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Court : Guwahati

Decided On : Jun-20-1969

Judge : R.S. Bindra, J.

Appellant : Ful Kumar and anr.

Respondent : The State

Judgement :

R.S. Bindra, J.

1. The appellants Fulkumar and Lalikumar challenge the correctness of their conviction under Section 364, Indian Penal Code, and sentence of 8 years' rigorous imprisonment, imposed on each by Shri N.M. Paul, the Additional Sessions Judge at Agartala, by his judgment dated 27-12-1966.

2. The two appellants were tried on the charge of murder under Section 302, Indian Penal Code and in the alternative on the charge under Section 364, Indian Penal Code. Their co-accused Promode Ranjan Dewan was charged under Section 302 read with Section 109, I.P.C. and in the alternative under Section 364 read with Section 109, Indian Penal Code. The charge of murder could not be sustained against either of the accused and so they were all acquitted of that charge. Promode Ranjan Dewan was also exonerated of the charge under Section 364 read with Section 109, Indian Penal Code. The present appellants were held guilty under Section 364, Indian Penal Code and sentenced in the manner stated

above.

3. The prosecution story, as gathered from the testimony of the various witnesses examined at the trial, is that at about 9 P. M., on 22-9-1963, the appellants Fulkumar and Lalikumar visited the house of the deceased Panchakumar when the latter was sitting in his hut at Hajachara along with his wife and both were smoking. The two accused requested Panchakumar to accompany them out and he agreed. The party of three left the house of Panchakumar and made for that of Khagendra, the other deceased of this case, Khagendra and his wife Chandrasree were also enjoying smoke in their hut. Fulkumar and Lalikumar requested Khagendra to go out with them and Khagendra nodded assent. However, neither Panchakumar nor Khagendra returned to their respective huts during that night and so their spouses felt anxiety in regard to their safety. Bagalaxmi, the wife of Panchakumar, contacted Chandrasree, the wife of Khagendra, on the morning of 23rd to ascertain if the latter had any information respecting her husband. Each apprised the other that her husband had not returned since he had left on the previous night in the company of Fulkumar and Lalikumar. Both the women also happened to meet Fulkumar and Lalikumar in the village on the same morning and made inquiries about their husbands. However, Fulkumar and Lalikumar denied any knowledge in regard to their whereabouts. After the necessary but abortive search in the village and elsewhere the two women went to the police Outpost at Silachari to report that their husbands were missing since the previous night. It appears that Radhapada, the A. S. I. in charge of the Outpost at Silachari, advised them to submit their report in writing. Consequently, they went to the bazar at Silachari and requested Benoy Bhusan (P. W. 3) to help them in preparing the reports. Benoy Bhusan prepared the reports Exts. P-I and P-I (a) at their instance and these reports were then presented to Radhapada, who sent those reports, in original, on the same day by post to the police station Sabroom, under which the Outpost at Silachari falls.

4. On 23rd of September, 1963, Priyanath Ghosh (P. W. 9), an employee in the Anti-Malaria Department as Field Worker, was surprised to notice one aged lady and an aged man on the run while he was proceeding from Hajachara to Silachari. On

enquiry from those two persons, the witness learnt that they had seen two dead bodies, with serious injuries on their persons, lying in a paddy field close by. The witness then visited the place where the dead bodies were reported to be lying and was convinced about the veracity of the information passed on to him by the aforementioned two persons. On the next day, 24-9-1963, Priyanath Ghosh communicated what he had seen to Anil Kumar (P. W. 4), an employee in the Forest Department, and this Anil Kumar, in turn went to the Outpost at Silachari and told A. S. I. Radhapada, the officer in charge, that the dead bodies of two persons were lying in the paddy field. A. S. I. Radhapada then contacted Priyanath Ghosh (P. W. 9) and asked him to accompany him to the place where the dead bodies were lying. Priyanath excused himself but detailed one peon of his own Department for accompanying A. S. I. Radhapada to the relevant field. A police party headed by Radhapada then left for that field where they reached at about 3 P. M. After seeing, the dead bodies, Radhapada sent a word to the widows of Panchakumar and Khagendra. After those women had reached the field and identified the bodies of their husbands, Radhapada prepared the inquest reports. He seized one blood-stained sickle, some blood-stained earth and some blood-stained garments from the scene of occurrence and prepared the recovery memo in that respect. That done, he sent the dead bodies to Silachari and busied himself in the search of Fulkumar and Lalikumar. That search, however, was unavailing. He returned to the Outpost at about 7-30 P. M. and then sent a radiogram message to the Officer-in-charge of the police station Sabroom intimating the recovery of the dead bodies of Panchakumar and Khagendra as also the reports lodged by the widows of the deceased on the previous day. On the next morning (25-9-1963) Radhapada sent the dead bodies to Sabroom for post mortem examination.

5. The radiogram message sent by Radhapada was received by Aparna Ranjan Bhattacharjee, the Officer-in-charge of the police station Sabroom, at 9 A. M. on 25th of September. On the basis of that message Bhattacharjee registered a case and then started the investigations. At about 2 in the night between 25th and 26th, he left for the place of occurrence via the Outpost Silachari. From the latter Outpost he collected all the papers on the evening of 26th and after spending the night at that Outpost he left for the place of occurrence on the next morning. He

prepared the site plan and collected from there another two sickles and two tufts of blood-stained hair. Thereafter, he went to the village of the two deceased and examined a few persons. He also happened to search the houses of the accused Fulkumar and Lalikumar, but abortively. On 29-9- 1963 Bhattacharjee happened to arrest Amarendra Dewan, a nephew of the accused Pro-mode Ranjan Dewan, and Sonadhan Chakma, from whose paddy field the dead bodies were found. But it appears that they were subsequently released, nothing incriminating having been discovered against them. One Brajendra Tripura was also arrested in connection with this case, but he too was not ultimately proceeded against. Bhattacharjee arrested Promode Dewan on 4-10-1963, while Radhapada (P. W. 18) succeeded in arresting the present appellants on 15-12-1963.

6. Before the investigations had concluded, Bhattacharjee had to leave Sabroom for Kamalpur in connection with Court evidence. He therefore, made over the investigations on 17-12-1963 to Gobinda Gopal Basak (P. W. 17). Radhapada sent the two appellants on 17-12-1963 to the police station Sabroom, Sri G. G. Basak secured police remand respecting them on 18-12-1963 from the Magistrate at Sabroom. It is in the statement of Basak that on 20th of December, 1963, both the accused made disclosure statements to him and that pursuant thereto he recovered the takkal daos Exts. PM-1 and PM-1 (a) respectively at the instance of Fulkumar and Lalikurnar.

7. The post-mortem examination on the two dead bodies was done by Dr. Nilmani Deb Barma (P. W. 15) on 26th of September, 1963. He noticed a large number of incised wounds on the persons of the two deceased. All the wounds, the doctor affirmed, were ante-mortem and sufficient to occasion death.

8. P. W. 1 Bagalaxmi and P. W. 2 Chandrasree, the wives of the two deceased, happened to affirm that their husbands had taken some lands on rent from Promode Dewan, the accused since acquitted, that Promode Dewan wanted their husbands to vacate the lands, and that since the deceased had refused to oblige Promode Dewan the latter happened to nurse a grievance against them. It was to secure his objective, the two women insinuated, that Promode Dewan had procured the murders of Panchakumar and Khagendra with the help of the present

appellants. These facts, the prosecution contended constituted the motive culminating in gruesome felony.

9. Fulkumar and Lalikumar entered the plea of not guilty. The defence set up by them was that they were altogether innocent and had been falsely implicated.

10. Shri A. M. Lodh, the learned Counsel representing the appellants as amicus curiae, urged vehemently that the evidence on the record falls far short of establishing the various ingredients of Section 364, Indian Penal Code. That section provides that whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. The expression 'abduction' is defined in Section 362, Indian Penal Code. That section enacts that whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person. Shri Lodh canvassed that it was not the contention of the prosecution that the appellants had forcibly compelled the two deceased to accompany them out, on the evening of 22-9-1963, and that in consequence the prosecution could at the best contend that the deceased had been beguiled into going out of their huts by deceitful means. However, the Counsel urged further that there was not an iota of evidence to establish that any deceitful means had been employed by the appellants against the two deceased. Shri H. C Nath, the learned Government Advocate, did not join issue with Shri Lodh on the point that it was not the prosecution case that any force had been used by the two accused against the deceased for the purpose of taking them out of their huts. However, Shri Nath submitted that the circumstantial evidence available on the record leaves no scope for doubt on the point that the accused did apply deceitful means in taking the two deceased out. When asked by the Court to detail the circumstantial pieces of evidence in support of his contention, Shri Nath could marshal only two of them. They are, (i) that at about 9 P. M. on 22nd of September, 1963, the two accused had firstly visited the house of Panchakumar and then of Khagendra and had taken them out of their huts along with them, and (ii) that the dead bodies of Panchakumar and Khagendra were found lying in the paddy field of Sonadhan Chakma on the morning of 23rd of

September, 1963. Shri Lodh, it must be stated here, did not contest that the two facts listed by Shri Nath are proved beyond doubt by dependable evidence,

The statements of P. W. 1 Bagalaxmi and P. W. 2 Chandrasree sound wholly convincing on the points that the two appellants had visited their respective huts late in the evening of 22-9-1963 and had taken their husbands along with them, and that they had lodged the reports Exts. P-I and P-I (a) with the Outpost at Silachari in the evening of 23rd of September, 1963, after they had failed to get any information about their husbands, despite intensive and extensive search during the day. It is convincingly established from the testimony of Priyanath Ghosh (P. W. 9) that he had seen the dead bodies lying in the paddy field on 23-9-1963 and that he had vouched that information to Anil Kumar (P. W. 4). This Anil Kumar deposed that he happened to visit the Outpost at Silachari on 24th of September, 1963 when he communicated the information, passed on to him by Priyanath Ghosh, to Officer-in-Charge of the Outpost. Radhapada (P. W. 18) affirmed that on 23rd the reports Exts. P-I and P-I (a) had been delivered to him by the two women and that on the next day Anil Kumar apprised him personally that two dead bodies were seen lying in the paddy field. He deposed further that after ascertaining for himself that the bodies were lying at the place mentioned by his informant, he sent a radiogram to the police station Sabroom. That radiogram message is marked Ext. P-II. It is recited therein that the two women had made the reports on 23rd of September and that the dead bodies of the two persons had been found lying in the paddy field of Sonadhan Chakma of Hajachara on 24th. Therefore, the two facts emphasised by Shri Nath are proved indisputably.

11. However, the point that falls for determination is whether those two facts per se constitute sufficient material to warrant the conclusion that the two accused had abducted the deceased persons or that their abduction was actuated by the intention to murder them or that they may be so disposed of as to be put in the danger of being murdered. The motive, if any, behind the murder of the two deceased persons was attributed only to the accused Promode Dewan. However, he has been completely cleared of the charge and acquitted. His acquittal has not been challenged by the State. Though, I agree, it is not essential for the prosecution to establish motive against the accused in all cases, but at the same

time it cannot be gainsaid that without adequate motive, speaking normally, none is expected to take the life of another human being. To bag human body as a game is a rare occurrence, if at all. In the reports Exts. P-I and P-I (a) no evil intentions were imputed to the present appellants; nor the two women assigned any motive to them in their statements made at the trial. P. W. 13 Jogendra happened to affirm in the committing Court that there was no enmity between the two deceased and the accused Promode Dewan. This averment of a prosecution witness dwarfs the contrary assertion of the widows of the deceased. Naradmuni (P. W. 7), the elder brother of the deceased Panchakumar, undoubtedly deposed - that his family had enmity with Promode Dewan. However, it is significant that he did not go further to state that the appellants had any differences with the two deceased. He also did not affirm that the accused Promode had such intimate connections with the appellants that he could prevail upon the latter to murder the deceased. P. W. 2 Chandrasree affirmed at the trial that she had stated before the committing Magistrate that her husband had no enmity with the accused Fulkumar and Lalikumar. In the face of all this data it is futile for the prosecution to contend that either of the two appellants had any motive for committing the double murder. The learned Trial Court could not record a definite finding, against the appellants respecting the motive part of the story. In para 24 of its judgment, it is mentioned that

Though there was no direct evidence to prove the motive of the accused Fulkumar and Lalikumar, it may be inferred from the circumstances of the case that the accused Fulkumar and Lalikumar might have been engaged to abduct the deceased with a plan that they would be murdered or be so disposed of as to be put in danger of being murdered.

It is further stated in the same para that as a consequence of their abduction the deceased Panchakumar and Khagendra had been murdered during the course of the night. The expression 'might have been engaged' is clearly indicative of the doubt in the mind of the trial Court respecting the motive attributed to the accused. The view of the trial Court would look rather amazing in the context that not only Promode Dewan, who is alleged to have procured the services of the two appellants for the abduction of the deceased, but also the appellants have been

given clear acquittal on the charge of murder, and that, in addition, Promode Dewan has also been exonerated of the charge under Section 364 read with Section 109, Indian Penal Code. If Promode Dewan had not engaged the two appellants for the alleged abduction of the deceased, a corollary that follows from his acquittal, the charge of abduction against the two appellants must fall through ipso facto inasmuch as it is the basis of the prosecution story that it was Promode Dewan who had procured the abduction of the two deceased through the appellants.

12. Coming back to the submission of Shri H. C. Nath that there is abundant material available on the record to justify the conclusion that the appellants had abducted the deceased for the purpose mentioned in Section 364, Indian Penal Code, it can bear repetition to state that he had founded that submission on the facts that the deceased Panchakumar and Khagendra had accompanied the appellants from their respective huts at about 9 P. M. on 22nd of September, 1963, and that the dead bodies of Panchakumar and Khagendra were seen lying in a paddy field on the morning of the next following day. The principles bearing on what should be the nature and quality of the circumstantial evidence before a charge can be held established by it are well settled. They are, (i) the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established; (ii) all the facts so established should be consistent only with the hypothesis of the guilt of accused; and (iii) the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In this connection, reference is invited to the cases of Hanumant Govind v. State of Madhya Pradesh AIR 1952 SC 343 and Govinada Reddy v. State of Mysore AIR 1960 SC 29. It is equally well established that, in cases dependent on circumstantial evidence, in order to justify the inference of guilt, the incriminating facts must be incompatible with the innocence of the accused or the guilt of any other person and also incapable of explanation upon any other reasonable hypothesis than that of his guilt. Circumstantial evidence, therefore, must be a combination of facts creating a network through which there is no escape for the accused, or, in other words, the facts taken as a whole do not admit, to the extent of moral certainty, of any inference but of his guilt. The chain of facts constituting the evidence must be so

complete as not to leave any reasonable ground for a conclusion therefrom consistent with the innocence of the accused.

If we examine the facts of the case in hand in the light of these principles, there looks no scope for doubt on the point that the network constituted by the two facts, relied upon by Shri H. C. Nath, leaves gaps of varied dimensions through which the accused -can get out with facility. The record is altogether barren of evidence that the two appellants and the deceased had remained together for any length of time after 9 P. M. Nor is there any evidence to indicate, even approximately, the time at which Panchakumar and Khagendra were hacked to death. Again there is no evidence to establish that the two appellants had not slept at their respective houses during the night of occurrence. The prosecution evidence is altogether insufficient to prove that the appellants had any motive for taking the lives of Panchakumar and Khagendra. Further, it is in prosecution evidence that the dead bodies were found lying in a paddy field, that A. S. I. Radhapada had recovered one bloodstained sickle from that field, and that S. S. I. Bhattacharjee (P. W. 21) came by another two sickles from the same field. It may be that the two deceased had gone to cut standing paddy crop from the field of another and the latter opened an assault on them with some dangerous weapon. The unchallenged acquittal of Promode Dewan smashes the foundations of the prosecution edifice that the appellants had wilily brought the two deceased out of their huts at the instance of Pro-mode Dewan, either to murder them or to dispose of them in a way that they may be exposed to the danger of being murdered. All these factors constitute loopholes which lend colour to the contention of the appellants that they had been hauled up without any justification. Lastly, it may be mentioned that in the reports Exts. P-I and P-I (a) the appellants were not mentioned as the possible culprits, and that the Investigating 'Officer happened to arrest, within a few days of the occurrence, Brajendra Tripura (P. W. 10), Amarendra Dewan and Sonadhan Chak-ma. The present appellants were the last in the list of the persons to be arrested in the case, their arrests having been effected as late as 15-12-1963. There is no evidence to establish that the appellants had been absconding right up to the date of their arrest. They are labourers by profession and so could not have adopted any means to escape arrest if the police were earnest in apprehending them, No incriminating article was recovered from or at the instance of the

appellants. The trial Court has rejected the testimony of Shri Basak that the appellants had made disclosure statements before him or that those disclosure statements had led to the recovery of any instruments. Shri H. C. Nath did not challenge that finding of the trial Court. Hence I find it difficult to uphold the conclusions of the trial Court that the circumstantial evidence was consistent only with the hypothesis that the accused had abducted the two deceased or that the abduction was for purposes mentioned in Section 364, Indian Penal Code.

13. As a result, I allow the appeal, set aside the conviction and sentence of both the appellants, and order their immediate release. Announced.

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