State Vs. Neeraj @ Lukka

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SooperKanoon Citation : sooperkanoon.com/45680

Court : Delhi

Decided On : Feb-24-2015

Judge : G. S. Sistani

Appellant : State

Respondent : Neeraj @ Lukka

Advocate for Pet/Ap. : Mr. Sunil Sharma

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRIMINAL LEAVE PETITION No.341/2014 Date of decision:

24. h February 2015 % . Petitioner STATE Through : Mr. Sunil Sharma, APP for the State. versus ..Respondent NEERAJ LAL@LUKKA Through : None. CORAM : HONBLE MR. JUSTICE G. S. SISTANI HONBLE MS. JUSTICE SANGITA DHINGRA SEHGAL G. S. SISTANI, J.

(ORAL) 1. The State seeks leave to file an appeal under Section 378(1) of Code of Criminal Procedure to challenge the judgment dated 19.10.2013, passed by the learned Additional Sessions Judge, in Sessions Case No.27/2012, whereby the respondent was acquitted of the charges under Section 363/364/302 and section 201 of Indian Penal Code.

2. To appreciate the contention raised by learned counsel for the petitioner/State, a brief summary of the prosecution case is given below:

On 11.04.2012, complainant Suresh @ Pappu (PW2) lodged a report regarding his son Atul @ Bunty missing since 10.04.2012 from 9pm onwards. FIR Ex.PW1/A was registered. CCTV footage of the cameras installed at Khan Market were examined which indicated that the missing boy was seen in the company of respondent around 9pm. The interrogation of the respondent revealed nothing substantial and in the intervening night of 17/18th April 2012, Ct. Vinod (PW4) while checking the ground of Kamal Nursery, Khan Market found a male headless dead body lying in a highly decomposed state. This information was recorded vide DD No.31A Ex.PW5/A. Unscaled site plan (Ex.PW37/A) of the place of incident was prepared on 19.04.2012. During investigation physical inspection of the body of respondent was done and it was found that right lower part of leg was wounded and signs of burnt hairs were there on his left leg. When put to rigorous interrogation, respondent confessed of taking revenge and strangulating Atul @ Bunty (deceased) and burning his dead body later. On the basis of said information, respondent was arrested on 19.04.2012 vide memo Ex.PW30/C.

3. During investigation, respondent identified the place of occurrence and at his instance a plastic cane Ex.PW22/1 and a plastic rope Ex.PW33/P33 were recovered and he also got recovered the clothes Ex. PW30/P35 which he was wearing on 10.04.2012 when he committed the murder of the deceased and the clothes Ex.PW30/P-34 that he had worn on 17.10.2012 when he set the dead body of deceased Atul @ Bunty to fire. Charge sheet was filed and respondent was charged on the count of committing offence u/s 363/364/302 and section 201 of IPC.

4. The respondent pleaded not guilty to the charge. The prosecution examined 37 witnesses to bring home the guilt of the respondent.

5. PW2 father of the deceased Atul @ Bunty deposed that there had been a quarrel between his son and the respondent about 3-4 months prior to the date of incident and the respondent was under a belief that he had been beaten up by some boys at the behest of the his son Atul @ Bunty and this deposition of PW2

was corroborated by the testimony of mother of the deceased Atul @ Bunty (PW11). Trial court while passing the impugned judgment observed that there is no direct evidence that respondent committed murder of the deceased Atul @ Bunty or burnt his dead body and held that the evidence brought on record by the prosecution does show some motive in the mind of the respondent in teaching a lesson to deceased Atul @ Bunty but the evidence is not so cogent or strong so as to hold it against the respondent.

6. Regarding the time of death and cause of death, trial court observed that the post-mortem report Ex.PW9/A revealed that death had occurred about 10 days prior to the day when body of the deceased was found but due to highly decomposed state of the body, the post-mortem report could not decipher the cause of death.

7. With respect to last seen evidence, trial court observed that the prosecution has relied upon the testimony of Ashish Shukla PW21who is assisting his father in the business of PAN shop at Khan market and is acquainted with both the respondent and the deceased Atul @ Bunty. PW21 deposed that he had seen respondent with the deceased Atul @ Bunty many a times in the market area and the respondent informed PW21 about his grudge against the deceased that he had been beaten up at the behest of the deceased Atul @ Bunty and will teach deceased Atul @ Bunty a lesson. PW21 further deposed that on 10.04.2012 when he was at his shop he saw the deceased with the respondent. Trial court believed the testimony of PW21 that he has no apparent reason to testify falsely against the respondent but held that it is not sufficient to nail the respondent guilty of murder as cause of death remains a mystery. Trial court relied upon Niranjan Panja vs State of West Bengal 2010 (6) SCC525and observed that:

....where the prosecution depends upon the theory of last seen together, it is always necessary to establish the time of death.

8. Trial court further observed that the time of death as per the postmortem report is held to be about 10 days prior to the day when the body of the deceased was found and it is not in sync with the time the deceased Atul @ Bunty was last seen in the company of respondent. The fact that respondent was seen with the

deceased at 9-9:15pm and later last seen alone at 10 or 10:15pm on the same night, the possibility of someone else meeting the deceased Atul @ Bunty cannot be ruled out.

9. Trial Court also observed that on 18.04.2012, the ground of Kamal Nursery where the body of the deceased was found was scanned/searched by the members of the crime team but surprisingly they could not sight the plastic cane placed on the roof of the only room at site but could only recover it at the instance of the respondent. Trial court further observed that no public witnesses were joined while affecting the recoveries of plastic cane, plastic rope and burnt clothes at the instance of the respondent.

10. In the background, counsel for the state submits that the impugned judgment was passed on hypothetical presumptions, conjectures and surmises and the order is perverse and lacks legality and thus it is liable to be set aside.

11. Learned counsel for the state further contends that trial court has failed to appreciate the evidence brought forth in the statement of Ashish Shukla PW21 who had last seen deceased Atul @ Bunty in the company of respondent.

12. The next contention raised by the learned counsel for the state was that learned trial court failed to appreciate the evidence of CCTV footage wherein the deceased was seen with the respondent on 10.04.2012 before murder and trail court failed to rely on the testimony of PW20 Santosh Singh Rawat who identified the respondent as the person who had purchased petrol worth Rs 500 in plastic cane from him on 17.04.2012.

13. On the basis on aforesaid submissions, it has been strongly urged by the counsel for the state that the impugned judgment be set aside as it has caused a grave miscarriage of justice.

14. We have heard learned counsel for the petitioner/State and carefully examined the impugned judgment, evidence placed on record and the submission so made. In the present case, the prosecution relied on certain chain of circumstances to bring to the fore that respondent committed the murder of deceased Atul @ Bunty.

In our view when the prosecution case rests upon circumstantial evidence, the circumstances should be conclusively proved and point to the guilt of the accused. The circumstances so proved should not be compatible with any hypothesis except the guilt of the accused. Hon'ble Supreme Court in Hanumant Govind Nargundkar & Anr. Vs. State of M.P. AIR 1952 SC343 laid down five principles, extracted as under:1. The circumstances from which the conclusion of guilt is to be drawn should be in the first instance being fully established; 2. All the facts so established should be consistent only with the hypothesis of the guilt of the accused; 3. 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; 4. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused; and 5. It must be such as to show that within all human probability the act must have been done by the accused.

15. Also law with regard to the conviction on the basis of circumstantial evidence has been discussed in detail by the Supreme Court in the case of Harishchandra Ladaku Thange Vs. State of Maharashtra, reported at AIR 2007 SC2957 It would be useful to reproduce the relevant paras:8. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person.

9. We may also make a reference to a decision of this Court in C. Chenga Reddy & Ors. V. State of A.P. 1996 (10) SCC193, wherein it has been observed thus:21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

16. In the present case, the circumstances set out would demonstrate that there is some motive for commission of crime but that motive by itself is not conclusive. Also the post-mortem report could not decipher the cause of death because if the time in the post mortem is reckoned, the death occurred prior to 10th or 11th of April, 2012 which cannot be the case as the deceased Atul @ Bunty was last seen alive at 9:00pm on 10.04.2012. Also last seen evidence is held to be shaky since the time of death opined by PW9 Dr Sukhdeep Singh (Ex.PW9/A) is totally incongruent with the last sighting of the deceased.

17. With respect to the identification of the respondent as the person who bought petrol from PW20 Santosh Singh Rawat, there is no denial that he purchased petrol for Rs 500 on 17.04.2012 but there is no direct or circumstantial evidence to conclude that respondent was sighted at the spot of incident or that he tried to burn the dead body of the deceased Atul @ Bunty. Further the FSL reports are inconclusive and have put irreparable cracks in the prosecution case as in FSL report Ex.PW22/A there was no trace of residue of petrol, diesel or kerosene on the burnt material sent for examination and per FSL report Ex.PW9/B it cannot be opined that plastic rope which was recovered at the instance of respondent was used to cause the death of the deceased Atul @ Bunty. Thus trial court has rightly held that prosecution has failed to prove a complete chain of circumstances consistent with the hypothesis of the guilt of the respondent.

18. The law relating to an appeal against an order of acquittal was succinctly laid down by Hon'ble Supreme Court in State of Goa v. Sanjay Thakran and Another (2007) 3 SCC755 Relevant para has been reproduced as under:14. By a series of decisions, this Court has laid down the parameters of appreciation of evidence on record and jurisdiction and limitations of the appellate court, and while dealing with appeal against order of acquittal this Court observed in Tota Singh and Anr. v. State of Punjab (1987) 2 SCC529 as under:

6. ...The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality

or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous.

15. Further, this Court has observed in Ramesh Babulal Doshi v. State of Gujarat (1996) 9 SCC225 7....This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial court can be legitimately arrived at by the appellate court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then onlyreappraise the evidence to arrive at its own conclusions....

19. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality, perversity or infirmity. Merely because two views are possible, the court of appeal would not take the view which would upset the judgment delivered by the court below.

20. Upon applying the settled position of law to the facts of the present case, only one view is possible on the basis of evidence placed on record, i.e. there exist gaps in the chain of circumstantial evidence to prove the guilt of the respondent

beyond reasonable doubt. Since there was no other material adduced by the prosecution to strengthen its case, taking into consideration the weak circumstantial evidence and that the chain of circumstances sought to be proved by the prosecution did not lead to the hypothesis that it was only the respondent who could have committed the crime, we believe that learned trial court rightly acquitted the respondent.

21. For the reasons stated above it can be said that the view taken by the trial court was plausible and reasonable on the basis of evidence adduced. We do not find any substantial and compelling reasons to interfere in the order of acquittal. The leave petition, therefore, has to fail. The same is accordingly dismissed. G. S. SISTANI, J SANGITA DHINGRA SEHGAL, J FEBRUARY24 2015 gr