

NIRANJAN PANJA

A

v.

STATE OF WEST BENGAL

(Criminal Appeal No. 564 of 2005)

MAY 14, 2010

B

[V. S. SIRPURKAR AND DR. MUKUNDAKAM SHARMA,
JJ.]

Penal Code, 1860 – s. 302 – Murder – Circumstantial evidence – Motive alleged – Conviction by courts below relying on circumstances of the case including discovery of the weapon of offence and applying the theory of ‘last seen together’ – On appeal, held: Conviction not justified – The circumstances relied on for passing conviction order are inconsequential – Discovery of weapon of offence cannot be relied upon as the same was not produced before the court – Motive which is an important circumstance, not proved – Conviction cannot be based on theory of ‘last seen together’ as the prosecution failed to establish the time of death.

C

D

Appellant-accused, alongwith co-accused was prosecuted u/s. 302 r/w. s. 201 IPC for having caused death of one person. The prosecution case was based on circumstantial evidence. Trial court convicted the appellant-accused u/s. 302 IPC while acquitting the co-accused. High Court confirmed the conviction.

E

F

In appeal to this court appellant-accused contended that majority of the circumstances, on the basis of which conviction order was passed, could not be viewed as incriminating circumstances; that despite the discovery of the weapon of offence, the same was never produced before the court, nor was it identified by the witnesses.

G

The State contended that there was motive for commission of the offence inasmuch as there was

A enmity between the accused and the deceased; and
that it was the accused who was last seen together with
the deceased.

Allowing the appeal, the Court

B HELD: 1. There is hardly any evidence in this case
much less a clinching one to believe the theory that the
accused had committed the murder. Both, the judgment
of the trial court as well as the appellate court are
incorrect judgments. In this case, the prosecution has
utterly failed to prove that the accused has committed the
C murder of the deceased. The circumstances relied on by
the High Court for convicting the accused are
inconsequential. The circumstances were totally
innocuous and suspicious. [Paras 9, 16 and 17] [123-G;
127-D-E]

D 2. The High Court has accepted the evidence on the
recovery of the so-called weapon. The said discovery
cannot at all be relied upon in the absence of the weapon
being produced before the court. Again, the High Court
E has also commented upon the medical evidence of the
Medical Officer (PW-11) when he spoke about the injuries
upon the dead body being possible by *Siuli Katari*. In the
absence of *Siuli Katari* being seen by the doctor in the
court, this evidence should have been discarded. It
F seems that the so-called weapon of the offence was lost.
The High Court had also expressed its displeasure and
directed that the circumstances under which the said
weapon was lost should be informed to the court and
also as to who was responsible for the loss of the material
weapon. There are no traces about the same. [Para 8]
G [123-B-E]

3. The question of motive has not been considered
by the High Court at all. The so-called motive as deposed
by PW-1 was that the accused used to speak against the
deceased after the deceased stopped looking after his
H

litigation. It appears that the deceased used to look after the litigation of number of persons and that was probably his profession. It cannot be said that merely because the deceased had stopped looking after the litigation of the accused, the accused had any strong motive much less to commit murder of the deceased. Motive is an important circumstance in the prosecution which is based on circumstantial evidence. However, there is no such strong motive on the part of the appellant. [Para 10] [123-G-H; 124-A-B]

4. PW-1 had suggested in his evidence that on the fateful day in the evening he saw his father (the deceased) at a tea-stall along with the accused and the three other persons. Most of these witnesses, barring PW-3 have not been examined in this case. Again, it will be very inconsequential even if the accused was in the company of the deceased as there were number of other persons also who were having tea. PW-1 then said that he learnt from PW-3 that, thereafter, all of them went to the liquor shop and took liquor. This evidence could not have been allowed to be recorded because it is clearly inadmissible. The claim of PW-1 that the accused had come to his house, and advised him to lodge a complaint against two persons, was also extremely suspicious as there was hardly any corroboration to this claim. The witness also identified the blood-stained clothes. [Para 11] [124-C-G]

5. There is hardly anything in the evidence of PW-2 which is incriminating except that he had seized clothes from the dead-body. PW-3 spoke about the deceased, himself and the accused being there and their consuming liquor at liquor shop. His evidence shows that he was also in the company of the deceased till 9 p.m. He had not stated about their taking liquor in his police statement which he had accepted. The evidence of this witness would be of no consequence, particularly, because the

A prosecution in this case has not fixed the time of death and no evidence is led to that effect. Where the prosecution depends upon the theory of 'last seen together', it is always necessary that the prosecution should establish the time of death, which the prosecution has failed to do in the present case. The evidence of PW-4 also is of no consequence. [Para 12] [124-G-H; 125-A-E]

6. For effecting a discovery, a statement has to be recorded on the part of the accused showing his readiness to produce the material object and it is only that part of the statement which is not incriminating and leads to discovery which becomes admissible. The evidence of PW-5, a witness of discovery, does not inspire confidence and it is of no use, more particularly, because the so-called weapon of offence allegedly produced by the accused never saw the light of the day nor had the witness identified the same and the prosecution had also not given any explanation whatsoever about the disappearance of this weapon. The evidence of PWs 6, 8, 9, 11 and 12 also does not inspire any confidence. [Paras 13 and 14] [126-C-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 564 of 2005.

F From the Judgment and order dated 21.11.2003 of the High Court of Calcutta in CRA No. 229 of 1995.

Ranjana Narayan for the Appellant.

Avijit Bhattacharjee for the Respondent.

G The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. The appellant by this appeal challenges his conviction ordered by the Trial Court and confirmed by the High Court. He was tried for offence under Section 302, Indian Penal Code on the allegation that he had

H

NIRANJAN PANJA v. STATE OF WEST BENGAL 117
[V.S. SIRPURKAR, J.]

committed the murder of one Haripada Samanta on the night between 12-13th December, 1988 at Village Ghagra, Police Station Mahisadal at Sarberia. Charges were framed under Section 302 read with Section 201, IPC against Niranjana Panja and one Narayani Parua. Eventually, the second accused was acquitted of the offence under Section 302 read with Section 201, Indian Penal Code. However, accused Niranjana Panja alone came to be convicted by the Trial Court under Section 302, Indian Penal Code and his appeal having failed, he is before us.

2. A report came to be filed before the concerned Police Station by one Tapan Kumar Samanta, who was the son of the victim, Haripada Samanta, that his father was killed and his body was lying in the narrow Khal. He reported that he found number of injuries caused by a heavy sharp cutting instrument on various parts of his body including head and neck. It was stated that in the morning of 13.12.1988 at about 7 a.m. he got the information about his father's dead body lying in a narrow Khal. He stated that on the previous day in the morning his father had gone to Midnapore to look after the case of one Narayan Adhikari of their village and in the evening on that day he himself had talked to his father at Mahisadal. At that time, Niranjana Panja, Narayan Adhikari, Sudhir Maity and Nirode Kanta Bera were with him. It was claimed that he came to know that on the previous night at about 9 p.m. his father consumed liquor with accused Niranjana Panja and Narayan Adhikari in the liquor shop of one Bholanath Pal and, thereafter, the said three persons came through the village pathway and while Narayan Adhikari went towards his house, his father and Niranjana Panja went back to their homes. However, Haripada Samanta did not return home. On the basis of this complaint, investigation was taken up by the In-charge of the said Police Station, Shri T.K. Tas, Sub-Inspector of Police.

3. The police also came to know during the investigation that there was some rivalry between the deceased and the

- A accused Niranjan Panja as the deceased had stopped looking after the cases of Niranjan Panja for the last 5-6 months on which Niranjan Panja used to speak against the deceased. The prosecution case is that it was on account of this that the accused had committed the murder. The prosecution examined
- B number of witnesses including the complainant son. They were Ram Chand Bar (PW-2), Narayan Das Adhikari (PW-3), Ranjit Samanta (PW-4), Sunil Kumar Samanta (PW-5), Kanai Lal Das (PW-6), Paresh Das Adhikari (PW-7), Smt. Sita Samanta (PW-8), Rabindra Rana (PW-9), Amarendra Seth (PW-10), Dr.
- C Ardhendu Bikas (PW-11) the medical officer, Hare Krishna Pramanik (PW-12) and Shri Tarun Kumar Das (PW-13). The case proceeded only on the circumstantial evidence as there was no eye witness. The defence was that of denial. The defence pointed out that there were major discrepancies in the
- D prosecution evidence like the so-called weapon Siuli Katari was never produced before the Court and the necessary witnesses were also not examined.

4. Ms. Ranjana Narayan, the Amicus Curiae pointed out that the evidence in this case was extremely brittle. She invited
- E our attention to the findings of the High Court where the High Court had culled out ten circumstances. She pointed out that out of these ten so-called circumstances, majority of them could not be viewed as incriminating circumstances. By reference to the evidence of the witnesses, she pointed out that the most
- F substantial circumstance was that the deceased was last seen in the company of the accused. She pointed out that, that circumstance was also not established and could not be viewed as an incriminating circumstance inspite of the so-called discovery of the weapon of murder which was neither
- G produced before the Court nor was identified by any of the witnesses. She also pointed out that the so-called blood stained Siuli Katari was not discovered by the accused. Learned Counsel urged that non-existing circumstances were taken into consideration, for example, the report of the Serologist showed
- H that the Katari was blood stained but the origin of that blood

could not be detected nor was that weapon ever produced before the Court. A

5. As against this, Shri Avijit Bhattacharjee supported the judgment by saying that there was motive inasmuch as there was enmity between the accused and the deceased and it was the accused who was in the company of the deceased on the last day of his life i.e. on 12.12.1988 and that there was clinching evidence to suggest that it was the accused alone who accompanied the deceased back to his home and, therefore, the accused was bound to explain on the basis of 'last seen together' theory. B C

6. We shall consider each of the circumstance relied upon by the High Court. The High Court has quoted the following ten circumstances:-

"A. PW-1 the son of deceased Haripada Babu came to know that his father has been murdered on the previous night (12.12.88) and his body was lying on a small canal in Sarberia. He informed his mother (PW-8), who in turn informed PW-4, Ranjit Samanta his uncle and some neighbours and was also called by the village Chaukidar (PW-2) and on reaching the spot he identified the dead body of his father and PW-3 the Officer-in-Charge of the local Police Station. He signed on the Inquest Report (Ext.1) and was also witness to the Seizure List (Ext.2) in respect of the wearing apparels and penned down the complaint (Ext.3). D E F

B. PW-1 learned from PW-3 Sudhir Maity (not examined) and others that the Appellant used to speak against his father since he has stopped tadbirs of his cases. G

C. On 12.12.88 morning the father of PW-1 along with PW-3 had gone to Midnapore in connection with a case instituted by the latter and in the evening he found in the tea stall of one Gautam Manna (not examined) near Sahid H

A Minar at Mahisadal bazaar that his father along with PW-3 and the appellant, Sudhir Maity (not examined), Nirode Kanta Bera (not examined) were taking tea. There he met his father and on his advice he returned home after marketing.

B D. After the murder of his father he (PW-1) heard from PW-3 that after they were taking tea, PW-3, the appellant and the deceased went to the liquor shop of Bholanath Pal (not examined) at Garkamalpur and took liquor and afterwards left that shop leaving beside Haripada Babu and the appellant together.

C E. PW-7 who was returning home in the night at about 9.30 in evening found that Haripada Babu, father of PW-1 was standing and on his query told him that he was waiting since the appellant had gone to the house of his uncle (PW-6).

D F. The appellant came to the house of PW-1 after he returned home witnessing the dead body of his father lying by the side of the canal and advised him to lodge a complaint against one Haripada Panja and Abinash Panja, which we find corroborated from the evidence of PW-10 also.

E G. The discovery of the dead body of deceased Haripada Babu by the side of the canal and the Ext.6 the post-mortem report, prepared by PW-11 show that death was due to shock and haemorrhage which was homicidal and ante-mortem in nature.

F H. The arrest of the appellant on the very next date of the incident followed by the statement made by him before PW-13 which led to the recovery of the blood stained Siuli Katari under a Seizure List (Ext.4) and a green coloured chadar and a white coloured dhoti under a Seizure List (Ext.5) in presence of PW-5.

H

I. The evidence of PW-9 the village blacksmith, who A
deposed that the appellant came to his shop and got a
Hansua sharpened by him and the day after he had
sharpened the said weapon he heard that a man was
murdered and his body was lying on the side of the small
canal of Sarberia. In answer to the Court PW-9 the village B
blacksmith said-

"Siuli Katari and Hansua are same thing."

J. The Report of the Serologist (Ext.8) shows blood was C
detected in the Katari. However, since it was disintegrated
the origin could not be determined."

7. The first circumstance 'A' that Tapan Kumar Samanta
(PW-1) came to know about the death of his father and that his D
dead body was lying near the small canal in Sarberia can hardly
be said to be an incriminating circumstance vis-à-vis the
accused. The second circumstance 'B' too cannot be
considered as an incriminating circumstance as Tapan Kumar
Samanta (PW-1) had never heard the appellant speaking E
against his father and he claimed that he came to know about
that from Narayan Adhikari (PW-3) and Sudhir Maity (who was
not even examined). Therefore, that circumstance too would go
out of consideration. Insofar as the third circumstance to the
effect that the accused was seen in the company of the
deceased at Midnapore can hardly be said to be a F
circumstance worth the name. It is alleged that the accused was
seen taking tea with the deceased at Mahisadal bazar in the
company of Sudhir Maity and Nirode Kanta Bera and these
persons have not been examined at all. Therefore, even if it is
presumed that the deceased was taking tea with them in the
evening, that would be of no consequence. Insofar as the fourth G
circumstance 'D' is concerned, again, it is based on the
hearsay evidence of Tapan Kumar Samanta (PW-1) that he
heard it from Narayan Das Adhikari (PW-3) that afterwards the
appellant and the deceased went to the liquor shop of Bholanath H

- A Pal at Garkamalpur and took liquor and afterwards left the shop leaving Haripada Samanta and the appellant together. This circumstance, in our opinion, could be somewhat relevant as it established the presence of the accused along with the deceased in the evening and the fact that he was in the company of the deceased. However, we must point out here that the said liquor shop owner Bholanath Pal was never examined. The circumstance 'E' is also of no consequence as Paresh Das Adhikari (PW-7) merely saw the deceased standing alone by the side of courtyard in front of his house at about 9.30 p.m. in the evening. On his inquiry as to why he was standing there, the deceased is supposed to have answered him that he was waiting for Niranjana Panja since he had gone to the house of his uncle, Kanai Lal Das (PW-6). In fact, Kanai Lal Das (PW-6) denied this fact that the accused had come to his place. Therefore, even that circumstance is extremely suspicious. As regards the sixth circumstance 'F', that the accused had gone to the house of Tapan Kumar Samant (PW-1) on 13.12.1988 and told him about his father lying by the side of canal and advising him to lodge a complaint against one against Haripada Panja and Abinash Panja, we will consider this circumstance later on when we examine the evidence in detail. The circumstance at 'G' is the discovery of the dead body by the side of the canal. That cannot be viewed against the accused unless the accused is connected with the death. The next circumstance 'H' is that the accused was arrested on the next day and his arrest led to the recovery and blood stained Siuli Katari under a Seizure List (Ext.4) along with two other clothes, namely, a green coloured chadar and a white coloured dhoti. Unfortunately, for the prosecution this Siuli Katari was never brought before the Court. It is said to have been lost and has never seen the light of the day before the Court. This is apart from the fact that the proof of discoveries itself is doubtful. The circumstance at 'I' is extremely strange. Under that Rabintra Rana (PW-9), the village blacksmith is said to have seen the accused sharpening a Hansua on the earlier day of the incident. Neither that Hansua nor the said Siuli Katari had

been presented before the Court. This witness also did not even see or identify the same. The last circumstance 'J' is about the report of the Serologist showing that the Siuli Katari was having blood. However, it is clear that the report does not say that it was human blood. On the other hand, it was reported that the blood was disintegrated and the origin of the same could not be determined. Therefore, even this circumstance has to go out of consideration.

8. The High Court has accepted the evidence on the recovery of the so-called weapon. We fail to follow as to how the said discovery could at all be relied upon in the absence of the weapon being produced before the Court. Again, the High Court has also commented upon the medical evidence of Dr. Ardhendu Bikash Das, the Medical Officer (PW-11) when he spoke about the injuries upon the dead body being possible by Siuli Katari. In the absence of Siuli Katari being seen by the doctor in the Court, this evidence should have been discarded. It seems that the so-called weapon of the offence was lost. The High Court had also expressed its displeasure and directed that the circumstance under which the said weapon was lost should be informed to the Court and also as to who was responsible for the loss of the material weapon. We do not see any traces about the same. Therefore, the High Court has merely relied upon the said discovery made in the absence of Siuli Katari and recorded under Section 27, Indian Evidence Act and the theory of 'last seen together'. From this, the High Court has proceeded to hold that the chain of circumstances was complete against the accused and the only unmistakable inference of the same was in favour of the culpability of the accused.

9. We have already pointed out as to how the so-called circumstances were totally innocuous or suspicious.

10. On this backdrop, we will first go to the question of motive which has not been considered by the High Court at all. The so-called motive as deposed by, PW-1, Tapan Kumar was

- A that the accused Niranjana Panja used to speak against his father after his father stopped looking after his litigation. It appears that the deceased used to look after the litigation of number of persons and that was probably his profession. We do not think that merely because the deceased had stopped
- B looking after the litigation of the accused, the accused had any strong motive much less to commit murder of the deceased. Motive is an important circumstance in the prosecution which is based on circumstantial evidence. However, we do not see any such strong motive on the part of the appellant. We,
- C therefore, reject the theory that there was any motive much less any strong motive on the part of the accused so as to commit the murder of the deceased.

11. In his evidence, PW-1, Tapan Kumar had suggested that on the fateful day in the evening he saw his father at the
- D tea stall of one Gautam Manna along with Niranjana Panja (accused), Narayan Adhikari, Sudhir Maity and Nirode Kanta Bera etc. Most of these witnesses, barring Narayan Adhikari, have not been examined in this case. Again, it will be very inconsequential even if the accused was in the company of the
- E deceased as there were number of other persons also who were having tea. Tapan Kumar Samanta (PW-1) then said that he learnt from Narayan Adhikari that, thereafter, all of them went to the liquor shop and took liquor. We do not know as to how this evidence was allowed to be recorded because it is clearly
- F inadmissible. The claim of Tapan Kumar Samanta that accused Niranjana Panja had come to his house, and advised him to lodge a complaint against Haripada Panja and Abinash Panja was also extremely suspicious as there was hardly any corroboration to this claim. This witness also identified the blood
- G stained dhoti and gangi baniyan.

12. The second witness was Ram Chand Bar (PW-2) who was a gate keeper in the Gram Panchayat. There is hardly anything in his evidence which is incriminating except that he had seized clothes from the dead body. PW-3, Naryan Das
- H

Adhikari spoke about the deceased, himself and the accused A
being there and their consuming liquor at Bholanath Pal's liquor
shop. He, however, claimed that at about 9 p.m. he parted way
and proceeded towards left and Haripada and Niranjan
proceeded towards right i.e. towards Sarberia. It means that
he was also in the company of the deceased till 9 p.m. He had B
not stated about their taking liquor in his police statement which
he had accepted. He admitted that he and Haripada got down
from the bus at Mahisadal on return from Midnapore. He also
admitted that nobody had witnessed that he had parted
company from Haripada and Niranjan at 9 p.m. on 12.12.1988. C
He could not even tell as to how far Haripada and Niranjan went
together. He admitted that he parted way at a spot in Ghagra
Mouza. He further stated that the house of the deceased was
barely five minutes walk away from that spot while the
accused's house was about half a mile. It was also in the vicinity D
of the village itself. The evidence of this witness would be of
no consequence, particularly, because the prosecution in this
case has not fixed the time of death and there is no evidence
led to that effect. Where the prosecution depends upon the
theory of 'last seen together', it is always necessary that the
prosecution should establish the time of death, which the E
prosecution has failed to do in this case. The evidence of Ranjit
Samanta (PW-4) also is of no consequence.

13. Sunil Kumar Samanta (PW-5), however, was a witness
of discovery. He claimed that he went to the house of Niranjan
Panja along with the Panchayat member, Harekrishna
Pramanick, where the seizure of a chadar, a cloth and a side
bag made of cotton was made. Accused Niranjan Panja had
himself brought out those clothes and then accused led them
to the stack of loose earth under the Banana tree by the side G
of canal and a Hansua was recovered where it was kept
concealed. He had then claimed that a lady had brought out
the weapon and the villagers informed them that she was the
second daughter of Niranjan Panja. He did not even identify that
lady. In his cross-examination, it was suggested that two articles, H

- A namely, the clothes were seized from the house of accused Niranjan Panja. He admitted that he had gone to Thana for his personal business at about 8-9 p.m. and, there he met the Investigating Officer. The accused Niranjan Panja was also there. Then he along with the Investigating Officer and accused
- B Niranjan went to the house of Niranjan. He admitted that there was no other member of the public in the jeep. He had to admit in his cross-examination that he had not said to the Investigating Officer that as per the showing of the Niranjan, Hansua was recovered from beneath loose earth under the Banana tree.
- C Therefore, this can hardly be an evidence of discovery. For effecting a discovery, a statement has to be recorded on the part of the accused showing his readiness to produce the material object and it is only the part of the statement which is not incriminating and leads to discovery which becomes
- D admissible. The evidence of this witness does not inspire confidence and it is of no use, more particularly, because the so-called Hansua allegedly produced by the accused never saw the light of the day nor had the witness identified the same and the prosecution had also not given any explanation whatsoever about the disappearance of this weapon.
- E

14. PW-6, Kanai Lal Das was declared hostile. Paresh Das Adhikari (PW-7) stated that he saw the deceased standing under a tree just by the side of the courtyard in front of his house and on being asked as to why he was standing there, the
- F deceased said that the accused Niranjan had gone to Kanai Lal Das's house and since he was not on talking terms with Kanai Lal, he did not go along with the accused. He claimed that, thereafter, he went for answering the nature's call and when he returned, he did not find Haripada there. The evidence of
- G this witness does not inspire any confidence. Kanai Lal Das himself said that the accused did not go to meet him and nothing of this sort had ever happened. This witness was declared hostile.

- H 15. The evidence of Smt. Sita Samanta (PW-8) is of no consequence because she did not know anything. However, the

evidence of Rabindra Rana (PW-9) is very interesting. He had seen the accused sharpening the Hansua on the previous day. This could hardly be a circumstance to be viewed against the accused as the said Hansua has not seen the light of the day. Dr. Ardhendu Bikas Das (PW-11) was the doctor who had neither seen the Siuli Katari nor had fixed the time of death in the post-mortem report. Hare Krishna Pramanik (PW-12) refused that anything was seized by police from the house of Niranjan Panja in his presence. He was not even declared hostile. The Investigating Officer's evidence too is of no consequence, particularly, because the so-called theory of discovery has been disbelieved by us. He had not even executed the spot Panchnama from where the so called Siuli Katari was allegedly procured by the accused.

16. In short, there is hardly any evidence in this case much less a clinching one to believe the theory that the accused had committed the murder.

17. We are convinced that both the judgments of the Trial Court as well as the Appellate Court are incorrect judgments. In this case, the prosecution has utterly failed to prove that the accused had committed the murder of the deceased, Haripada Samanta. We, therefore, allow this appeal and set aside the conviction of the accused. The accused shall be released forthwith unless required in any other offence.

K.K.T.

Appeal allowed.