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Court : Allahabad

Decided On : Jan-03-2014

Judge : Amar Saran & Sunita Agarwal

Appeal No. : Criminal Appeal No. 1665 of 1982

Appellant : Chandru and Another

Respondent : State

Judgement :

Amar Saran, J.

This appeal was called out in the revised list. Even though, there are a number of counsel, yet none of them has appeared. One counsel Sri Fanish Mishra has sent an illness slip. As there are a number of counsel, we propose to ignore the said illness slip. In Bani Singh v. State of U.P., (1996) 4 SCC, 720, as reiterated in K.S. Panduranga v. State of Karnataka, (2013) 3 SCC 721 it has been held that even in the absence of counsel, who are deliberately not appearing, it will be open to the Court to peruse the record and the judgement of the Trial Court and decide the appeal on merit after hearing the State counsel. The hearing of the appeal cannot be adjourned only for this reason.

2. We have heard learned A.G.A. Sri R. K. Singh and Sri Anand Tiwari and perused the papers of the case.

The appellants Bishambar and Chandru have been convicted by the IVth Additional Sessions Judge, Bijnore and sentenced to rigorous imprisonment for life under sections 302/34 I.P.C. and three years R.I. under section 201 I.P.C. by the judgement dated 8.7.1982. It may be noted that the co-accused Smt. Birro and Ashok have been acquitted by the said judgement for want of evidence.

3. An information was given at the P.S. Kotwali Dehat, Bijnore, on 30.12.1980 by one Abdul Hai, S/o Abdul Rahman that in the jungle of the village, Akbarabad, a male corpse was lying in a sack in the field of Abdul Aziz and action be taken in this regard. The said Abdul Hai has not been examined. However, P.W. 2 Head Constable Jagdish Prasad Kaushik has proved this report (Ext. Ka-1) and he has also made necessary G.D. entries (Ext. Ka-2) at 2.00 p.m. on 30.12.1980 on its basis. PW 2 also pointed out that initially, investigation was conducted in this case by S.I. R.S. Rana, who carried out the inquest and sent the dead body for post mortem examination. Autopsy was conducted on the unidentified corpse on 31.12.1980 at 4.00 p.m by P.W.11 Dr. S.K. Agarwal. As per the post mortem report the corpse was of a 22 year old unidentified male, which showed signs of putrefaction. The following ante mortem injuries were revealed: 1) A transverse incised wound 7 cm x 3 cm x oesophagus on the front of neck about 1 1/2 cm above supra sternal notch. 2) An abrasion 3 cm x 2/10 cm on the front of rt. forearm just above wrist joint. 3) Incised wound (stab wound) on the left side of thoracic lower part in 11th intercostal space and below it, about 7 cm below and outwards from left nipple 5cm x 2cm x abdominal cavity deep. Omentum peeping through. On internal examination, it was found that the trachea was cut through and through and the cause of death was shock and haemorrhage due to ante mortem injuries.

4. Smt. Mungia, P.W. 7 mother of the deceased Sher Singh @ Shibba arrived at the police station along with another son on 6.1.1981 at about 11 a.m. police station and identified the corpse to be that of her son, the deceased Sher Singh alias Shibba by its clothes and photograph. The investigation of the case was conducted by P.W. 10 M.P. Deshwal.

5. It may be noted that on 12.1.1981 the I.O. recorded the statement of S.I. Raghubir Singh Rana and also the statement of Smt. Mungia, P.W. 7. The I.O. also recorded the statement of the Village Pradhan Het Ram, P.W. 6 on 12.1.1981, and thereafter again on 13.1.1981. As the statements dated 12.1.1981 and 13.1.1981 of Hetram disclosed the complicity of the appellant Chandru in this offence, the I.O. conducted raids at the premises of Chandru on 20.1.1981, but he was could not be found. On 2.2.1981, the I.O. learnt that the co-accused Ashok has surrendered in Court. On 5.2.1981 the I.O. recorded the statement of Chandru and Ashok at the District Jail.

6. In the night of 5/6.2.1981 the I.O. apprehended the appellant Bishambhar from his house at 11 p.m. and took him to Najibabad. On the pointing out by Bishambhar, a knife was recovered near the northern wall of the house of Nathu Harijan (Ext. Ka-17). The said recovery memo of the knife (Ext. Ka-8) shows that the knife contained blood and rust. The charge sheet was submitted against all the accused on 11.2.1981.

7. On an analysis, we find that only three strands of circumstantial evidence have been adduced in this case.

One is evidence of motive, regarding which P.W. 7 Smt. Mungia, P.W. 8 Thani and P.W. 9 Mukhram have been examined. However, we find that Smt. Mungia has merely stated that the mother of the appellant Chandru had protested to her that Mungia's son Sher Singh alias Shibba used to visit Chandru's house and tried to remain in contact with Chandru's wife co-accused Veero. This witness and her husband scolded Sher Singh about this visit. However, this evidence is hearsay in nature. In any case, Smt. Mungia, mother of Sher Singh is a partisan witness. P.W. 8 Thani, another witness of motive has merely stated in his examination-in-chief that one and a half years earlier at about 8-8 1/2 p.m., when he had gone searching for his lost cow, near the premises of Het Ram, he had seen Shibba going ahead followed by Veero and there were rumours that there were illicit relations between the two.

8. P.W. 9 Mukhram has merely deposed that on the date of incident, when he was returning after easing himself from the field near the "Johad", then he saw the

deceased Sher Singh sitting and talking to Chandru's wife at the house of Chandru. In our view these three illustrative circumstances seem to be completely inadequate for showing the motive of this crime with appellant Chandru and for connecting the appellants with this crime. In any case it is completely illegitimate to infer on their basis that the appellant Chandru must necessarily have been involved with this crime.

9. There is also evidence of extra judicial confession before P.W. 6 Het Ram, Pradhan. However, the statement of Het Ram Pradhan is self-contradictory inasmuch as at one point in his cross examination Hetram states that Chandru had confessed to him of having committed the crime on the date the dead body of Sher Singh was identified (i.e. on 6.1.1981). He further added that he had never met Chandru after 6.1.81. But subsequently, when his 161 Cr.P.C statement was recorded by the I.O. on 12.1.1981, he mentioned no such fact. Thereafter subsequently, contrary to his earlier version, PW 6 Hetram deposed that on 13.1.1981 his statement was recorded by the I.O. and on the same day the appellant Chandru had confessed to his involvement in the crime. In view of these most significant contradictions the evidence of extra judicial confession can not be relied upon.

10. In any case, it is well settled that the evidence of extra judicial confession is considered an extremely weak kind of evidence, and unless it inspires confidence because the extra judicial confession appears to be voluntary and truthful, and to have actually been made before the witness concerned for good and sound reasons and is corroborated by independent evidence it would be unsafe to place reliance on it. Thus reviewing the conspectus of law on the subject of extra-judicial confessions, the Apex Court has observed as follows in *Sahadevan v. State of T.N.*, (2012) 6 SCC 403 at page 410 :

"14. It is a settled principle of criminal jurisprudence that extra-judicial confession is a weak piece of evidence. Wherever the court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra-judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra-judicial confession suffers

from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration."

11. The last piece of evidence in this case is of recovery of the knife at the instance of the appellant Bishambhar on 6.2.1981. However, regarding this recovery, we find that the Investigating Office has already prepared a site plan (Ext. Ka-16), in which he has shown wet mud inside the house of Nathu Harijan on 12.1.81. No blood stains were collected from this spot. Nathu harijan was also never examined to prove these recoveries from his house which was accessible to all. After the arrest of Bishambhar in the night of 5/6.2.1981, on 6.2.1981 the knife is said to have been recovered on the pointing out of Bishambhar, from outside the Northern boundary wall of the house of Nathu Harijan about which a site plan was prepared as (Ext. Ka-17) on 6.2.81. The locations in the two site plans (Exts. Ka 16 and Ka 17 correspond, and it appears that the knife had already been located at this spot by the police, and thereafter a false recovery is shown on the pointing out of appellant Bishambhar after his arrest. The other witnesses of recovery P.W. 3 Nathu, S/o Pran, (who is different from Nathu Harijan near whose house the recovery was made) and P. W. 4 Ram Lal, state that Bishambhar had already disclosed to them that he had hidden the knife near the house of Nathu Harijan. We, therefore, think that the knife had already been found at the spot and hence the said recovery could not be used for showing the complicity of the appellant in this offence. Apart from the aforesaid pieces of evidence, which we have shown are extremely fragile and unreliable in nature, there is no other evidence such as evidence of last-seeing of the appellant along with the deceased etc for completing the chain of circumstances against the accused 12. In the aforesaid state of affairs, we are satisfied that there are no good grounds for concluding that the circumstances indicated above were sufficient for showing the complicity of the appellant in this offence and for affirming the order of the trial judge convicting the appellants as above, which is hereby set aside. The result is that this appeal succeeds and is allowed. The sentence awarded by the Trial Judge under all counts is set aside. The appellants who are on bail need not surrender to their bail. Their sureties are discharged.

Appeal allowed.

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