

Atul Sharma vs.state

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Court : Delhi

Decided On : Jan-27-2018

Appellant : Atul Sharma

Respondent : State

Advocate for Def. : Mr. Hirein Sharma

Advocate for Pet/Ap. : Mr. Sumeet Verma, Mr. Aman Chaudhary

Judgement :

* + 1. IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision: January 27, 2018 CRL.A. 297/2015 ATUL SHARMA Appellant Through: Mr. Sumeet Verma, & Mr. Aman Chaudhary, Advocates STATE Versus Through: Mr. Hirein Sharma, Addl. Public Prosecutor for State with W/Inspector Viphesh, police station Vijay Vihar Respondent CORAM: HON'BLE MR. JUSTICE SUNIL GAUR HON'BLE MS. JUSTICE PRATHIBA M. SINGH JUDGMENT (ORAL) Impugned judgment of 22nd November, 2014 holds appellant guilty of the offences under Sections 302 and 201 of Indian Penal Code (IPC) and vide impugned order of 24th November, 2014, appellant has been sentenced to imprisonment for life and fine with default clause for offence under Section 302 IPC and for the offence under Section 201 of IPC, he has been sentenced to rigorous imprisonment for five years and fine with default clause. Both the sentences have been directed to run concurrently.

2. The case set up against appellant is that on 24th March, 2014 at about 11:15 p.m., at Mange Ram Park Extension, Gadda, Ara Machine CrI.A.297/2015 Page 1 of 9 Plot, Vijay Vihar, appellant had committed murder of Mukesh Sharma by giving blows with chorsi and axe on his stomach and after having committed the murder, appellant had caused disappearance of the aforesaid weapons of offence and his blood stained clothes. The prosecution case set up against appellant rests on the testimony of wife of deceased- Ms. Ranjana (PW-16) and her father Sharvan (PW-17). Apart from their evidence, there is deposition of Raju (PW-21), who had last seen the deceased with appellant and that of Girish Chand (PW-18), who had given the ID to Ajay Sharma to obtain the sim card for the mobile from which the call was made by appellant to Ms. Ranjana (PW-16) after the incident. As per prosecution case, the mobile call was made by appellant from mobile No.8377823767 to Ms. Ranjana (PW16 on mobile No.87262964524 just after the incident.

3. The Nodal Officer-Saurabh Aggarwal (PW13) has deposed that the mobile No.8377823767 is in the name of Girish. Another Nodal Officer-Pawan Singh (PW15) has deposed that mobile No.87262964524 was in the name of Sovaran. Regarding recovery of weapon of offence, there is evidence of Investing Officer-Inspector Sunil Kumar (PW25), SI Ajay Kumar (PW24) and HC Parvinder Kumar (PW23). The medical evidence comprises of deposition of Dr. Bhawna Jain (PW19), who had first examined the deceased and of Dr. Vijay (PW24), who had conducted the post mortem on the body of deceased. The crux of prosecution evidence has been tabulated by trial court in paragraph No.75 of impugned judgment, which needs no reproduction.

4. On the strength of afore-referred evidence, appellant was tried for offence of murder. The stand taken by appellant in his statement under CrI.A.297/2015 Page 2 of 9 Section 313 Cr.P.C. is as under:-

"I am innocent. I have been falsely implicated because I was engaged to be married with Ranjana which marriage was broken after which Ranjana was forcibly married with Mukesh and even after marriage she made contact with me on telephone. It was after the marriage of Ranjana with Mukesh that I came to know

him because he was staying in the same area. On the date of incident I saw him in an injured condition at the gate of my factory and I took him to the hospital with the assistance of my brothers Ram Avtar and Ajay who were also working in the same factory. 5. No evidence has been led by appellant in his defence. Trial court vide impugned judgment and order has convicted and sentenced appellant, as noted above.

6. Learned counsel for appellant assails the impugned judgment and order on sentence by drawing attention of this Court to deposition of Raju (PW21 and points out that this witness has not supported the prosecution case and has admitted that appellant was living with deceased in the same room and so, there is no question of his being last seen with the deceased. It is also pointed out that this witness (PW21 has categorically stated that he had not seen appellant coming out of room with chorsi and axe in his hands.

7. To assail the testimony of Ranjana (PW16, it is submitted by learned counsel for appellant that even this witness (PW16 has not supported the prosecution case, as she has categorically deposed that the statement made by her before the Court was correct and not the statement which she had made to the police. It is submitted that the so called extra judicial confession made by appellant to this witness (PW16 at 11:00 CrI.A.297/2015 Page 3 of 9 p.m. on the day of incident, is not supported by electronic evidence, as the mobile call was not made from the mobile phone of appellant on the mobile phone of Ranjana (PW16. It is further submitted that had appellant made extra judicial confession to her regarding having eliminated her husband- Mukesh Sharma, then she would have definitely disclosed it to police, who had informed her that Mukesh Sharma had been murdered. It is pointed out that as per testimony of Investigating Officer (PW25, he had informed Ranjana (PW16 about murder of Mukesh Sharma only after he had taken over investigation at 02:30 a.m., the night intervening 24th and 25th March, 2013. Thus, it is submitted that had any extra judicial confession been made to Ranjana (PW16, then she would have certainly disclosed about it to the police when she was informed about death of Mukesh Sharma.

8. Attention of this Court is drawn by learned counsel for appellant to evidence of Saurabh Aggarwal (PW13); Pawan Singh (PW15 and Girish Chand (PW18 to submit that purported extra judicial confession was made from mobile No.8377823767 to mobile No.87262964524 but none of these mobile numbers belonged to appellant or Ranjana (PW16. So, it is submitted that evidence on record does not indicate that any of these two mobile numbers were being used by appellant or Ranjana (PW16. It is pointed out that as per evidence of Nodal Officer-Vishal Gaurav (PW14, appellants mobile number was 9818553961. It is submitted by learned counsel for appellant that the electronic evidence does not support the prosecution case of appellant making extra judicial confession to Ranjana (PW16 on mobile phone.

9. So far as recovery of weapon of offence and blood stained clothes CrI.A.297/2015 Page 4 of 9 of appellant are concerned, it is submitted that there is discrepancy in the evidence of recovery witnesses-HC Parmender (PW23; SI Ajay Kumar (PW24 and Inspector Sunil Kumar (PW25. It is pointed out by appellants counsel that recovery of weapon of offence and blood stained clothes does not connect appellant with the offence in question for the reason that blood group on the recovered weapons and blood stained clothes does not match with the blood group of deceased.

10. At this stage, learned Additional Public Prosecutor for respondent- State submits that though mobile phone No.8726964524 is in the name of Sovaran, but was of Sharvan (PW17 who is father of Ranjana (PW16 and it has come in the evidence of Ranjana (PW16 that she had been using the mobile phone, which was lying in the house and she does not recollect in whose name this number was.

11. Counsel for appellant points out that evidence of Sharvan (PW17 is silent on the aspect of mobile phone No.8726964524, and nowhere it has come in the evidence of this witness that this mobile number belongs to him or he had given the said mobile phone to his daughter Ranjana (PW16. It is also pointed out that fathers name of Sharvan (PW17 is Gopal Sharma, whereas as per evidence of Nodal Officer- Pawan Singh (PW15, fathers name of Sovaran is Raja Ram. Thus, it is submitted by appellants counsel that prosecution case does not stand proved

and the trial court has erred in convicting and sentencing appellant and so, this appeal deserves to be allowed and appellant be acquitted.

12. On the other hand, learned Additional Public Prosecutor for respondent-State submits that there was strong motive for appellant to CrI.A.297/2015 Page 5 of 9 commit the offence in question and that evidence of Ranjana (PW16 and Sharvan (PW17 supports the prosecution case and the recovery of weapon of offence and blood stained clothes of appellant connects him with the offence in question. Learned Additional Public Prosecutor for respondent-State submits that there is no infirmity in the impugned judgment and order on sentence and so, this appeal deserves to be dismissed.

13. After having heard learned counsel for parties and on scrutiny of evidence on record, we find that instant case is not solely based on circumstantial evidence. There is evidence of an illiterate lady- Ranjana (PW16, who claims that she was in love with appellant prior to her marriage with deceased. It has come in her evidence that she used to give a missed call from the mobile (which used to remain in house) to appellant and then he used to call back. In such a situation, sole reliance need not be placed upon electronic evidence to discard version of star witness Ranjana (PW16, who in her evidence has categorically stated that appellant had promptly confessed to her on mobile phone that he had eliminated the deceased. On analysis of the evidence of this star witness (PW16, it becomes abundantly clear that appellant had a strong motive to eliminate the deceased, as deceased used to object to appellant talking with his wife- Ranjana (PW16. Not only this, it has come in the evidence of Ranjana (PW16 that deceased had a suspicion about the liaison between her and the appellant. No doubt, this witness Ranjana (PW16 has stated in her re-examination that evidence given by her before the Court and not the statement made to police, is correct but that by itself would not wash away her testimony. CrI.A.297/2015 Page 6 of 9 14. Upon a close reading of the testimony of Ranjana (PW16 as a whole, we find that her testimony remains unshaken on the crucial aspect of appellant making extra judicial confession to her. Ground realities have to be taken note of. Ranjana (PW16 was certainly not a party to elimination of her husband. It is so said because it has come in her evidence that after appellant had made extra judicial confession to

her, she had immediately told her mother-in-law about it. Merely because Ranjana (PW16 had not told the police that she already knew about murder of her husband, it would not provide any reasonable basis to conclude that no extra judicial confession was made by appellant to Ranjana (PW16. It is quite natural for Ranjana (PW16 to be in a state of shock upon learning about elimination of her husband at hands of appellant and so, on this ground her testimony cannot be disbelieved. The evidence on record does reveal that the mobile phone in question, from which appellant had made call to Ranjana (PW16 on the day of incident, belonged to brother of appellant, who was living with appellant. It has also come in evidence that whenever Ranjana (PW16 had to talk to appellant, she used to give a missed call on mobile No.8377823767, which belonged to brother of appellant and then, appellant used to call back. The call detail records reveal that on the day of incident, a long call was made from mobile phone of appellants brother to mobile number of Sovaran. It is pertinent to note that it has not been put to Ranjana (PW16 as to on which mobile number she had received the call from appellant on the day of incident. The controversy raised regarding the mobile phone purportedly belonging to Sovaran by appellants counsel does not clinch the issue as there is no cross-examination of Ranjana (PW CrI.A.297/2015 Page 7 of 9

16) on this aspect. Such a view is taken because deposition of Ranjana (PW16 of having a mobile phone, is not controverted. So on the basis of electronic evidence alone, the reliable evidence of Ranjana (PW16 cannot be discarded. It remains unassailable that Ranjana (PW16 is an illiterate lady, who was in possession of a mobile phone. Since the deposition of Ranjana (PW16 substantiates the prosecution version, therefore, the electronic evidence cannot be made the basis to demolish the incriminating extra judicial confession which stands duly proved on record. We are of the considered opinion that there was a strong motive for the appellant to eliminate the deceased and evidence of extra judicial confession is clinching.

15. To complete the chain of circumstantial evidence, there is recovery of weapon of offence and clothes of appellant-accused, which were blood stained. Simply because the blood group is not known, it would not mean that the said recoveries

are to be disbelieved. The so called discrepancy in the evidence of Investigating Officer- Inspector Sunil Kumar (PW25; SI Ajay Kumar (PW24 and HC Parvinder Kumar (PW23 is of no consequence, as upon scrutiny of their evidence, this Court finds that factum of recovery of weapon of offence and blood stained clothes of appellant, stands duly established from evidence on record. For the lapse on the part of Investigating Officer to get blood group detected on the blood stained recoveries and tallying it with the blood group of appellant, prosecution cannot be made to suffer because there is no cross- examination of Investigating Officer on this aspect.

16. As regards evidence of last seen is concerned, we find that Raju (PW21 has categorically deposed that appellant and deceased used to CrI.A.297/2015 Page 8 of 9 work in a saw mill and he had seen appellant entering the room of the deceased on the day of incident. Although Raju (PW21 had not seen appellant coming out of room and merely because appellant and deceased were living in one room, would not justify the conclusion that he had not seen them together just before the incident. Raju (PW21 has categorically stated in his evidence that he had seen them together going towards room and on this aspect, evidence of this witness remains unshaken. Thus, in our opinion evidence of last seen stands firmly established from evidence on record.

17. We have analysed the evidence on record on the parameters governing appreciation of circumstantial evidence, as reiterated by Supreme Court in *Sonu Vs. State of Haryana* (2017) 8 SCC570 and thereafter, we are of the considered opinion that circumstantial evidence is so complete that it gives rise to reasonable conclusion that it is none other than appellant who had committed the offence in question. We find no ground to interfere in the impugned judgment and order on sentence of the trial court.

18. In the light of aforesaid, this appeal is dismissed. (SUNIL GAUR) JUDGE (PRATHIBA M. SINGH) JUDGE Page 9 of 9 JANUARY27 2018 r CrI.A.297/2015