

State Vs. Ruben and anr

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Court : Delhi

Decided On : Feb-17-2014

Judge : Sanjiv Khanna

Appellant : State

Respondent : Ruben and anr

Judgement :

§~8 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

17. hFebruary, 2014 + CRL.L.P. 567/2012 STATE Petitioner Through: Mr. Rajesh Mahajan, ASC for the State. versus RUBEN & ANR Respondents Through: Mr. Jatin Rajput Amicus Curiae with Mr. Anupam Dubey, Advocate
CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE G.P. MITTAL

JUDGMENT

SANJIV KHANNA J.(ORAL) CRL.M.A.19607/2012 (delay of 300 days) in CRL.L.P. 567/2012 1. This is an application for condonation of delay of 300 days in filing of the leave to appeal against the judgment of acquittal. It is stated that the delay had occasioned due to administrative reasons as the file had been circulated and opinion of different officers had to be obtained.

2. The delay is substantial. Keeping in view the aforesaid facts but subject to payment of costs of Rs. 5,000/- to be paid to the Respondents by way of two

cheques of Rs. 2,500/- each, the application for condonation of delay is allowed. Payment will be made within four weeks of receipt of this order by the appellant. CRL.L.P. 567/2012 1. The present appeal is directed against the judgment dated 14.10.2011 relating to FIR No.163/ 2010, Police Station New Friends Colony registered under Section 302/ 201/ 34 of the Indian Penal Code, 1860 (IPC for short). The said FIR relates to the homicidal deaths of Vimla and Hari Lal (at some places in the impugned judgment, the second deceased has also been mentioned as Hariom). Factually, it is an undisputed position that D.D. No.8-A was recorded at about 08:25 a.m. on 10.07.2010 that in Block B, New Friends Colony, dead bodies of a girl and a boy were found lying in a park. Photographs of the crime scene as well as of the two bodies were taken but the identity of the deceased boy and the girl could not be ascertained and the dead bodies were sent to All India Institute of Medical Sciences (AIIMS) mortuary to be preserved. The said facts stand proved by PW-2 S.I. Hoti Lal who had reached the spot along with PW-15 Constable Jitender Kumar. PW-15 has deposed that he along with PW-2 reached the spot after receiving D.D. No.8-A and found bodies of a male and a female in the park, one pair of gents shoes and single ladys chappal were also located but no other incriminating material/ evidence was found in the park. PW-15 has further deposed that they had thoroughly examined the park. S.H.O. Sunil Kumar Singh and Inspector Jagbir Singh were also present. Number of public persons had gathered at the spot including some chowkidars but they could not identify the victims.

2. The FIR in the present case was recorded on 11.07.2010 at 12:40 a.m. at night, after a gap of more than 12 hours after the two dead bodies were recovered. The FIR does not mention the names of the deceased or any eye witness or any facts relating to commission of the crime. The FIR is silent in these regards, though it was recorded 12 hours after the police had inspected the place of the crime and had carried out further investigation.

3. As per the police version two SIM cards were recovered from the wallet of deceased Hari Lal. The Trial Court has however, disputed this position for various reasons set out in paragraphs 46 and 47 of the impugned judgment which read as under:

46. According to prosecution on receiving the information of lying of dead bodies at the spot, PW2 SI Hoti Lal alongwith PW15 Ct. Jitender Kumar reached spot and after some time SHO also reached the spot, recovered two SIM cards from back pocket of the pant of deceased Hari Lal and as per statement of PW2 SI Hoti Lal, crime team and photographers were called at the spot. Admittedly, there is no crime team report on record. PW21 Jagbir Singh (IO) had stated that he did not know whether crime team was called at the spot. The photographs of the spot including dead bodies and chappals, shoes etc. do not show whether any SIM cards etc., were also recovered from the dead body at that time. It is unexplained by the prosecution that when the SIM cards were recovered in the morning before the dead bodies were taken to hospital by PW2 and PW15, why the rukka was prepared at 11.55 p.m. in the night. Further even there is no mention of recoveries of SIM cards from the back pocket pant of deceased Hari Lal in rukka.

47. PW15 Ct. Jitender had not stated anything about recovery of these two SIM cards who was accompanying PW2 SI Hoti Lal at that time. It is not explained if two SIM cards were recovered in the morning why the information from them not gathered at that time, why police waited till 10 clock night that is for about 14 hours after recovery. This itself creates doubt about the recovery of the SIM cards from the dead body of deceased Hari Lal.

4. We do not elaborately discuss on the aforesaid aspect, as it is the case of the prosecution that the two Respondents herein, namely, Edward and Ruben were arrested on 11.07.2010 at 03:15 p.m. and 05:45 p.m. vide arrest memos Ex. PW-2/ F and PW-2/ I respectively. At this stage, it is important to record that Edward is the father of the deceased girl Vimla, aged about 21 years and Ruben is stated to be a friend of Edward. For clarity, we record that there is discrepancy about the arrest of the two accused which has been noticed in paragraph 53 of the impugned judgment. As per the arrest memos of the accused persons, accused Edward was shown to be arrested at around 03:15 p.m. (late afternoon) on 11.07.2010 and accused Ruben was shown to be arrested at 05:45 p.m. (evening) on the same day from B-434, New Friends Colony. However, as per the statements of PW-17 HC Manoj, these accused were arrested in night itself from Panchsheel Enclave and New Friends Colony respectively. This casts doubt about

the preparation of arrest memos and the circumstance of arrest of accused persons, consequently creating doubt on the sequence of events including recoveries at the instance of accused persons.

5. Apart from said discrepancies which have been noticed and recorded in the impugned judgment, we feel that the case of the prosecution is doubtful and shaky as they have not been able to show and establish beyond doubt that the two Respondents were the perpetrators of the crime.

6. It is accepted and admitted position that there are no eye witnesses and the case of the prosecution is based upon circumstantial evidence. The prosecution relies upon the disclosure statements and the pursuant recoveries of a vegetable cutter knife, ashes of chunni, piece of chunni, broken plywood door and piece of it and an iron tray at the instance of the respondents, relying upon Section 27 of the Evidence Act, 1872 (the E. Act). The prosecution also relies upon motive.

7. Section 25 of the E. Act excludes any confession made to a police officer from consideration. Similarly, Section 26 of the E. Act excludes the confession made by a person while he is in custody of a police officer, unless it is made in the immediate presence of a Magistrate. Section 27 of the E. Act which is in the form of an exception to Sections 25 and 26 of the E. Act, admits only so much of the information given by an accused which distinctly relates to the facts discovered in pursuance of the information. The recovery of the object has to be distinguished from the fact thereby discovered. If in pursuance of the information provided, any fact is discovered which connects the accused with the commission of the crime, then only the fact discovered becomes relevant.

8. In *Pulukuri Kottaya & Ors. v. Emperor*, AIR 1947 PC67 the Privy Council very vividly brought out the distinction between the object discovered and discovery of a fact in pursuance of an information provided by a person accused of an offence while he is in police custody. Their Lordships observed as under:

Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring

the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw, for the Crown, has argued that in such a case the fact discovered is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. That ban was presumably inspired by the fear of the legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect. On normal principles of construction their Lordships think that the proviso to Section 26, added by Section 27, should not be held to nullify the substance of the section. In their Lordships' view it is fallacious to treat the fact discovered within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered.

Information supplied by a person in custody that I will produce a knife concealed in the roof of my house does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added with which I stabbed A these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.

9. The Trial Court noticed that there were contradictions between the statements of PW-2 and PW-21 regarding the place of recovery of ashes of burnt chunni and tasla because PW-2 stated that the same were recovered from the second floor whereas PW-21 stated that these were recovered from the ground floor.

10. The question for consideration is that even if the recoveries are believed, do the same in any way advance the prosecution case and connect the respondents with the commission of the crime?. This position of law has been explained in State (NCT of Delhi) v. Navjot Sandhu @ Afsal Guru, (2005) 11 SCC600 wherein the contention raised on behalf of the State that Section 27 is not limited to actual physical material object discovered but also includes any mental condition of which any person is conscious, was rejected. In Navjot Sandhu (supra), the Supreme Court reiterated and approved the law with regard to the admissibility of only that portion of the information supplied by an accused which distinctly relates to a material fact discovered, in other words, any fact which showed the accused's relation with the commission of the offence.

11. The alleged discovery of above stated articles is not a discovery of any material fact so as to connect the respondents with the commission of the murder of deceased Vimla and Hari Lal and therefore the alleged recoveries at the respondents instance are of no consequence as neither the knife nor the burnt pieces of chunni nor the ashes would show that the respondents were in any way connected with the commission of the offence.

12. We may notice that the ligature mark on the neck of the deceased Vimla is clearly visible and noticeable in the photographs which have been marked as Ex.

PW-14/ A-1 to A-3. The ligature mark is also mentioned in the MLC of the deceased Hari Lal Ex. PW-5/ A recorded on 10.01.2010 at 10:19 a.m. which clearly records that the patient was brought dead on 10.07.2010 at 10:19 a.m. and there was a ligature mark present on the neck and blood stained froth present on the mouth. The MLC of Vimla was not exhibited, but as per the said MLC Mark A, the patient was brought dead on 10.07.2010 at 10:22 a.m. and a ligature mark was present on her neck. The two bodies were subsequently sent for post-mortem on 12.07.2010 at about 2:40 p.m. when the inquest papers were received. As per the post-mortem reports Ex. PW-6/ A of deceased Hari Lal and Ex. PW-1/ A of deceased Vimla, no incised wounds were present on the body of the two deceased and the deceased died due to ante-mortem strangulation by ligature. Viscera was preserved to rule out any possibility of intoxication. There were some bruises and a lacerated wound on the body of deceased Vimla. The prosecution has not been able to show and establish that the alleged knife which was recovered was either involved in the said occurrence or was used in the occurrence. In view thereof, Section 27 of the E. Act cannot and does not come to the aid of the prosecution as the prosecution has not been able to connect the knife with the offence in question.

13. On the question of motive, the Trial Court has recorded that the prosecution has not been able to prove and establish that Edward, father of deceased Vimla, wanted to kill his daughter as he did not want Vimla to get married with deceased Hari Lal as he was dependent upon her income. The findings recorded by the Trial Court in this regard are as under:

54. According to prosecution, the motive for killing of the deceased was due to the fact that accused Edward do not want to marry his daughter deceased Vimla with Hari Lal because he was dependent upon her income and in this regard the prosecution had examined PW-9 Anand Kumar who stated that deceased Vimla daughter of accused Edward used to work in the house of Mrs. Sabharwal who used to tell that accused Edward used to take salary from Vimla but in cross examination he stated that he had no talks with Vimla regarding her salary. Further Aruna Sabharwal (PW14) has also denied any such fact. PW11 Daisy, sister of deceased Vimla also stated that deceased Vimla wanted to marry deceased Hari

Lal but it could not be finalised but she do not know why marriage could not be finalised, though in cross examination she stated that her father was agreeable for marriage. Whereas PW10 Rajesh husband of PW11 Daisy stated that he was told by Daisy that as her father was angry therefore, marriage could not be finalised between Vimla and Hari Lal. There is nothing tangible came out from the deposition of these witnesses regarding the motive of the crime. Further, as per prosecution case, there is no prior planning of murder and accused Edward just reached the spot all of a sudden and found both of them in objectionable condition and due to altercation Ruben also involved and they murdered the deceased persons. Therefore, no motive as alleged is deducible from prosecution story.

14. We have also examined the statements of PW-3 Kamla Devi, PW-9 Anand Kumar, PW-10 Rajesh, PW-11 Ms. Daisy and PW-14 Mrs. Aruna Sabharwal. These witnesses do not disclose that there were repeated quarrels or Edward carried any ill-will against the deceased Vimla and Hari Lal. However, it is clear that Vimla used to like Hari Lal and they wanted to get married.

15. Failure of Edward to inform the police about disappearance of his daughter deceased Vimla does raise some suspicion but on the said aspect we have deposition of PW-8 M.P. Gogia and the doubt/ debate on the time and date of arrest. PW-8 M.P. Gogia has deposed that he is a retired government official and working as a builder at B-434, New Friends Colony, New Delhi, which was owned by three persons. He had kept Ruben as chowkidar who used to stay there round the clock. On 09.07.2010 at about 5:30 p.m. he had gone to the aforesaid premises, B-434, New Friends Colony, New Delhi and Ruben was present. After two days he came to know about the incident and that Ruben was involved in a murder case and he had been arrested. In the cross-examination, he had deposed that the police persons did not allow the work of construction to continue for 3-4 days after the incident and they had locked the premises. He had not gone to the premises on 10.07.2010 but had come to know through his labour that police had locked the premises and stopped the work. This was informed to him at 12:00 noon on 10.07.2010 but he could not inform and state the name of the worker who had called him up and informed him.

16. Thus, on the basis of the aforesaid evidence, that is, reliance on Section 27 of the E. Act and the alleged motive, we do not find that the prosecution has been able to prove and establish its case as made out in the charge sheet. For the aforesaid reasons, we do not find any merit in the present leave to appeal; the same is accordingly dismissed. (SANJIV KHANNA) JUDGE (G.P. MITTAL)
JUDGE FEBRUARY17 2014 vk

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