 50 television sets were delivered to Lapcon Electronics Private Limited.

9. PW 6 was working with M/s. Fairdeal, a shop in Dharmatala, Kolkata. After verifying from the records maintained by the shop, he informed the police who had come for enquires that the television model was received by the shop from Lapcon Electronics Private Limited. The delivery challan was seized by the police.

10. PW 8 is an accountant with M/s. Sur Sangeet. According to him this firm had received a Samsung colour T.V. from M/s. Fairdeal of Dharmatala. That television set was delivered later by M/s. Sur Sangeet to M/s. Radio Ways Private Limited of Lindsey Street, Kolkata.

11. PW 7 is an employee of M/s. Radio Ways Private Limited. On the basis of the model number of the television set provided to him, he disclosed to the police the name of the person to whom it was sold. Documents indicating the purchaser of the television set were seized by the police.

12. PW 9 Biswanath Roy purchased the television set from M/s. Radio Ways Private Limited on the request of his friend Subhasish Dutta @ Tuna who has been examined as PW 15.

13. PW 15 has stated in his deposition that in the year of 2001 he purchased a television set from Radio Ways Private Limited in the name of his friend Biswanath Roy - PW 9. This witness claimed that he knew the appellant who was an employee of a business run by Lalbabu Shaw - PW 10. The mother of Lalbabu Shaw was his tenant since 1992. According to this witness in the year 2003 Lalbabu left his house for his village in Bihar about 2/3 days prior to the Chat Puja. Lalbabu Shaw told him that he had requested Binode and Nandu to stay in his tenanted room and asked PW 15 to keep an eye on them. The witness claimed that about 3/4 days after the Chat Puja he went to the tenanted room and found Nandu, Binode and one aged man was having a meal together. He asked Nandu as to when Lalbabu Shaw would return and Nandu informed him that he had no knowledge about the same. Lalbabu then returned asked the witness about the whereabouts of Nandu and Binode as he had to break the padlock of the room. This witness claims that the carton of the television set which was purchased by him was given to Lalbabu by his mother. He claimed to have identified the carton in the police station. He also identified the photograph shown to him by the police as the man who was enjoying his meal with Binode and Nandu in the rented room. The PW 15 has witnessed the seizure made

in 2004 at the instance of the appellant. According to this witness Nandu took out a bag from Lalbabu's room which was kept under bundles of gunny bags. This bag contained cotton thread, phoron and cobbler's chisel.

14. Lalbabu Shaw - PW 10 has deposed that he was in the business of manufacturing footwear. In the year 2003 he had engaged the appellant and Binode Das as they were skilled in that trade. He has corroborated the evidence of PW 15 regarding his departure for the Chat Puja. He has also stated that he had given Nandu one ash coloured vest and cash of Rs. 1000/- a few days before his departure. He has stated that prior to his departure for the Chat Puja he had requested his landlord for the empty carton which was lying in the courtyard of the godown of PW 15 to keep the finished goods manufactured in his godown by Nandu and Binode. According to this witness when he returned he had to break open the lock of the room (godown) and he did not find the finished goods nor the cobbler's tools. He also did not see the cartoon. Lalbabu Shaw has witnessed the seizure and recovery of the cobbler's tools at the instance of the appellant. In his cross-examination he claimed that he could recognise the carton because he used it to keep the manufactured footwear in his godown. He was unable to recollect the number on the cartoon. He has identified an ash coloured vest which he claimed to have given the appellant prior to his departure for the Chat Puja in October, 2003.

15. The prosecution has tried to connect the television cartoon to the appellant and the consequential death of the victim by relying on the aforesaid testimonies.

16. PW 11 is the doctor who performed the post mortem examination of the dead body. He has opined that the death was due to the effect of manual strangulation with other injuries which were ante mortem in nature. The witness has timed the death as having occurred within 24 hours prior to the day and time of the post mortem which was performed on 6th November, 2003 at 1.45 p.m. The doctor has further opined that the possibility of the murder having been committed by more than one person could not be ruled out. The witness has stated that there were injuries on the neck suggesting manual strangulation.

17. The test identification parade was held on 21st December, 2004 after the appellant was arrested on 15th November, 2004. It was conducted by PW 13, Judicial Magistrate, 1st Class.

18. PW 17 is a van rickshaw puller. According to him three years before his evidence was recorded at about 5.30 a.m., a man asked him to carry a T.V. carton covered with a plastic gunny bag. He claimed that the man was not known to him, but he carried the box from South Sealdah Road to Chaul Patti Road. He dropped off that man and the carton and was paid his fare. The appellant was identified by this witness in Court. He was shown a photograph and identified the same as being one of the surrounding area of the house of PW 15. The witness has stated that he saw the man, i.e., the appellant thrice; for the first time when he carried the box in his

van rickshaw, then in the correctional home and later in Court.

19. The prosecution has examined a senior scientific officer from the Forensic Science Laboratory as PW 18. This witness has stated that the lungi, vest and gamcha which were worn by the deceased did not bear any sign of violence.

20. PW 19 is the brother-in-law of the victim. He claimed that he saw the photograph of Mitran Das, the deceased, in a Hindi daily newspaper and contacted the police immediately. The witness has stated that he knew that the appellant and Binode Das were not the employees of footwear factory situated at 12, Govinda Khatick Road and that Mitran Das was also an employee there. This witness identified a photograph to be that of a factory room situated at South Sealdah Road where the appellant used to work. According to him, he could identify the room as he had visited the room with Mitran Das prior to the latter's death. He has identified the appellant in Court.

21. PW 20 is the police officer who received the anonymous telephone call about a corpse being found. He started the investigation in this case and continued the same till it was handed over to the Homicide Squad of the Detective Department. According to him, the appellant made a statement leading to the recovery of some articles including the cobbler's tools which he seized. He has spoken about the journey of the cardboard carton from Samsung Electricals Private Limited to the room rented by Lalbabu Shaw.

22. Mr. Sanjoy Banerjee, the learned Counsel for the appellant submitted that an unbelievable case has been cooked up against the appellant on the basis of a cardboard carton. He submitted that the carton which landed in the courtyard of PW 15 had seen the vagaries of weather for more than two years before Lalbabu Shaw used it to store the footwear that he was manufacturing and therefore could not have been intact. According to the learned Counsel it is impossible to believe that the van rickshaw puller, who was a witness to the test identification parade, could identify the appellant after a year although he had seen him only once at 5.30 in the morning. He urged that the appellant had no motive to kill the deceased. He submitted that the appellant has been implicated falsely by the prosecution. He has relied on the judgments in the case of [Pannayar Vs. State of T. Nadu by Inspector of Police,](#) [R. Shaji Vs. State of Kerala,](#) and [Musheer Khan @ Badshah Khan and Another Vs. State of Madhya Pradesh,](#) . The learned Counsel urged that the present case is based on circumstantial evidence and the circumstances do not lead to the only possible conclusion that the accused is guilty. The learned Counsel submitted that it was possible that the appellant had a meal with the deceased on 5th November, 2005 when PW 15 had seen them. However, there was no proof that the appellant continued to be with the deceased even after his meal; nor was there any material on record to establish that there was no possibility of any other person having had access to the deceased.

23. Mr. Pawan Kumar Gupta, the learned Counsel for the State, pointed out having regard to the time of death mentioned by PW 11, it was only the appellant and Binode who could have had access to the deceased. He has pointed out the fact that the deceased was last seen on the company of the appellant has been proved through the testimonies PWs 10, 15 and 18. PW 19 had also spoken about the presence of the victim and the appellant in the godown together on 5th November, 2003. He has then submitted that the evidence of the van rickshaw puller who has identified the appellant as having hired his van to ferry the carton was extremely important. According to the learned Counsel the circumstances in the present case make up a chain which point to the only inference, namely, the guilt of the appellant. Therefore, according to the learned Counsel, there is no need for this Court to interfere with the decision of the Trial Court.

24. On scanning the evidence on record and considering the statements at the bar we are convinced that the prosecution has woven a fantastic tale: the journey of the cardboard carton. There is no doubt that the dead body was found in the carton. The legs had been amputated below the knees. The body has been identified to be that of Mitran Das. The learned Counsel for the prosecution submitted that on enquiries made in the surrounding area of the place of occurrence, the police learnt of the van rickshaw puller - PW 17. It is incomprehensible as to why the police would go to PW 17. In fact PW 20 has stated that he was not able to find anybody in the area who could identify the photograph of the deceased. The investigating officer PW 21 has also reiterated this position. It is rather strange that the police interrogated the van rickshaw puller in the Sealdah area when the carton was found in the Chaul Patti area. What was the reason for them to interrogate the van rickshaw pullers and then zero in on PW 17 is unfathomable. The van rickshaw puller who identified the appellant after more than one year has not stated why he could remember the appellant even after one year when he had seen him only on the day when he allegedly transported the carton. There is no evidence to show that there was any special reason for the van rickshaw puller to remember the appellant who he allegedly seen at 5.30 in the morning. Therefore, the story of the identification by the van rickshaw puller is unbelievable.

25. The prosecution has tried to link the appellant to the crime by relying on the seizure of an ash coloured vest which allegedly was given to him by Lalbabu Shaw. Merely because such a vest was stitched to the nylon bag which contained the carton it would not lead to the inference that the appellant was responsible for the crime. The vest was not a special one with any specific markings. It was identified by Lalbabu only because he had worn it on several occasions. However, that does not mean that such a vest was not available in the market or that nobody else could possess such a vest.

26. In a case based on circumstantial evidence, motive becomes a paramount criterion for deducing that it was the accused who committed the crime. The

Supreme Court in R. Shaji (supra) held that the absence of a motive is a circumstance in favour of the accused in a case based on circumstantial evidence. In the present case, there is not even a shred of evidence to prove that the appellant had any motive to commit the crime. Therefore, the case of the prosecution is extremely weak.

27. The Supreme Court in the case of Musheer Khan's case (supra) has observed thus:

"49. To my mind, the first rule is that the facts alleged as the basis of any legal inference from circumstantial evidence must be clearly proved beyond any reasonable doubt. If conviction rests solely on circumstantial evidence, it must create a network from which there is no escape for the accused. The facts evolving out of such circumstantial evidence must be such as not to admit of any inference except that of guilt of the accused.

50. The second principle is that all the links in the chain of evidence must be proved beyond reasonable doubt and they must exclude the evidence of guilt of any other person than the accused."

28. Bearing these principles in mind we have noticed that the prosecution has not recovered any weapon of assault except for some cobbler's tools. The doctor's opinion was that the death occurred due to manual strangulation associated with other injuries on the body. The cobbler's tools which were recovered pursuant to the statement made by the appellant have not been shown to the doctor by the prosecution in order to elicit his opinion as to whether these tools were used to injure the victim and then to strangle him. There is a report from the FSL indicating that the cobbler's knife (mentioned in the forwarding memo and also in the seizure list) was a chisel with a wooden handle and a sharp edge of approximately 2 inches. However, the blood on the chisel was not sufficient to ascertain the blood-group. The FSL report indicates that the half sleeve vest, lungi and gamcha were stained with blood of Group-B. These were clothes worn by the deceased. It does not throw any light on whether the appellant was responsible for the death.

29. The circumstances relied on by the prosecution do not form a chain which leads to the only inference, namely, the guilt of the accused. The links in the chain which the prosecution has tried to establish have not been proved beyond reasonable doubt. They do not exclude the evidence of guilt of any person other than the accused. Therefore, in our opinion, the prosecution has failed to establish that the appellant is guilty of the crime alleged against him.

30. The decision of the Trial Court is in our opinion erroneous and is therefore set aside. The conviction and punishment imposed on the appellant is set aside. The appellant is acquitted. He will be set at liberty immediately if not required to be detained in any other case.

31. Urgent certified photocopies of this judgment, if applied for, be given to the learned Advocates for the parties upon compliance of all formalities.