

State of U.P. Vs. Omvir and Others

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Court : Allahabad

Decided On : Dec-22-2014

Judge : Rakesh Tiwari & The Honourable Mrs. Justice Vijay Lakshmi

Appeal No. : Government Appeal No. 3156 of 2007

Appellant : State of U.P.

Respondent : Omvir and Others

Judgement :

Rakesh Tiwari, J.

Heard learned AGA for the State of U.P-appellant and perused the record.

This Government Appeal No. 3156 of 2007 along with Criminal Misc. Application (Leave to Appeal) under Section 378 and 378(3) Cr.P.C. has been preferred challenging the validity and correctness of the impugned judgment and order dated 10.1.2007 passed by the Addl. Sessions Judge, Court No. 7, Muzaffarnagar in S.T. No. 436 of 2005 (State Vs. Omvir and another) connected with S.T. no. 437/2005 (State versus Omvir), S.T. No. 438/2005 (State versus Shahzad) and S.T. No. 895 of 2005 (State versus Idrisi) acquitting the accused-respondents of the charges framed against them under Sections 302 IPC read with Section 34 IPC and Section 25 of the Arms Act.

The prosecution story, in brief, is that informant Rais Ahmad son of Jamil Ahmad Ansari submitted a written report scribed by one Wakil Ahmad at P.S. Kairana averring that his father Jamil Ahmad alias Jatlo was running a General Merchant shop near his house in which his younger brother Shahzad also used to sit. Anwar son of Sharif Ansari and Idris of his village were lifting/stealing the goods from that shop. On numerous occasions they took Gotkha from the shop and when Shahzad demanded money they threatened with dire consequences to his life; that on the intervening night of 8.11.2004 when father of the informant was sleeping in upper portion of a room of the house along with his family members and his younger brother Shahzad was also sleeping in another room, at about 1.30 A.M. in the night on hearing the cry of the father informant and his younger brother suddenly came out. Informant and his brother saw three persons namely, Anwar, Idris and one another person coming out of the room in the light source there. Anwar was armed with knife, Idris and the other were armed with country made pistol. After fleeing away of having seen the accused persons the informant and his brother went in the room of his father and saw that the neck of his father was chopped off from his body which was lying on earth.

Pursuant to the report, crime nos. 364/2004, 366/2004 and 367/2004 under Section 302/34 IPC and Section 25 of the Arms Act were registered on 8.11.2004 at 2.45 A.M. at P.S. Kairana, District Muzaffarnagar. The dead body of the deceased was sent to District Hospital, Muzaffarnagar where Dr. Rakesh Kumar conducted the post mortem examination on the cadaver of the deceased on 8.11.2004 at 3.45 P.M. The Doctor found one contusion 6 cm. x 3 cm. and two incised wounds 21 cm. x 3 cm. and 5 cm. x 2.5 cm. on the person of the deceased. In his opinion the death had occurred due to shock and haemorrhage.

After investigation, the I.O. submitted charge sheet the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

3. The circumstances should be of a conclusive nature and tendency;

4. They should exclude every possible hypothesis except the one to be proved;
and

5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

These five golden principles constitute the panchsheel of the proof in a case based on circumstantial evidence and in the absence of a corpus delicti.

In the cases of circumstantial evidence rendered in *Baba Ram Das alias Tarlok Singh versus State of Punjab* (11/1998 C.C.R. page-16, Punjab and Haryana), *Shyamal Shah and others versus State of West Bengal* (2014 ACR-444 (SC), *Shyodan versus State of U.P.* (2014)(1) A.A.R. 337, Alld. High Court), *State of Gujrat versus Ratan Singh alias Chini Bhai* (2014 (1) A.A. R. 272, SC), *Padala Veera Reddy versus State of A.P. and others*, AIR 1990, SC-79 and *State of U.P. versus Ashok Kumar Srivastava*, 1992 Crl.L.J. 1104, it has been held that the chain of circumstantial evidence is to be complete for holding that the accused and none other would have committed offence and it should be unbroken to point out to the guilt of the accused persons only and no other.

The law firmly entrenched by the Apex Court is that there can be no doubt that conviction can be based solely on circumstantial evidence but it should be tested on the touchstone of law relating to circumstantial evidence in view of the decision rendered in *Hanumant Govind Nargundhkar versus State of M.P.*, AIR 1952 SC-343 and *Mula Devi versus State of Uttarakhand*, AIR 2009 SC-655. In the case of *Ram Singh versus Sonia*, AIR 2007 SC-1218 the Apex Court has held that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a complete chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis regarding the guilt is possible.

From the statement of the witnesses, the chain of circumstantial evidence being incomplete, therefore, in our considered opinion, the trial Court has not committed any illegality or infirmity in acquitting the accused Idris and also two other remaining accused persons namely, Omvir and Shahzad. The judgment of the trial Court is a quite exhaustive one. On the basis of the evidence, the trial Court has rightly come to the conclusion that there is no evidence on record to connect the

accused and as such acquitted the accused-respondents of the charges levelled against them. In the aforesaid facts and circumstances, we are of the considered view that the findings of acquittal recorded by the trial Court are based on the evidence on record. It can not be said that the trial Court has not properly appreciated the evidence or there is any perversity in the findings so recorded by it. There appears to be no illegality or infirmity in the impugned judgment. On the evidence available, no other view is possible than acquittal.

For the reasons stated above, the application for leave to appeal is rejected. As a consequence, the government appeal is also dismissed.

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