

GUIRAM MONDAL

v.

STATE OF WEST BENGAL
(Criminal Appeal No. 1268 of 2007)

APRIL 26, 2013

[K.S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

PENAL CODE, 1860:

ss.148 and 302/149- Double murder - Conviction of one accused only by trial court for causing death of one of the deceased- High Court convicting the appellant and four others - Held: High Court has correctly appreciated the evidence rendered by witnesses - It rightly came to the conclusion that trial court was completely in error by over-looking some crucial and important evidence and placing much reliance on non-mention of name of accused persons in inquest report - High Court has rightly held the appellant guilty u/s 302 read with s.148 and awarded him sentence of life imprisonment - Evidence - Evidence of related witnesses - Investigation - Delay in despatch of special report to Magistrate.

INVESTIGATION:

Inquest - Purpose of - Explained.

The appellant and other accused persons were prosecuted for causing death of two persons, namely, 'AD' and 'SK'. The prosecution case was that the accused persons took alongwith them the two victims and assaulted them with deadly weapons causing their death. PW1, the brother of 'AD', and other witnesses tried to save the victims but in vain and in the process PW1 was shot by a pipe gun and he sustained injuries. The trial court convicted A-3 for causing the death of 'AD' and acquitted all other accused. However, on appeal, the High

A Court convicted the appellant alongwith four others while maintaining the acquittal of others.

B In the instant appeal, two other convicts had also joined the appellant, but as they did not comply with court's order for surrendering, the appeal with regard to them was dismissed.

Dismissing the appeal, the Court

C HELD: 1.1 PW 1, the brother of deceased 'AD', who is also an injured eye-witness, has clearly and unequivocally supported the prosecution case and deposed about the manner in which the accused had done away with the two deceased and his version is fully corroborated by other eye-witnesses, PWs 2, 3, 4, 8 and D 11. The specific part played by the various accused persons, including the appellant, has been narrated by these witnesses. The High Court has correctly appreciated the evidence. [paras 7 and 8] [1113-D-E, H; 1114-A-B]

E 1.2 The High Court has held that the trial court was completely in error by over-looking some crucial and important evidence and in placing much reliance on non-mention of name of accused persons in the inquest report. The basic purpose of holding an inquest is to F report regarding the cause of death, namely whether it is suicidal, homicidal, accidental etc. and non-mention of few accused persons therein is of no consequence. [paras 9 and 10] [1114-D-G]

G *Pedda Narayana and others v. State of Andhra Pradesh* 1975 Suppl. SCR 84 = (1975) 4 SCC 153; *Amar Singh v. Balwinder Singh and Others* 2003 (1) SCR 754 = (2003) 2 SCC 518; *Radha Mohan Singh @ Lal Saheb and Others v. State of U.P.* 2006 (1) SCR 519 = (2006) 2 SCC 450 - H referred to.

1.3 Merely because the FIR was placed before the Magistrate three days after registration of FIR, it cannot be said that the FIR was anti timed, anti dated and fabricated. In fact, no question was put to the Investigating Officer as to the cause of delay in sending FIR to the Magistrate.[para 11] [1115-E-F]

State of Jammu and Kashmir v. S. Mohan Singh and Another (2006) 9 SCC 272 - referred to.

1.4 Further, merely because a witness is a relative of the deceased is not a reason for discarding his evidence. Evidence of relatives can be acted upon if the court finds that the evidence of such a witness is reliable and trustworthy. Besides, PW2 was not a relative of deceased 'AD'. A close scrutiny of the evidence rendered by the eye-witnesses clearly establishes the involvement of the accused. Further, in their cross examination, there is no serious contradiction, omission, infirmity, defect or lacuna which can make their evidence unbelievable and to make them untrustworthy witnesses. Their statements have been fully corroborated by PW 12, the autopsy surgeon, relating to the nature of injuries and places of injuries on the person of the deceased. [para 13-14] [1116-B-C, E-G]

Seeman @ Veeranam v. State by Inspector of Police (2005) 11 SCC 142; *Alamgir v. State (NCT, Delhi)* 2002 (4) Suppl. SCR 88 = (2003) 1 SCC 21; *Dalbir Kaur and Others v. State of Punjab* 1977 (1) SCR 280 = (1976) 4 SCC 158; *State of U.P. v. Jodha Singh and Others* (1989) 3 SCC 465; *Labh Singh and Others v. State of Punjab* (1976) 1 SCC 181; *Visveswaran v. State represented by SDM* 2003 (3) SCR 978 = (2003) 6 SCC 73 - referred to.

1.5 Considering the totality of the evidence and circumstances of the case, this court is of the view that the High Court has rightly held the appellant guilty u/s 302

A read with s.148 of IPC for the murder of 'AD' and awarded him the sentence of life imprisonment. [para 15] [1117-B]

Case Law Reference:

	1975 Suppl. SCR 84	referred to	para 10
B	2003 (1) SCR 754	referred to	para 10
	2006 (1) SCR 519	referred to	para 10
	(2006) 9 SCC 272	referred to	para 12
C	(2005) 11 SCC 142	referred to	para 13
	2002 (4) Suppl. SCR 88	referred to	para 13
	1977 (1) SCR 280	referred to	para 13
D	1989 (3) SCC 465	referred to	para 13
	1976 (1) SCC 181	referred to	para 13
	2003 (3) SCR 978	referred to	para 13

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1268 of 2007.

From the Judgment and order dated 28.11.2006 of the High Court at Calcutta in G.A. No. 22 of 1987.

F Rupali S. Ghosh, Sanjoy Kumar Ghosh, Deba Prasad Mukherjee for the Appellant.

Chanchal Kr. Ganguli, Soumi Jundu, Avijit Bhattacharjee for the Respondent.

G The Judgment of the Court was delivered by

H **K.S. RADHAKRISHNAN, J.** 1. The appellant, the 10th accused in Sessions Case No.20 of 1986, was charge-sheeted along with others for the offences punishable under Section 147, 148, 149, 323 and 302 of the Indian Penal Code and

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Section 25/27 of the Arms Act. The Trial Court, after appreciation of the oral and documentary evidence vide its judgment dated 22.4.1987 acquitted all the accused persons, except Accused No.3 Tarun Mondal, who was convicted for the offences punishable under Section 148 and 302 of IPC for causing the murder of Amrita Dome and sentenced him to suffer imprisonment for life under Section 302 IPC.

2. The State of West Bengal, aggrieved by the order of acquittal, preferred G.A. No.22 of 1987 before the High Court of Calcutta. The High Court vide its judgment dated 28.11.2006 partly allowed the appeal and convicted the appellant along with four others, while maintaining the order of acquittal passed by the trial Court, in respect of rest of the accused persons. Tarun Mondal, 3rd accused, was further found guilty of the murder of Sultan Khan.

3. We are, in this case, concerned only with the appeal filed by Guiram Mondal, 10th accused. The prosecution case, in short, is that on 26.4.1984 at about 12 hours the accused persons formed an unlawful assembly with deadly weapons and took along with them Amrita Dome and Sultan Khan through a kuchha road in village Pechaliya and, in the process, assaulted both Amrita Dome and Sultan Khan. Some of the witnesses, who are relatives of the deceased Amrita Dome, tried to save him but they were also assaulted by the accused persons and the informant Sadananda Dome (PW1) was shot at by a pipe-gun and he sustained injuries. While the accused persons were proceeding as such, Amrita Dome managed to escape from their clutches and took shelter in the house of Monohar Mondal @ Manu Mondal (PW2). The accused persons, however, chased Amrita Dome and brought him out of the house of Manu Mondal and killed him in the passage or pathway lying between the house of Manu Mondal and his nephew Sahadeb Mondal. Accused persons after murdering Amrita Dome left the spot to chase Sultan Khan, who was left injured in front of Durga temple which was close to the house

A of Monohar Mondal. Sultan Khan was also murdered by them and they carried away his death body to the grazing field and left it there.

B 4. Sadananda Dome (PW1) then passed this information, which was recorded in writing by PW 15 on 26.4.1984 at 6.05 PM and the same was treated as the FIR. The same was sent to the police station and was received there at 7.25 PM and on the basis of that FIR a case was registered against the accused persons and they were charge-sheeted for the offences, already mentioned earlier. PW 15, the Investigating
C Officer visited the place of occurrence and prepared the sketch map and conducted the inquest in the presence of PW 10, the Pradhan of the Gram Panchayat and sent both the dead bodies for post-mortem examination through constable PW 13.

D 5. PW 12 Dr. S. Nath, conducted the post-mortem on both the dead bodies and opined that the death was due to effect of head injury and associated injuries which were anti mortem and homicidal in nature. PW 15 on 13.5.1984 arrested various accused persons including the appellant and were brought
E before the trial court. On the side of the prosecution 16 witnesses were examined. PW 1 Sadananda Dome, the first informant is the brother of the deceased Amrita Dome. Monohar Mondal, in whose house the deceased Amrita Dome took shelter, was examined as PW2. Menoka Dome, wife of
F deceased Amrita Dome, was also examined as PW 3 and Sankar Dome, the father of the deceased Amrita Dome was also examined as PW 5. On the side of the defence, Joydev Garian DW1 was examined.

G 6. Dr. S. Nath was examined as PW12, who conducted the post-mortem on the dead bodies on 27.4.1984 deposed that on the dead body of Amrita Dome he found (1) one incised wound on right lateral aspect of forehead 2.5" x 2" x .5" (2) one incised wound in mid-region of forehead 3" x 2" x .5" (3) one incised wound 3" below the midpoint of chin 4" x 2" x 2.5" laryns

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and tranches cut off. He also noticed fracture of 4th, 5th ^ 6th ribs on the right side (2) fracture of 4th and 5th ribs on the right side (3) right lung was found ruptured. Further, it was also noticed a fracture of frontal bone. PW 12 has opined that the death was due to the effects of head injury and associated injury was ante mortem and homicidal in nature. PW12 conducted the post-mortem over the dead body of Sultan Khan and found (1) one incised wound 3" x 2" x 1" on back portion of head (2) one incised wound on left lateral aspect of neck 2" x 1.5" x 1" and (3) one incised wound 4" x 3" x 5" x 4" aspect of neck 2" x 1.5" x 1". He also found fracture of 4th, 5th, 6th and 7th rib of the right side and fracture of 4th, 5th and 6th ribs of the left side. He found fracture of occipital bone and both the lungs were ruptured. In his opinion, death was due to head injury and associated injury ante mortem and homicidal in nature.

7. PW 1, the brother of the deceased Amrita Dome, who is also an injured witness, had clearly and unequivocally supported the prosecution case and stated that he had seen the accused persons armed with deadly weapons like bhojali, axe, pipe gun and dagger etc. catching hold of his brother Amrita Dome and one Sultan Khan. Amrita Dome had managed to escape from the clutches of the accused persons and took shelter in the house of Monohar Mondal. PW1 also deposed that Sultan Khan in that process was half dead and lying in front of Durga Temple. PW 1 deposed that the accused persons took Amrita Dome out of the house of Monohar Mondal and assaulted with lathi, dagger, bhojali etc. PW 1 stated that he tried to save his elder brother but was shot at by a pipe-gun which caused injury on his shoulder. PW 1 also noticed that Kristo Gorain cut the throat of Sultan Khan and thereafter brought Sultan Khan to a grazing field and left the body there.

8. We have also gone through the evidence of the eye-witnesses PWs 2, 3, 4, 8 and 11 and their versions corroborate fully the version of PW 1, the first informant and eye-witness,

- A relating to the incident of assault and murder of Amrita Dome and Sultan Khan. The specific part played by the various accused persons, including the appellant, has been narrated by those witnesses. PW 2 had deposed that on the date of the incident he was in the cow-shed and as soon as he heard
 B a hue and cry, he came out and found that some persons, including the appellant, forcibly taking away Amrita Dome from the house of Manu Mondal. PW 2 had also requested the accused persons to not to assault Amrita Dome but was pushed away by the accused persons. Later he found Amrita
 C Dome dead and the body was lying on the path-way between his house and the house of Sadananda Mondal.

9. PW 3, the wife of Amrita Dome, also fully supported the prosecution case and also PW8, the mother of the deceased Amrita Dome and P.W.11, the wife of the brother of the
 D deceased. The High Court has correctly appreciated the evidence rendered by those witnesses. The High Court after examining the oral and documentary evidence came to the conclusion that the trial court was completely in error by over-
 E reliance on non-mention of name of accused persons in the inquest report. The High Court, in our view, correctly applied the legal principle that non-mention of name of the few accused persons in the inquest report is of no consequence.

- F 10. The inquest report normally would not contain the manner in which the incident took place or the names of eye-witnesses as well as names of accused persons. The basic purpose of holding an inquest is to report regarding the cause of death, namely whether it is suicidal, homicidal, accidental
 G etc. Reference may be made to the Judgment of this Court in *Pedda Narayana and Others v. State of Andhra Pradesh* (1975) 4 SCC 153 and *Amar Singh v. Balwinder Singh and Others* (2003) 2 SCC 518. In *Radha Mohan Singh @ Lal Saheb and Others v. State of U.P.* (2006) 2 SCC 450, this
 H Court held that the scope of inquest is limited and is confined

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to ascertainment of apparent cause of death. Inquest is concerned with discovering whether in a given case the death was accident, suicidal or homicidal, and in what manner or by what weapon or instrument the injuries on the body appear to have been inflicted. The details of overt acts need not be recorded in the inquest report. The High Court has rightly held that the manner and approach of the trial court in disbelieving the prosecution story by placing reliance on the inquest report was erroneous and bad in law.

11. We also fully agree with the views expressed by the High Court that the FIR was not anti dated, anti timed or was subsequently created. The verbal submission of PW 1 was reduced into writing by PW 15 and the same was treated as the FIR (Ext.3). The formal FIR was marked ext.3/3. Those documents would clearly indicate that the incident took place on 26.4.1984 at about 12 hrs and the FIR was recorded at village Pechaliya at 6.05 PM and after it was sent to the Khairasole police station which was registered as Khairasole P.S. Case No.10 dated 26.4.1984 at 7.25 P.M. There is nothing to show that the FIR was anti dated, anti timed or fabricated. Merely because the FIR was placed before the learned Magistrate on 30.4.1984, three days after registration of FIR, it cannot be said that the FIR was anti timed, anti dated and fabricated. In fact, no question was put to the Investigating Officer as to the cause of delay in sending FIR to the Magistrate.

12. This Court in *State of Jammu and Kashmir v. S. Mohan Singh and Another* (2006) 9 SCC 272 held that the mere delay in sending the First Information Report to a Magistrate cannot be a ground to throw out prosecution case if the evidence adduced is otherwise found credible and trustworthy. We are of the view that the High Court has rightly held that there is no reason to hold that the FIR was a fabricated document or anti dated or anti timed.

A 13. We are also not impressed by the argument of Ms.
 Rupali S Ghose, learned counsel appearing for the appellant,
 that not much reliance could be placed on the evidence of eye-
 witnesses as most of them are relatives of Amrita Dome and
 not a single independent witness was examined by the
 B prosecution. In our view, merely because a witness is a relative
 of the deceased is not a reason for discarding his evidence.
 Many a time, strangers will not come forward to depose as
 witnesses, even if they have witnessed the crime. Further,
 possibility of influencing such witnesses is also not uncommon.
 C Evidence of relatives can be acted upon if the court finds that
 the evidence of such a witness is reliable and trustworthy. In
 this connection reference may be made to the Judgments of
 this Court in *Seeman @ Veeranam v. State by Inspector of*
Police (2005) 11 SCC 142, *Alamgir v. State (NCT, Delhi)*
 (2003) 1 SCC 21, *Dalbir Kaur and Others v. State of Punjab*
 D (1976) 4 SCC 158, *State of U.P. v. Jodha Singh and Others*
 (1989) 3 SCC 465, *Labh Singh and Others v. State of Punjab*
 (1976) 1 SCC 181, *Visveswaran v. State represented by SDM*
 (2003) 6 SCC 73.

E 14. PW2, Monohar @ Manu Mondal, it may be noted, was
 not a relative of Amrita Dome. A close scrutiny of the evidence
 rendered by the eye-witnesses, some of which are relative of
 the deceased, clearly establishes the involvement of the
 accused. Further, in the cross examination of the eye
 F witnesses, we have not noticed any serious contradiction,
 omission, infirmity, defect or lacuna which can make their
 evidence unbelievable and to make them untrustworthy
 witnesses. Further, the evidence of eye-witnesses have been
 fully corroborated by the evidence of PW 12, the autopsy
 G surgeon relating to the nature of injuries and places of injuries
 on the person of the deceased. We notice that, earlier, the
 appeal was filed by Guiram Mondal along with Kisto Gorain and
 Madhusudan Mondal. Appeal was initially dismissed on
 17.9.2007 since they had not complied with the orders of this
 H Court dated 19.4.2007 for surrendering. Later, the appellant

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herein was arrested and his case was restored on 28.11.2008 A
by this Court.

15. Considering the totality of the evidence and
circumstances of the case, we are of the view that the High
Court has rightly reversed the judgment of the trial court after B
finding the appellant guilty under Section 302 read with Section
148 of IPC for the murder of Amrita Dome and awarded the
sentence of life imprisonment. We, therefore, find no reason
to interfere with the judgment of the High Court. The appeal
lacks merit and the same is dismissed. C

R.P.

Appeal dismissed.