

TAMA @ TAMAL MAL  
v.  
STATE OF WEST BENGAL

SEPTEMBER 11, 2007

[S.B. SINHA AND H.S. BEDI, JJ.]

*Penal Code, 1860:*

*Section 302—Murder caused by stabbing a knife on chest of victim—Conviction—Plea that in view of failure of I.O. to collect blood stained earth and recover the weapon of murder, conviction was liable to be set aside—Held, when testimonies of two eyewitnesses had been believed by trial court as also by High Court, there is no reason to differ with their findings—The fact whether blood stains collected from place of occurrence by I.O. had been sent for chemical examination or not pales into insignificance—Similarly, whether knife was recovered or not is also not of much importance—Investigation—Infirmities in—Effect of.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1228 of 2007.

From the Judgment and Order dated 6.3.2006 of the High Court of Calcutta in Criminal Appeal No. 191 of 2002.

Anil Kumar Karnwal (A.C.) and Altaf Hussain for the Appellant.

Tara Chandra Sharma and Kishan Datta for the Respondent.

The following Order of the Court was delivered :

ORDER

Leave granted.

Sole appellant is before us being aggrieved by and dissatisfied with the judgment of conviction and sentence dated 6.3.2006 passed by a Division Bench of the Calcutta High Court in Criminal Appeal No. 191/2002 whereby and whereunder the appeal preferred by the appellant herein from a judgment

A of conviction and sentence dated 1.2.2002 passed by the Additional District & Sessions Judge, Jangipur, Murshidabad, in Sessions Case No. 49/99/Sessions Trial No. 3 of 2000, convicting the appellant for commission of offence under Section 302 of the Indian Penal Code and sentencing him to rigorous imprisonment for life and a fine of Rs. 2000/-, was dismissed.

B The occurrence took place at about 1.30 p.m. on 29th September, 1990 in a village known as Jindighi in the District of Murshidabad. The case of the prosecution is that the deceased Alimat alias Aliul Zaman, younger brother of the first informat Badiujjaman (PW-1), along with one Samir Seikh (PW-2) had gone to the said village for purchasing paddy. He did not find any paddy and walked around with the appellant in that village. While returning home along the westren side of the village when he reached near the house of one Surath Dewan (FW-4), Surath Dewan began talking with him. One Samir Seikh (PW-2) was also with the appellant at that time. When PW-2 Samir Seikh had walked about 60 cubits away from the deceased, he met Giyasuddin who was coming from the opposite direction. PW-2 stated that when he looked behind, D found that although the appellant and the deceased were walking together, the appellant suddenly became agitated and stabbed the deceased on his chest with a knife.

On being informed of the said incident, the first informat Badiujjaman (PW-1) went to the said village. Indisputably the first information report was E lodged at 0615 hours on 30th September, 1990.

The prosecution in support of its case, besides examining the first informat Badiujjaman (PW-1), also examined Samir Seikh (PW-2) and Gias Seikh (PW-3) who were the eye witnesses to the occurrence.

F As noticed hereinbefore, the learned Trial Judge as also the High Court relied on the testimonies of the said eye witnesses PW-2 and PW-3 and convicted the appellant for commission of an offence under Section 302 of the IPC.

G Learned counsel appearing on behalf of the appellant in support of this appeal, would *inter alia*, submit that the learned Trial Judge and consequently the High Court committed an error in passing the judgment of conviction and sentence as; (i) the First Information Report was lodged after considerable delay; (ii) the Investigating Officer could not collect any bloodstains from the place of occurrence as on his own saying by the first informant (PW-1) that H there was heavy torrential rains; (iii) the weapon of attack, namely, knife was

not recovered.

We have been taken through the evidence of PW-1, PW-2 and PW-3 as also the evidence of Dr. S.K. Chakrabarty (PW-9). The fact that the deceased met a homicidal death is not in dispute. From the evidence of the Doctor (PW-9), who conducted the post-mortem examination, it appears that following injuries were found on the person of the deceased:

(1) One punctured injury-(stab wound) on the right side of the chest in its sixth intercostals space, cutting sixth rib  $2^{1/2}$  X chest cavity deep.

(2) One stab would on the left lateral side of the chest in its fifth intercostals space. Blood in chest cavity.

PW-1, the informant was not an eye witness. He was informed about the occurrence by PW-2. PW-2 in his evidence has categorically stated that when they were going together, he walked ahead of the deceased and was talking with one Giyasuddin who had been coming from opposite direction. When he looked behind he found that the appellant had stabbed the deceased with a knife on his chest and he had been fleeing away. PW-3 in his deposition substantially corroborated the statement of PW-2 stating that while he was talking to Samir Seikh, Alimat (the deceased) was standing about 60 cubits away from him near the house of Surat Dewan, the incident occurred and he saw the appellant stabbing the deceased whether the appellant fled away.

The submission of the learned counsel for the appellant that the First Information Report was lodged after some delay is not of much substance. It has been stated by PW-1 first informant in his deposition before the Court that as there was torrential rains, he could not go to the police station that day. We may also place on record that the police station is situate at a distance of about 21 Kilometres from the place of occurrence.

We may furthermore notice that the veracity of the testimony of PW-2 had not been questioned in the cross-examination. There has hardly been any cross-examination of the said witnesses. Except making some stray suggestions that the appellant did not stab the deceased, no other question in regard to the veracity of his statement had been put. Nothing has been elicited by the defence from the cross-examinations of PW-2.

When the testimonies of two eye witnesses had been believed by the learned Trial Judge as also by the High Court and in view of the fact that we

A did not see any reason to differ with the findings of the two Courts, in our opinion, the fact whether the bloodstains collected from the place of occurrence by the Investigating Officer had been sent to the Forensic Expert for chemical examination or not, pales into insignificance. We are furthermore of the opinion that whether the knife was recovered or not is also not of much importance.

B Our attention was drawn to the statement of Dr. Chakrabarty (PW-9) to the fact that according to the said witness, the injury suffered by the deceased could be caused if anybody falls an iron railing. Such a statement made by PW-9 does not lead us anywhere. It was not the case of the defence that there was any iron railing or the deceased had fallen on any iron railing. Even such a question was not put to PW-2 and PW-3 in the cross-examination.

C For the aforementioned reasons, we are of the opinion that there is no merit in this appeals. It is dismissed accordingly.

R.P.

Appeal dismissed.