

Babu and anr. Vs. State

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Court : Allahabad

Decided On : Nov-27-1971

Reported in : 1972CriLJ815

Judge : M.N. Shukla and ;K.N. Seth, JJ.

Appellant : Babu and anr.

Respondent : State

Judgement :

M.N. Shukla, J.

1. This appeal is directed against the order of the Civil and Sessions Judge, Meerut dated 23-9-1968 convicting the appellants under Section 302 read with Section 34, I. P.C. and sentencing each one of them to undergo imprisonment for life, They were further convicted under Section 201, I. P. C. and sentenced to four years' rigorous imprisonment each. The two sentences were directed to run concurrently.

2. The murder of one Baru is alleged to have been committed by the appellants about eight or ten days prior to 25-3-1968. the latter being the date when a report was lodged with the Police about the disappearance of Baru. The appellants were also charged under Section 201, I. P. C. for burying the dead body of Baru in a sugarcane field with the intention of screening themselves from the punishment for

committing the offence of murder. The appellant Babu is the real nephew of the deceased, being the son of Mangal Sen (brother of Baru). The appellant Mahipal was a servant of the deceased Baru, Baru lived all alone in village Daha within the limits of police station Doghat, district Meerut, being separate from his only brother Mangal Sen. He also carried on his own cultivation and in the consolidation proceedings a separate chak had been prepared in his name. The appellant Mahipal belonged to village Daulatpur which is in the District of Muzaffarnagar. The appellant Babu was married in the same village. For the last about two or three months preceding the murder Mahipal was in the employment of Baru (deceased).

3. The motive for the murder is alleged to be the keenness of Babu appellant to grab the property of his uncle Baru (Deceased). In the ordinary course also the property would have come to Babu and his father as Baru had no other heirs. He had lost his wife a few years ago. Still, however, according to the prosecution Babu accused was anxious to acquire the property of his uncle without delay. What set a keen edge to his avarice was that Baru had sold away his bullocks a few days before the murder and he was also contemplating to dispose of the land which stood in his own name. In the circumstances it is alleged that Babu accused became concerned and wanted to prevent his uncle from alienating the property. Mangal Sen, father of Babu accused, also did not relish the idea of Baru's disposing of his bullocks or land. In this background Babu accused in league with the other accused Mahipal who belonged to the village where the former was married, is alleged to have committed the murder of Baru and buried his dead body in his own sugarcane field.

4. For about eight or ten days prior to 25-3-1968 Baru was not available in his village and a rumour was already afloat that he had been possibly done to death by Mangal Sen. his son Babu and the servant Mahipal.

5. A first information report of the incident was lodged by Pooran (P. W. 1), a collateral of the deceased on 25-3-1968 at 6 p. m. at police station Doghat. It was a report merely about the disappearance of the deceased coupled with the only other allegation that since the brother and nephew of the deceased had occupied

his house it was suspected that they and the servant had murdered him,

6. On 26-3-1968 the Station Officer of Police Station Doghat namely. Budh Singh (P. W. 9) found the appellants in the fields of village Doghat which were situated towards the west of the Abadi of village Daha. There was a primary school on the way leading to the house of Baru from the field where the appellants were arrested. The Station Officer took them inside the primary school and there it is alleged, they gave information in the presence of witnesses Ratan Singh. Ham Singh. Raghubir Singh and others that they had murdered Baru and would also produce his dead body after digging it out from the sugarcane field of Baru. The accused actually accompanied the Station Officer to the sugarcane field of Baru and they dug out his dead body which had been placed in a gunny bag and wrapped in dutai.

7. The post-mortem examination on the dead body of Baru was conducted by Dr. Narain Das Gera, Medical Officer of Baghpat Civil Dispensary on 27-3-1968 at 4-30 p.m. In the opinion of the doctor the death of the deceased was due to asphyxia on account of throttling. The death had occurred about three weeks prior to the date on which the post-mortem was conducted.

8. The usual investigation followed and after completion of the same a charge sheet was submitted against the accused.

9. The defence of the appellants was one of complete denial. Both of them admitted that Baru had sold his bullocks but denied that he contemplated to sell his land as well. Both of them also denied that the dead body of Baru was recovered from his sugarcane field in the presence of the witnesses on their pointing out. Babu pleaded that he was not in the village when Baru is alleged to have been murdered and that he and his father Mangal Sen had taken the bullocks sold by Baru for the purpose of delivering them to the purchaser to his village and they returned after 12 or 13 days. He stated that he was falsely implicated in the case after the dead body of Baru was recovered. Mahipal also stated that he had been roped in merely on suspicion after the recovery of the dead body.

10. There are no eye-witnesses in the case and the conviction of the appellants is based on circumstantial evidence. The prosecution relied on the following circumstances against the appellants:

(1) Motive (2) Deliberate false information given by the appellants regarding the whereabouts of the deceased. (3) The appellants' taking possession of the house etc. of the deceased (4) Recovery of the dead body of the deceased from his sugarcane field on the pointing out by the appellants and (5) Extra Judicial confession of the accused. The last circumstance i.e. the extra judicial confession of the accused was not accepted by the learned trial Judge and the testimony of the sole witness on the point namely Saheb Singh (P, W. 4) was disbelieved. We are not inclined to differ with him and this circumstance, therefore, need not detain us.

11. The first circumstance relied upon by the prosecution was the motive for committing the murder of Baru. Pooran (P. W. 1). Ilam Singh (P. W. 2) and Raghubir Singh (P. W. 8) deposed about the motive. We are, however, not satisfied that the accused has really any strong motive to cause the murder of the deceased. So far as Mahipal appellant is concerned. Raghubir Singh (P. W. 8) stated that he had no grievance against the deceased nor did the latter have any grouse against him. The mere fact that Mahipal accused belonged to the village where Babu was married is much too weak a circumstance to warrant the inference that he must have been in league with Babu accused in his plan to murder Baru. Even so far as Babu is concerned, a strong motive on his part has not been established by the prosecution. He no doubt admitted that Baru had sold away his bullocks but both the appellants emphatically denied that the deceased contemplated disposing of his land as well. It is significant that the prosecution did not care to adduce even a shred of evidence as to the person or persons with whom any negotiation regarding the transfer of the land had been made. It is noteworthy that this contemplated transfer of land was not mentioned in the first information report. Thus, the motive for the murder is not established.

12. The next circumstance alleged by the prosecution is that a wrong information was given by the appellants relating to the whereabouts of the deceased. There is

no allegation in the first information report that any false information was given by the appellants. Pooran (P. W. 1) in his examination-in-chief also did not make any such assertion. He stated that even in the past sometimes the deceased used to go out of the village of his residence but used to return the next day. It is, therefore, not unlikely that Baru might have gone to some other village without informing either his nephew or his brother or the servant. It has come in evidence that Baru was separate from his brother and nephew and used to live all alone in his house cooking his own food and he had his exclusive chak. In these circumstances the probability of Baru having left for another village without caring to inform anyone cannot be wholly ruled out. In his cross-examination Pooran (P. W. 1) added that Mahipal on interrogation had told him that Baru had gone to another village and had paid him Rs. 10 to spend over the cattle that were left in his charge, and that on being asked again Mahipal had told him that the deceased had not returned. Raghubir Singh (P. W. 8) stated in his cross-examination that he made a query from Babu accused and his father Mangal Sen and the accused Mahipal. They all told him that the deceased had gone to Sadhu in Asia. This is a different story from the one stated by Pooran. As we have observed, it is not beyond the domain of probabilities that the appellants might not have been aware of the correct whereabouts of the deceased who might have left after telling Mahipal in a general way that he was going to another place. It is, therefore, difficult to hold that the accused persons gave deliberately false information to the prosecution witnesses or that their conduct proved their complicity in the crime. Moreover the evidence on this circumstance of false information supplied by the appellants is not consistent. The two witnesses on the point have made discrepant statements.

13. It was also urged on behalf of the prosecution that the conduct of the appellants inasmuch as they were found in possession of the house of the deceased after his disappearance was also an incriminating circumstance. The same two witnesses namely Pooran (P. W. 1) and Raghubir Singh (P. W. 8) were examined in support of this allegation. They deposed that both the accused and Mangal Sen (father of Babu accused) had taken over possession of the land and gher of Baru and they had also taken his cattle in their custody. This fact by itself does not necessarily indicate any criminal action on the part of those persons. In

the event of Baru's absence for sometime it was natural for his own brother Mangal Sen and Nephew Babu to look after his property. None of the prosecution witnesses has deposed that in his presence the accused broke open the lock of the house and occupied the same. Pooran (P. W. 1) admitted that he had stated in the first information report that the aforesaid persons had occupied the house of the deceased and broken open the lock merely because he had seen the kotha lying open. It would be natural to expect Mahipal also in the premises on account of the fact that the deceased had left a sum of Rs. 10/- with him before he disappeared and instructed him to look after the cattle. Therefore, the mere physical presence of these persons in the house or the gher or other property of the deceased in his absence does not lead to the conclusion that they had murdered him and thereafter taken possession. The circumstance is quite consistent with the innocent conduct of those people looking after the property of Baru in his absence. The only way to look after the house and gher etc. of the deceased in his absence was either to keep them locked or to stay therein and manage them. The accused might have found it more convenient to adopt the latter course.

14. The last circumstance on which the prosecution placed the greatest reliance was the recovery of the dead body of Baru from his own sugarcane field at the instance of the appellants. The witnesses examined on this point were Ilam Singh (P. W. 2). Ratan Singh (P. W. 3). Mool Chand (P. W. 5) and Raghubir Singh (P. W. 8) and the Investigating Officer Budh Singh (P. W. 9). The prosecution case is that on a joint information given by both the appellants in the primary school the dead body of Baru was recovered from his sugarcane field. The learned Counsel for the appellants contended that the joint information alleged to have been given by the two appellants was not admissible in evidence. The prosecution relied on a Division Bench decision of this Court in *Nathu v. State* : AIR1958 All467 wherein it was observed:

It is easily conceivable that two or more persons simultaneously or jointly furnish an information and as a result of that information a common discovery is made; such a case will if other conditions are satisfied be covered by the section. (Section 27 of the Evidence Act)

The ruling proceeded on the basis, inter alia, that the words 'a person' in Section 27 included 'persons'. This can, however no longer be regarded as good law in view of the pronouncement of the Supreme Court in *Ramkishan v. State of Bombay* : 1955 CriLJ196 . Their Lordships approved of a decision of Chagla. C, J. and Gajendragadkar. J. (as they then were) of the Bombay High Court in *Rex v. Gokulchand Dwarkadas Morarka* Cri. Appeals Nos. 454 and 464 of 1949 with Revn. Appln. No. 952 of 1949. D/- 11-1-1950 Bom, wherein an exception had been taken to the statement of the police officer that in consequence of certain statements made by the accused 1 and 2 in that case he had discovered the missing pages of the *Bombay Samachar* of the 23rd April, 1948. In the opinion of the Supreme Court such joint statement was inadmissible in evidence. Bhagwati. J. while dealing with the problem observed at page 116 of the report:

The question that really arose for the consideration of the Court was whether the joint statement attributed to the accused 1 and 2 in that case was admissible without specifying that statement was made by a particular accused which led to the discovery of the relevant fact and it was rightly held that a joint statement by more than one accused was not contemplated by Section 27 and the evidence of Mistry the Police Officer, in that behalf should therefore have been excluded.

For this reason we are of the opinion that in the instant case the joint statement attributed to the appellants on the basis of which the dead body of Baru is alleged to have been recovered is not admissible in evidence. It is imperative that before any such statement is held admissible under Section 27 of the Evidence Act it must be precisely known as to what specific statement was made by a particular accused. A general statement placed in the mouth of plurality of accused persons cannot be regarded in law as leading to discovery so as to attract the provisions of Section 27. Consequently, we have to exclude from consideration the circumstance alleged by the prosecution that the dead body of Baru was recovered on the information supplied or the statement given by the appellants.

15. From this it should not be taken to mean that the factum of the recovery of the dead body as a consequence of the digging out of the field by the appellants itself is not admissible. It will be covered within the ambit of Section 8 of the Evidence

Act inasmuch as it is indicative of the subsequent conduct of the appellants who are charged with the offence. But this fact can utmost justify the conclusion that the appellants had knowledge of the fact where the dead body was buried and not that they had themselves concealed the dead body. The two inferences are distinct and cannot be placed on the same footing. Whereas the latter inference would conclusively establish the offence under Section 201 I.P.C. and also considerably strengthen the probability that the accused persons were instrumental in the murder of the deceased, the former conclusion would do neither. It would not go beyond the inference that the accused persons had knowledge of the place where the dead body was concealed. Its intrinsic probative value for connecting the accused with the murder of the victim is almost inconsiderable. This weaker kind of inference which alone is available in a case where the statement of the accused that he himself buried the dead body and other incriminating articles is excluded from consideration was emphasised by the Supreme Court in Ramkishan's case : 1955 CriLJ196 (supra). In the present case we have already stated that the alleged statement of the accused leading to the discovery of the dead body is not admissible. Therefore Section 27 of the Evidence Act is not attracted. In Ramkishan's case : 1955 CriLJ196 the same view was expressed by Bhagwati, J. At page 116 of the report he observed:

What was stated by the Investigating Officer Hujur Ahmed Khan in the present case was that certain information was supplied to him by the accused 1 in consequence of which he took certain steps. He did not seek to prove that information or any part thereof in the evidence which he gave before the Court. Even when he said that Baliram dug out the tin box from the mud floor of a house at the instance of the accused 1 he did not seek to prove what that information was. The operation of Section 27 was therefore not attracted and 'prima facie' there was nothing to prevent that evidence being admitted against the accused 1.

Therefore the fact of the recovery of the dead body at the pointing out of the accused would not show their direct connection with the offence. It would utmost indicate that they had knowledge where the dead body was concealed. That circumstance, however, is consistent with many reasonable hypotheses and would not lead to the only conclusion that the accused committed the murder.

16. There is another material aspect of the case which is to be borne in mind. All the circumstances marshalled against the appellants excepting the recovery of the dead body apply with equal force to Babu appellant's father, namely, Mangal Sen. He fully shared with Babu the cause of enmity with the deceased, In fact, Mangal Sen was the heir of his brother and one cannot rule out the possibility of his being the prime mover in committing the murder of the deceased. Even the knowledge of the appellants with regard to the place where the dead body was buried might have been derived from Mangal Sen himself. Consequently, the circumstances of the present case are not incompatible with the innocence of the accused. A decision of the Supreme Court with almost parallel facts is quite apposite on the point. In *Machander v. State of Hyderabad* : 1955 CriLJ1644 the facts were that one Machander was charged with the murder of one Manmath. Gona, who was the brother of the appellant, was also challaned but he absconded and could not be tried. There was ill will between the deceased and the appellant as well as Gona. Thirteen days after the murder the dead body of the deceased and certain articles belonging to him were recovered on pointing out by the accused. It was held that these circumstances were not sufficient to warrant a conclusion of murder by the appellant because they could be said to point out with equal suspicion at the other members of the appellant's family such as his brother Gona. It was also observed that the appellant's knowledge of the murder and of the concealment of the dead body and other articles thirteen days later might have been derived from Gona or it might even be that he saw his brother commit the crime and hide the corpse and the articles. It was held that these hypotheses were not unreasonable on the facts of the case and could not be reasonably excluded. Vivian Bose, J. ruled:

Consequently, we are unable to hold that mere knowledge thirteen days later coupled with a motive which three others share. and a lie about the deceased's movements told four or five days after the murder, are enough : and. as that is all that the high court has based on, the conviction must be set aside.

17. The learned Deputy Government Advocate placed strong reliance on a decision of the Supreme Court in *Pershad v. State of Uttar Pradesh* : 1957 CriLJ328 . But that case is clearly distinguishable, There the prosecution had

succeeded in proving the motive, false denial by the accused of several relevant facts which were conclusively established and also a statement by the accused that he would give the clothes of the deceased which he had concealed in a pit in a brick-kiln and thereafter he had in the presence of the witnesses actually dug the pit and handed over the clothes of the deceased to the police. On the discovery of the clothes there was the solitary statement of the police Sub-Inspector without contradiction and that was believed. In other words, the evidence that the accused had hid the clothes of the deceased was believed and held admissible under Section 27 of the Evidence Act. In the present case, as we have already observed that evidence is not admissible under Section 27. We would like to add that the evidence is also not worthy of being believed. The witnesses who deposed on the point of recovery were Ilam Singh (P. W. 2), Ratan Singh (P. W. 3), Mool Chand (P. W. 5), Raghubir Singh (P. W. 8) and the Investigating Officer Budh Singh (P. W. 9). Ilam Singh (P. W. 2) deposed that the appellants had stated to the Sub-Inspector in the presence of other witnesses that they had buried the dead body of the deceased in his own field and they offered to dig out the same.

The statement of Ratan Singh (P. W. 3) is different. According to him the accused merely stated that the dead body was lying concealed in the sugarcane field and that they offered to take out the same. He did not depose that they had buried the dead body. Similarly, Mool Chand (P. W. 5) and Raghubir Singh (P. W. 8) do not refer to the accused having stated that they had buried the dead body. The Investigating Officer Budh Singh (P. W. 9) alone supported Ilam Singh (P. W. 2) and gave a consolidated statement. Thus, the evidence on this point is highly discrepant and cannot be relied upon and the prosecution has not been able to prove that the appellants had buried the dead body of the deceased. The recovery of the dead body does not establish any direct connection between the accused and the commission of the murder of Baru.

18. For these reasons we are of the opinion that the circumstances relied upon by the prosecution in the present case are not sufficient to bring the guilt home to the accused and they are consistent with their innocence. Their conviction, therefore, cannot be sustained.

19. In the result this appeal is allowed. The conviction and sentences of the appellants are set aside. They are on bail. Their bail bonds are discharged. They need not surrender.

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