

Trilochan Verma Vs. State

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Court : Delhi

Decided On : Oct-11-2013

Judge : Kailash Gambhir

Appellant : Trilochan Verma

Respondent : State

Advocate for Def. : Ms. Richa Kapoor

Advocate for Pet/Ap. : Mr. Sumeet Verma

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A. 379/1999 Date of decision: October 11, 2013 TRILOCHAN VERMA Through: Appellant Mr. Sumeet Verma, Advocate Versus STATE Through: Respondent Ms. Richa Kapoor, Additional Public Prosecutor for the State with SubInspector Yogesh Kumar, Police Station Timarpur, Delhi CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MS. JUSTICE INDERMEET KAUR

JUDGMENT

% KAILASH GAMBHIR, J.

1. Challenge in this appeal filed under Section 374 of the Code of Criminal Procedure 1973 (hereinafter referred to as Cr.P.C) is the judgment dated 30.11.1998 and order of sentence dated 30.11.98 passed by the learned

Additional Sessions Judge whereby the appellant has been convicted for committing an offence under Section 302 Indian Penal Code, 1806 (hereinafter referred to as IPC) and sentenced to undergo imprisonment for life together with imposition of fine of Rs. 1000/- and in default to undergo further RI for one month.

2. Before we deal with the contentions raised by counsel for the parties, brief narration of the prosecution case as it unfolds in the charge sheet would be necessary and the same is as under: 3. On the night of 18.07.1996 at about 9.30 p.m. accused took his daughter Usha from his house after having food. It is alleged that he went to a drain (Nallah) near Burari Chowk and threw his daughter in the said drain and returned back to his house alone. When his family members asked him about the child Usha, he replied that she had not gone with him. Further allegations are that the wife of the accused had died about one and a half years prior to the alleged occurrence. Accused wanted to remarry and his deceased daughter was coming in the way of settlement of his second marriage and in order to get rid of her, he killed her. It is alleged that he committed her murder by throwing her in the drain of Burari Chowk on 18.07.1996 at about 9.45 p.m. Prosecution machinery came up in action when DD. No.6A dated 19.07.1996 got registered in the police station Timarpur at about 11.25 a.m. on the information received by wireless operator of the said police station to the effect that Head Constable Banwari Lal had informed that a girl of about two and a half years of age was found dead in Burari main drain outer ring road. Copy of the said DD was sent to SI Dharampal who went at the spot with Constable Rajiv where they found the dead body of the deceased Usha. Dead body of the deceased was taken out from the said drain with the help of fire brigade, Roop Nagar. No external injury or sign of sexual assault was found on the deceased. Proceedings under section 174 Cr.P.C were completed and the body was sent for post mortem. Necessary formalities were done. Site plan was prepared of the alleged place of occurrence and the statements of the family members of the accused who were residing in the same house where accused was living with the deceased daughter and that of the other PWs were recorded. After completion of the necessary formalities and investigation, a report under Section 173 Cr.P.C was filed against the accused in the concerned court. After the committal, the case was assigned to the court of learned Additional Sessions Judge for disposal vide order dated 19.10.96. Charge

was framed against the accused vide order dated 12.11.96 for having committed an offence punishable under Section 302 IPC. Accused pleaded not guilty and claimed trial. To prove its case prosecution examined as many as 13 witnesses. Statement of the accused was recorded under Section 313 Cr.P.C and he denied his involvement.

4. Addressing arguments on behalf of the appellant Mr. Sumeet Verma, Advocate contended that the case of the prosecution is based on last seen evidence of PW-3, PW-4 and PW-5, who are the family members of the accused and who were keeping an evil eye on the share of the accused in the ancestral property, portion of which was under the occupation of the accused. Counsel further submitted that so far the witness PW-9 is concerned, he turned hostile and, therefore, his testimony of last seen evidence cannot be taken into consideration. Counsel also argued that it is a settled legal position that in a case of circumstantial evidence motive is of utmost importance but in the facts of the present case the prosecution failed to prove on record any motive on the part of the appellant to kill his own child of two and a half years of age. Counsel further argued that the motive sought to be projected by the prosecution cannot hold any ground. Simply because the accused wanted to remarry after the death of his wife that by itself, by no stretch of imagination could have prompted him to get rid of his small child. Counsel also submitted that none of the witnesses have deposed that the said child of such a tender age was creating any kind of hurdle or obstacle in the remarriage of the accused or they had ever noticed the accused scolding or fighting with his daughter, which could reflect his hostile attitude or conduct towards his daughter. Counsel also argued that as per the time indicated in the post-mortem report there is a wide gap between the time when the accused was lastly seen in the company of the deceased and the time of death of the deceased and, therefore, with such time gap, possibility of any other person responsible for the murder of the deceased cannot be ruled out. Counsel also argued that nearby the residence of the accused marriage function was being held and the possibility of the deceased daughter might getting attracted to the said celebration and going there could not be ruled out. Based on these submissions counsel for the appellant urged that the prosecution has failed to prove the case against the appellant beyond any shadow of doubt and even if the last seen evidence is accepted then also in the absence of

any other positive corroborative evidence to complete the chain of circumstances, to prove the guilt of the accused, the appellant cannot be held guilty for the commission of the said crime. In support of his arguments counsel for the appellant placed reliance on the following judgments:- 1. State of Goa v. Sanjay Thakran & Anr., (2007) 3 SCC7552. Inderjit Singh & Anr v. State of Punjab, air 1991 SC16745. Refuting the said contentions of counsel for the appellant, Ms. Richa Kapoor, learned APP for the State vehemently contended that there can be no reason to disbelieve the last seen evidence of the family members who are all natural witnesses and the testimony of all these witnesses remained unrebutted and unchallenged leaving no room to doubt their truthfulness, credibility and reliability. Counsel also argued that the family members who entered the witness box as PW-3 to PW-5 had no motive to implicate the accused in the commission of the said crime as they had only said what they had seen from their own eyes and nothing beyond that. Counsel also argued that no suggestion was given by the defence to these witnesses attributing any motive much less the motive of their having an evil eye on the portion of the ancestral property in the occupation of the appellant. Counsel further argued that the post-mortem report proved on record as Exhibit PW-1/A also proves the time of death of the deceased approximate to the time when she was taken by the accused to a nearby shop for getting her a toffee. Counsel also argued that there is no reason to disbelieve the motive theory as deposed by PW-3 to PW-5 in their respective testimonies about the remarriage plan of the accused after the death of his wife and his said daughter coming in the way of his remarriage. Counsel thus submitted that the last seen evidence supported by the medical evidence and motive on the part of the appellant to get rid of his daughter completes the chain of circumstantial evidence and there is no missing link by which even a doubt can be created to prove the guilt of the accused in the commission of murder of his own daughter. Counsel also argued that the appellant was vacillating in his stands when interrogated by the police after the body of the deceased was found in the drain.

6. We have heard learned counsel for the parties at considerable length and given our anxious consideration to the arguments advanced by them. We have also gone through the trial Court record.

7. Murder of a small female child of two and a half years had taken place on the night of 18th July, 1996 and her dead body was found in a drain near Burari Chowk. Undoubtedly, it is a barbaric and ghastly act by the perpetrator of the crime, who probably had no heart when accomplishing such a devilish act of committing murder of a child at such a tender age. What could be the motive of a person who had taken away the child to the drain and then had thrown her thereto die, where nobody could even hear her cries?. What could be the reason that the entire life of such a child was snatched from her?. Can the appellant, who is the father of the said child, be a perpetrator of such a heinous crime or is it some outsider, who had committed such a ghastly crime. In every criminal trial, search is for the actual perpetrator of the crime and the very purpose is to punish the devil and save the innocent.

8. The case in hand is based on circumstantial evidence and undoubtedly, the last seen together evidence is one of the important species of circumstantial evidence. There is no reason for us to disbelieve the testimonies of PW-3 to PW-5, who were consistent in their depositions having seen the appellant taking his daughter in his lap after the daughter had insisted for having a toffee from him and leaving the house on 18th July, 1996 at about 9.20 - 9.30 p.m. and the said child not returning back home with the appellant. The post-mortem, which was proved on record as Exhibit PW-1 /A also indicates the time of death of the deceased about 18 hours back. The post-mortem was conducted by PW-1, Dr. B.N. Acharya on 19th July, 1996 at 2.30 p.m. and if the time of 18 hours back is calculated, then the same approximately comes to the time when the appellant had taken away the child from his residence. The said drain where the dead body was found was stated to be about 1 k.m. away. PW-9 Jhetashanker, who was running a pan shop at a little distance, where the accused accompanying his daughter had gone, in his deposition also indicated almost the same time 9.00 or 9.15 p.m. on 18th July, 1996 when the accused had visited his shop. Although PW-9 had turned hostile in so far not affirming his statement under Section 161 Criminal Procedure Code, 1973 wherein he had disclosed that the appellant had gone towards Burari Chowk, but in his Court deposition he resiled from the said statement by saying that he did not see in which direction the accused had gone. The learned Trial Court has held the appellant guilty of committing the offence of eliminating his daughter based on

last seen evidence of PW-3 to PW-5, the medical evidence mainly comprising of post-mortem report and the motive of the appellant to get rid of his daughter so as to remarry.

9. It is well settled legal position that with a view to base conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by independent, reliable and clinching evidence and the circumstances so proved, if taken cumulatively, should form a chain so complete as would permit no conclusion other than one of guilt of the accused but inconsistent with his innocence. In *State of Goa vs Sanjay Thakran and Another* (2007) 3 SCC 755 it was laid down that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

10. Before we analyze, as to whether the facts of the present case qualify the aforesaid laid tests, the settled principles to deal with the last seen together evidence are to be kept in mind. There has been a consistent view of Apex Court and various other High Courts that in the absence of any other positive corroborative evidence of the accused on last seen together with the deceased, it would be hazardous to come to a conclusion of guilt in such cases. In *State of U.P. v. Satish*, reported in 2005 (3) SCC 114 the Apex Court observed as under:-

23. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the

accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs. 3 and 5, in addition to the evidence of PW-2.

11. In *Godabariksh Mishra v. Kuntala Mishra*, reported in AIR 1997 SC286, the Apex Court took a view that the theory of last seen together evidence is not of universal application and may not always be sufficient to sustain a conviction unless supported by other links in the chain of circumstances. The germane portion of the judgment is reproduced below:

11. . (g) The theory of last seen together is not of universal application and may not always be sufficient to sustain a conviction unless supported by other links in the chain of circumstances. 12. The High Court having held that from the facts and circumstances proved in the case, it was not possible to hold that the accused had committed the murder of the deceased. Hence, she was acquitted by giving her benefit of doubt.

12. In *Rishi Pal V. State of Uttarakhand*, 2013 (2) ACR1471 reiterating the aforesaid legal position, the Honble Apex Court while dealing with the principle of last seen evidence held as under:

16. In *MohiburRahman and Anr.v. State of Assam* : (2002) 6 SCC715 this Court held that the circumstance of last seen does not by itself necessarily lead to the inference that it was the accused who committed the crime. It depends upon the facts of each case. There may however be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide. Similarly in *ArjunMarik and Ors. v. State of Bihar*:

1994. Supp (2) SCC372 this Court reiterated that the solitary circumstance of the accused and victim being last seen will not complete the chain of circumstances for the Court to record a finding that it is consistent only with the hypothesis of the guilt of the accused. No conviction on that basis alone can, therefore, be founded. So also in *Godabarish Mishra v. Kuntala Mishra and Anr.* : (1996) 11 SCC264 this Court declared that the theory of last seen together is not of universal application and may not always be sufficient to sustain a conviction unless supported by other links in the chain of circumstances. In *Bharat v. State of M.P.* : (2003) 3 SCC106 two circumstances on the basis whereof the Appellant had been convicted were (i) the Appellant having been last seen with the deceased and (ii) Recovery of ornaments made at his instance. This Court held: ... Mere non-explanation cannot lead to the proof of guilt against the Appellant. The prosecution has to prove its case against the Appellant beyond reasonable doubt The chain of circumstances, in our opinion, is not complete so as to sustain the conviction of the Appellant....

20. Suffice it to say that even if we take the most charitable liberal view in favour of the prosecution, all that we get is a suspicion against the Appellant and no more. The High Court was in that view justified in setting aside the order passed by the trial Court and acquitting the Appellant of the offence of murder under Section 302 Indian Penal Code. The order passed by the High Court deserves to be affirmed giving to the Appellant the benefit of doubt. We accordingly dismiss the appeal filed by the Appellant and discharge the notice of show-cause issued to him.

13. It is thus seen that it wouldnot be safe to base conviction of the accused merely onthe proven last seen together evidence unless such last seen together evidence finds corroboration from other reliable and clinching evidence forming a complete chain of circumstantial evidence leading to only one conclusion favouring the hypothesis of guilt of the accused inconsistent withhis innocence.

14. Applying the aforesaid legal principles in the facts of the present case what can be seen here is that the prosecution, undoubtedly succeeded in proving the last seen together evidence through the testimonies of PW-3 to PW -5 to prove that the accused had taken the child with him on 18th July, 1996 ataround 9.p.m.and this fact also finds corroboration from the deposition of PW-9, who

although turned hostile but remained consistent in affirming the visit of accused at his shop in the evening at around 9:00 -9:15 p.m. But the precise question staring at us is whether the conviction of the appellant can sustain merely on the last seen together evidence of the said witnesses, which is also supported by the time of death as indicated in the post-mortem report.

15. In a case based on circumstantial evidence, motive assumes utmost importance although it is fairly well settled that failure to establish motive for the crime cannot throw overboard the entire prosecution case where otherwise the prosecution succeeds in proving its case with cogent and convincing evidence. To say, that the appellant had eliminated his two and a half years child with a view to remarry cannot be easily fathomable in the absence of any other evidence proving the hostility of the appellant towards the child or any other circumstance showing that she became a hurdle or obstacle in the way of the appellant to remarry. We are, therefore, not persuaded to accept the said motive theory propounded by the prosecution through the depositions of PW-3 to PW-5. We cannot be oblivious of the fact that death of the wife of the appellant had taken place about 1 years ago and none of the family members even those who entered the witness box have come forward to depose that the appellant started behaving with his daughter differently or he was not bringing her up properly with due care and attention or he used to scold and beat her or at any stage he took her as a hurdle in his remarriage. In the absence of any such incriminating evidence, we cannot believe that the appellant being a father could have such a sinister motive to eliminate his daughter just for the purpose of marrying again.

16. So far as the issue raised by the learned APP in regard to the vacillating stand of the accused in the rukka is concerned, we find no force in the argument raised by the learned APP as the rukka is not a substantive piece of evidence, nevertheless, we cannot be oblivious of the fact that the appellant could not be in a normal state of mind after having learnt about the murder of his daughter. It is a matter of common knowledge that every individual reacts and behaves peculiar to his own psyche, understanding and rationality and in that very quest may not be able to answer the queries put forth by the police officials aptly and sensibly. The said circumstance of alleged vacillating stand of the appellant cannot be taken

adverse to inculcate the accused in the commission of the said crime. When a case totally hinges upon circumstantial evidence, it is the duty of the court to see that the chain of circumstances which lead towards the guilt of the accused have been fully and conclusively established.

17. It is a cardinal principle of criminal jurisprudence that the accused is presumed to be innocent unless proved guilty. The prosecution in every criminal trial has to discharge a very heavy onus to prove its case beyond any shadow of doubt and by mere notion or feeling that the accused may be the guilty person, the Courts cannot hold such person to be the perpetrator of the crime. The journey of the prosecution which starts from may be true must end up where the court derives complete satisfaction that what started with may be true now has culminated to the stage of must be true. Even if the single chain of circumstantial evidence is snapped the prosecution case crumbles under its own weight.

18. Taking the overall view of the facts and circumstances of the case, we do not find ourselves in agreement with the reasoning of the learned Trial Court holding the appellant guilty of committing murder of his own daughter merely based on the last seen together evidence in the absence of any other clinching and positive corroborative evidence proved on record by the prosecution so as to complete the chain of circumstantial evidence, incapable of forming any other opinion but guilt of the accused and inconsistent with his innocence. The order of conviction dated 30.11.98 and order of sentence dated 30.11.98 passed by the learned Trial Court is hereby set aside. The appeal is allowed. Copy of this order be sent to jail Superintendent for information and compliance. KAILASH GAMBHIR, J
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