

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 154 OF 2013

MAJEDA BIBI ... Appellant

VERSUS

THE STATE OF WEST BENGAL & ORS. ... Respondents

WITH

CRIMINAL APPEAL NO. 155 OF 2013

O R D E R

These appeals are filed by the State as well as the complainant against the judgment of the High Court which has acquitted respondent Nos. 3 to 8 herein in FIR No. 52/94 dated 31.5.94 which was lodged against them under Sections 148, 302 and 34 of the Indian Penal Code (IPC) with the allegations of committing murder of one Ahamadullah (hereinafter referred to as the 'deceased').

The case of the prosecution, in brief, is that on 31.05.1994, at about 1 p.m., while the complainant (mother of the deceased) was going to bath in the nearby pond outside the village, where her son (the deceased) had also gone to take his bath, she found that her son was surrounded by all the accused persons. Of those persons, Emadatul and Kawser had "hensua" in their hands while the other five accused persons had sticks with them. All the accused persons were

present near the water on the southern side of the pond. According to the said FIR, Emadatul and Kawser were striking the deceased with the "hensua" and Baharul and Evnasud held the victim. Witnessing the aforesaid incident, the complainant started shouting for help and on hearing her cry, the witnesses, viz., Chanda Tudu, Anil Murmu, Riajuddin, Abdul Bari and many other persons of the village came to the spot. When the "shouts increased", the accused persons ran away through the northern bank of the pond, after throwing the dead body of Ahamadullah in the pond.

On the basis of the aforesaid FIR, the accused were charged under Sections 302/34 and 148 of the IPC. The accused pleaded innocence.

At the time of trial, the prosecution examined eleven witnesses but the accused did not adduce any evidence in support of their defence. They, however, were examined by the Court under Section 313 of the Code of Criminal Procedure, 1973.

The trial Court while convicting the respondents/accused persons believed the testimony of the complainant/PW-1 who stated that she was an eye-witness to the occurrence. It has also come on record that after she witnessed the occurrence and started crying, her husband (PW-3) reached the spot and she narrated the incident to him. In the same manner, she deposed that she had narrated the incident to PW-2 and to PW-4 to 7 as well. Some of the

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contradictions in the statements of PW-2 to 7 were projected by the defence before the trial Court. The trial Court, however, did not give much weightage to those contradictions. The trial Court also stated that even if the testimonies of PW-2 to 7 created certain doubts, since evidence of PW-1 was credible and trustworthy and she had seen the occurrence and further, when it is corroborated with the medical evidence, conviction could be recorded on the basis of evidence of PW-1 itself.

In the appeal filed by the respondents against the said judgment, the High Court has vide the impugned judgment acquitted the respondents holding that the prosecution could not prove the guilt of the respondents beyond reasonable doubt.

We have gone through the judgment of the trial Court as well as the High Court.

In the detailed judgment rendered by the High Court, it can be discerned that the High Court has analysed the deposition of each and every witness minutely and has come to the conclusion that there were serious infirmities and contradictions in the statement of PW-2 to 7 vis-a-vis PW-1 and on that basis the deposition of even PW-1 becomes doubtful.

It is an accepted case of the parties that there has been animosity between the complainant side on the one hand and the respondents, who are arrayed as the accused persons,

on the other side. No doubt, PW-1 in her statement mentioned the names of these accused persons. However, at the same time, as per the prosecution story, she had disclosed these names to PWs 2 to 7 also who had reached the place of occurrence immediately after the incident. However, the High Court has found that PWs 2 to 7 did not disclose these names to the Investigating Officer (PW-10) who had reached the spot for the purpose of inquest etc. It is also found that PW-7 admitted in the cross examination that PW-1/complainant had told him that 6-7 unknown persons had murdered her son. The High Court has also found mismatch between the testimony of PW-1 on the one hand and the medical evidence on the other hand. The doctor who had performed the necroscopy of the dead body of Ahamadullah was examined as PW-8 and in his evidence, he had stated that there was presence of mud and water in the stomach of the deceased and opined that body was thrown to the pond while the deceased was still alive. This fact has not been disputed by the prosecution. In spite thereof, neither PW-1 nor PW-3 tried to find out as to whether their son who was thrown in the pond was alive or not and the body was allowed to remain in the water for six long hours. This behaviour of the parents of the deceased has raised doubt in the mind of the High Court about the veracity of the version of the prosecution.

As mentioned above, the High Court has analysed the depositions of the witnesses in detail from where it has

concluded that the case could not be proved beyond reasonable doubt.

We have indicated above some of the observations of the High Court. It has to be kept in mind that the High Court in the First Appeal is the last Court to arrive at the findings of fact. The manner in which the evidence is analysed by the High Court cannot be found fault with. Once that exercise is undertaken by the High Court and it has resulted into acquittal, in an appeal against the acquittal, even if two views are possible, the view which has been found in favour of the accused has to be accepted.

For all these reasons, we do not find any merit in these appeals which are, accordingly, dismissed.

....., J.
[A.K. SIKRI]

....., J.
[ASHOK BHUSHAN]

New Delhi;
September 14, 2017.

ITEM NO.102

COURT NO.6

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No. 154/2013

MAJEDA BIBI

Appellant(s)

VERSUS

THE STATE OF WEST BENGAL & ORS.

Respondent(s)

WITH

CrI.A. No. 155/2013 (II-B)

Date : 14-09-2017 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ASHOK BHUSHAN

For parties

Mr. Irshad Ahmad, AOR

Mr. Raja Chatterjee, Adv.

Mr. Chanchal Kumar Ganguli, AOR

Mr. Runa Bhuyan, Adv.

Mr. Piyush Sachdev, Adv.

Mr. A. Ahmed, Adv.

Mr. Pijush K. Roy, Adv.

Ms. Kakali Roy, Adv.

Mr. G. Ramakrishna Prasad, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed
order.

(NIDHI AHUJA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

[Signed order is placed on the file.]