

REPORTABLE”

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1499 OF 2007

Jiten Besra

.... Appellant

Versus

State of West Bengal

.... Respondent

J U D G M E N T

V.S. SIRPURKAR, J.

1. By this appeal, accused Jiten Besra challenges the judgment of the High Court confirming the judgment of the Trial Court whereby he was convicted for the offence under Section 302, IPC and was consequentially sentenced to suffer rigorous imprisonment for life. The accused Jiten Besra is said to have committed murder of one Nandlal Tudu and Mital Bala. The deceased Nandlal Tudu was none else but the father-in-law of the accused, being father of Malati Besra, his wife. It is contended by the prosecution that on the fateful day, Malati along with her mother had gone to attend 'Boul Song' and she was also accompanied by her sister Parbati. When they came back at dawn on 21.05.1997, they found that both her parents i.e. Nandlal and Mital Bala were dead.

2. A written complaint was lodged by Malati in Boro Police Station wherein it was alleged that one unknown miscreant might have killed her parents out of previous enmity. The investigation ensued on the basis of this First Information Report and the investigating agency came to the conclusion that it was appellant Jiten Besra who was the perpetrator of the crime. In support of it, the charge-sheet was filed and after the committal of the case to the Sessions Judge, during the trial, the prosecution examined, in all, 15 witnesses which included Malati (PW-1), PWs-2 to 13, who were persons from locality, Partha Sarathi Dhar (PW-14), the doctor who conducted the postmortem of the bodies of the deceased persons and Ram Narayan Datta (PW-15) who was the Investigating Officer. The defence of the appellant was that he was being falsely implicated and there was no evidence against him whatsoever.

3. The defence did not prevail and the accused came to be convicted by the Trial Court relaying on the evidence of the prosecution witnesses. The High Court dismissed the appeal and that is how the appellant is before us.

4. A glance at the High Court and the Trial Court judgments suggests that the Trial Court had relied on few circumstances as also the evidence of the prosecution witnesses. The circumstances relied upon are:

- (i) the presence of Jiten Besra in the village on the fateful night;

- (ii) strained relationship with his parents-in-law; and
- (iii) the blood found on clothes.

The same three circumstances have been relied upon by the High Court also. We must hasten to add that the circumstances on which the Trial Court and the High Court have relied upon are not clearly stated nor do we find any discussion on one very important aspect that in case of the circumstantial evidence the circumstances relied upon must be proved first and should not only point towards the guilt of the accused but they should be of such nature that no other inference except the guilt of the accused, is possible thereupon. We have, therefore, to examine the evidence ourselves from that angle.

5. Learned counsel appearing on behalf of the appellant has contended that even if all the three circumstances are taken to be proved, such inference of the guilt on the part of the accused is not possible. The contention raised is that both the Courts below have erred firstly, in relying upon the unproved circumstances and secondly, even the witnesses examined including Malati were not sufficient to reach the only conclusion regarding the guilt of the accused.

6. The first witness Malati (PW-1) had barely stated about the strained relationship of her and her husband i.e. the accused as also between her deceased parents and the accused. This witness was the author of the

FIR. According to her, she had seen her husband to be present after she came back and realized that her parents were done to death. She also asserted that his clothes were blood stained at that time. Very strangely, however, in the First Information Report which she made almost immediately, she had stated that one unknown person had committed the murder of her parents. She also admitted that the FIR was written in her house and a number of persons were present there, including the accused. This was a very important piece of evidence, the relevance of which does not seem to have been realized by the Courts below. Even as regards the so-called enmity, which is one of the circumstances held against the accused, she admitted that she could not remember any mis-behaviour committed by the accused towards her. From her cross-examination, it is clear that the accused was on visiting terms to her. This does not suggest in any manner that there was such a fierce enmity between the accused and the deceased persons or even Malati. The evidence of other witnesses like Santosh Baskey (PW-2) is of no consequence. He is silent on the question of any enmity. In fact he appears to be a scribe of the FIR. He also admitted that the accused was present when the FIR was being written. However, he did not assert anything regarding the so-called enmity of the accused with the deceased persons. All that he has asserted was that the accused had strained relationship with his wife and his parents-in-law. The evidence of Panchanan Baskey (PW-3) only asserted

that the clothes of the accused were soaked in blood and the relationship between the accused and his wife and his parents-in-law were strained. To the same extent is the evidence of Binod Mandy (PW-4), Laxmi Hansda(PW-5), Sarbeswar Besra (PW-6), Balaram Baskey (PW-7) Haripada Murmu (PW-8), Jagari Tudu (PW-9), Ukil Tudu (PW-10) Khudiram Hembram (PW-11), Hapan Hembram (PW-12) and Durgacharan Hansda (PW-13). Beyond saying that the relations were strained and further that the clothes of accused were blood stained, all these witnesses have stated nothing more. None of them has, however, stated that the accused was not even on visiting terms. On the other hand, their evidence suggests that the accused was on the visiting terms. Therefore, the first circumstance of enmity relied upon by the Courts below hardly cuts any ice. In fact, that could not have been relied upon as an incriminating circumstance at all. It may be that the accused might be having strained relationship with the wife and her parents but it is clear that he was on visiting terms with them. He was working in some other village which is hardly about 15 kms. away from their village. Under such circumstances, the Courts should have weighed the circumstance as to whether the strained relationship was of such fierce nature that the accused would go to the extent of committing murder of both the parents-in-law.

7. As regards the blood stains on the clothes of the accused, this circumstance is of no consequence for the simple reason that the clothes

of the accused were never sent to the Forensic Science Laboratory. That is the fact clearly admitted by PW-15, Ram Narayan Datta who was the Investigating Officer. Therefore, the origin of the so-called blood allegedly found on the clothes of the accused was not known nor was it established that it was the blood of the deceased that was allegedly found on the *Lungi* of the accused. This witness also admitted that initially Malati (PW-1) did not say anything against the accused person and it was only subsequently that she amended her statement and complained against the accused which statement was much later i.e. on 24.05.1997. Once it is established that the clothes of the accused or deceased persons were never sent to the Forensic Science Laboratory, it is clear that nobody knew the blood group of the accused or of the deceased persons. Under such circumstances, that circumstance loses all its significance.

8. The last circumstance relied upon by the Courts was the presence of the accused in the house. There is no evidence collected by the prosecution that the accused alone was present in the hut. On the other hand, it has clearly come in the cross-examination of the witnesses that his parents-in-law were not alone in the hut and in fact the younger brother of Malati was also present there. This is apart from the fact that the mere presence of the accused in the village by itself cannot amount to an incriminating circumstance, particularly, when the witnesses have admitted that he was on the visiting terms with his parents-in-law. At least no

witness denied that he was on the visiting terms. Thus, in this case all the alleged incriminating circumstances could not be said to have been established. Once that was clear and once it is found that the circumstances could not point out towards the guilt of the accused, without any other inference being probable, the accused must get the benefit of doubt. There is hardly any discussion regarding this aspect in the judgments of the Trial Court as well as the High Court. Those judgments, therefore, cannot be sustained.

9. Accordingly, we allow the appeal giving the benefit of doubt to the accused and acquit him of all the charges. He be set at liberty forthwith unless required in any other offence.

.....J.
(V.S. Sirpurkar)

.....J.
(Surinder Singh Nijjar)

New Delhi;
March 10, 2010.

