

Narayan Vs. State

Narayan Vs. State

SooperKanoon Citation : sooperkanoon.com/48285

Court : Rajasthan Jodhpur

Decided On : Feb-27-2015

Appellant : Narayan

Respondent : State

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :::

JUDGMENT

D.B.Criminal Jail Appeal No.833/2008 Narayan versus State of Rajasthan Date of judgment: 27th Feb., 2015 PRESENT HON'BLE Mr.JUSTICE GOPAL KRISHAN VYAS HON'BLE Mr.ANUPINDER SINGH GREWAL Mr.Shaitan Singh, for the appellant.

Mr.J.Bhardwaj, Public Prosecutor.

<><><> BY THE COURT:[Hon'ble Mr.Justice G.K.Vyas,J.].The instant cr.

jail appeal has been filed by the accused appellant Narayan S/o Pratap, resident of Gangapura, District Bhilwara to challenge the judgment dated 25.9.2008 passed by the learned Addl.

Sessions Judge No.1, Bhilwara in Sessions Case No.20/2007 whereby the accused appellant was convicted for offence under Section 302 and 397 IPC.

As per the brief facts of the PW-5 Goverdhan Lal, the brother of deceased Ratni filed a written complaint (Ex.P/5) on the spot where the body of the deceased Ratni was lying in the agricultural field of the family of complainant in the village Araniya in which it is stated that his family they are 2 brothers and one sister Ratni.

Today on 23.8.2007 after taking vegetables from agricultural field, I went to the market from house, at that time, his sister Ratni was in the 2 house but at about 9.00 - 9.30 a.m.his uncle Pokar came and asked that body of sister Ratni, aged about 32 years is lying in his agricultural field.

Upon the said information, the complainant Goverdhan Lal and his uncle Pokar rushed to the place of occurrence where they saw that body of his sister Ratni was lying on earth and in her neck one Lumadi (Cloth) was there and it was appearing that she died due to throttling and the silver rings (Kadiya) were not found but no apparent injury was found upon her body.

It was apprehended by the author of the FIR that some unknown person has killed his sister who was married with Mangi Lal of village Rewada but her husband deserted her for the reason that she was not mentally fit.

Upon above complaint, the SHO, Police Station Gangapur registered an FIR No.237/2007 under Section 302/379 IPC and commenced investigation.

The Investigating Officer prepared site plan and took the body of Ratni in possession for the purpose of post mortem and after completing all the formalities on site took the body of Ratni to the hospital for post mortem.

Certain photographs of site were also taken.

In the investigation, the statements of prosecution witnesses were recorded under Section 161 Cr.P.C.and after arresting the accused appellant Narayan, brother of Ratni recovered 2 silver rings (Kadiya) as per his information which were wearing by the deceased Ratni at the time of occurrence took place.

The 3 police filed charge-sheet against the appellant for offence under Section 302 and 397 IPC on the basis of recovery of silver rings (Kadiya) as per his information

so also, on the basis of evidence of last seen.

After filing charge-sheet in the court of Addl.

Chief Judicial Magistrate, Gangapur on 16.10.2007, the case was committed to the court of Sessions Judge, Bhilwara from where case was transferred to the court of Addl.

Sessions Judge No.1, Bhilwara for trial.

The learned trial court after hearing arguments framed the charge for offence under Section 302 and 397 IPC against the accused appellant and commenced trial.

In the trial, the statements of 15 prosecution witnesses were recorded including author of the FIR Goverdhan Lal PW-5 and out of the list of the prosecution witnesses submitted alongwith charge-sheet, the prosecution did not produce witnesses Madhu, Bhawani Ram, Ratan Lal, Sohan Lal, Ghyan Prakash Maheshwari, Smt.

Sandhiya Nalwaya, Rohitash and Mamood Khan in support of prosecution case.

After recording evidence of prosecution witnesses, the statements of accused appellant were recorded under Section 313 Cr.P.C. in which accused appellant denied all the charges leveled against him by the witnesses and did not produce any evidence in defence.

After hearing learned counsel for the parties, the learned trial court finally decided the case vide judgment dated 25.9.2008 whereby the learned trial court held the 4 appellant Narayan guilty for committing murder of his younger sister Ratni under Section 302 and 397 IPC and passed sentence for life imprisonment alongwith fine of Rs.2,000/- and in default of payment of fine to further undergo 6 months RI under Section 302 IPC and for offence under Section 397 IPC 7 years RI with fine of Rs.1000/- and in default of payment of fine to further undergo 3 months RI.

The learned trial court specifically observed in the judgment that both the sentences will run concurrently.

In this appeal the accused appellant is challenging the judgment dated 25.9.2008.

The learned counsel appearing for the appellant Mr.Shaitan Singh vehemently argued that prosecution has failed to prove its case beyond reasonable doubt because the conviction for the offence under Section 302 and 397 IPC is based upon the evidence of last seen, so also, the recovery of so called 2 silver rings (Kadiya).which is alleged to be taken away by the appellant from the body of his sister Ratni after causing death.

While attacking upon the evidence of last seen it is submitted that before arrest of accused appellant on 25.8.2007 there was no evidence on record with regard to last seen.

To substantiate his argument, it is submitted that admittedly, the accused appellant was arrested by the police vide Ex.P/50 at 4.00 p.m.on 25.8.2007 and as per the prosecution case, the information under Section 27 of the Evidence Act was given 5 by the accused appellant on 26.8.2007 at about 2.15 p.m.with regard to silver rings (Kadiya) and second information was given on 28.8.2007 at about 11.20 a.m.with regard to sleeper of deceased and one instrument to open the lock of silver rings.

In pursuance of the said information, the recovery of silver rings (Kadiya) was made as per information vide Ex.P/11 and P/12.

Likewise sleepers and other material were recovered vide Ex.P/13 but in fact, these articles were not recovered at the instance of accused appellant because there is no reliable evidence on record to prove the recovery of the silver ornament.

It is also argued that deceased Ratni was elder sister of accused appellant, therefore, the so called motive taking of silver ornament (Kadiya) is baseless because the story of prosecution is totally doubtful and the conviction of the accused appellant for aforesaid offence is contrary to law.

While inviting the attention towards the evidence of last seen it is submitted that admittedly deceased Ratni was real sister of the accused appellant and they were

residing in a house and after his arrest, the statement of PW-15 Kishan Lal under Section 161 Cr.P.C.were recorded to create evidence of last seen which is evident from the fact that investigating officer PW-11 recorded the statements of all the witnesses of last seen in the investigation after arrest of accused on 25.8.2007, therefore, it is a case in which the prosecution has created the fabricated and false story of last seen so as to connect the accused appellant with the crime, therefore, on the basis of such evidence, the learned trial court has committed a grave error to convict the accused appellant for the offence of murder of his own sister.

Lastly it is argued by the learned counsel for the appellant that it is a case in which accused appellant has been planted on the basis of false evidence because as per the statement of Patwari of concerned area PW-2 Roshan Lal S/o Mangi Lal, the agricultural field of the family of accused is situated in KhaSr.No.2031, measuring 0.74 hectare and in that agricultural field the accused appellant Narayan and deceased Ratni were having half share, therefore, it can be said that only to grab the agricultural land of accused appellant and deceased Ratni, the appellant has been falsely implicated in case of murder of his own sister Ratni.

Because after conviction of the accused appellant and death of his sister Ratni obviously, the agricultural land will go to other family members including brother PW-5 Goverdhan Lal, the author of the FIR, therefore, there is reasonable apprehension of false implication of the appellant with the alleged crime, therefore, it is submitted that conviction, which is based upon the evidence of alleged last seen and recovery of silver ornament deserves to be quashed.

Per contra, the learned Public Prosecutor opposed the prayer and submits that the deceased Ratni was suffering from the disease Asthma and accused appellant although 7 younger brother of deceased killed her only to get silver ornament wearing by her because she was mentally retired.

While inviting our attention towards the witness of last seen Kishan Lal PW-15 it is submitted that the said witness has categorically stated in the court that the date on which the occurrence took place the appellant was coming from the side where the agricultural land is situated in which the body of the deceased Ratni was

found, therefore, when there is evidence of last seen and recovery of silver ornament is made as per information given by the accused appellant under Section 27 of the Evidence Act then obviously it is a case in which the learned trial court has rightly held accused appellant guilty of offence under Section 302 and 397 IPC.

The learned Public Prosecutor argued that prosecution has proved its case beyond reasonable doubt on the basis of evidence of last seen and recovery of silver ornament, therefore, no case is made out for interference in the finding given by the learned trial court for conviction and punishment against the accused petitioner.

Therefore, this appeal may be dismissed.

After hearing the learned counsel for the parties we have minutely perused the entire evidence, so also, consider the case on merit.

Admittedly, the FIR (Ex.P/49) was filed by PW-5 Goverdhan Lal, brother of deceased and accused appellant against unknown person and in the FIR following facts were mentioned by him which reads as 8 under: \$ ' \$ \$-\$.

.

Meaning thereby as per FIR itself there was no injury upon the body of deceased Ratni and upon perusal of the statement of the doctor PW-10, who performed the post mortem the cause of death was asphyxia resulted from strangulation and something of mouth.

Meaning thereby, no injuries were inflicted upon the deceased Ratni and cause of death was asphyxia resulted from strangulation.

We have considered the arguments of the learned counsel for the appellant that before arrest on 25.8.2007 there was no evidence to connect the appellant with the crime.

In this regard, fiRs.of all we have perused the arrest memo of accused appellant Ex.P/50 whereby on 25.8.2007 at about 4.00 p.m.the accused appellant was

arrested.

We have also perused the statement of investigating officer PW- 11 Ram Singh, who has categorically stated in his statement that ' / , , , , , ' 6 ' \$ '8 -1 .We have perused the statement of Kishan Lal recorded under Section 161 Cr.P.C.The said statement of last seen were recorded by the Investigating Officer on 26.8.2007, after the arrest of accused appellant.

Meaning thereby, 9 before the arrest of accused appellant there was no evidence of last seen on record so as to connect the accused appellant with the crime, therefore, it emerges from the facts that for creating evidence of last seen the statement of PW-15 Kishan Lal were recorded, therefore, it can be presumed that this witness of last seen was planted so as to create evidence of last seen.

The following statement is given by the PW-15 Kishan Lal in his examination-in-chief, which reads as under: \$ \$.

\$ \$; \$ ' \$ \$ \$ \$ \$ \$ \$, \$ ' \$ \$ 5/- \$ '\$; \$ \$ " We have perused the statement of investigating officer PW-11 Ram Singh.

The said witness categorically said in the cross examination that \$ \$ \$ C \$- ' .

We have also perused the statement of the witnesses of last seen Nand Ram.

The said witness turned hostile before the court and did not support the statement of Kishan Lal PW-15 who had said in his statement that he was sitting in the hotel of Nand Ram in the morning when accused appellant was coming from the agricultural field in which the body of the deceased Ratni was found.

The other witnesses of last seen are the family membeRs.they were residing in the same house, therefore, 10 it cannot be said that PW-3 Smt.

Nani Bai, PW-4 Smt.

Rukman and PW-6 Pokar are the witnesses of last seen because they were residing in the house in which deceased Ratni and accused Narayan, author of the FIR are residing.

In view of the above, we are of the opinion that prosecution has failed to prove the fact of last seen, therefore, conviction of appellant on the ground of last seen is not sustainable in law.

Now we are examining the recovery of the articles.

Admittedly, the FIR was filed by the brother of the deceased on spot in which it was categorically stated that no injury was found upon the body of deceased.

Meaning thereby for the purpose of taking away the articles as per the prosecution itself no injuries was caused by the person.

We have considered the argument of the learned Public Prosecutor that recovery was made as per the information given by the accused appellant.

For this purpose it is very relevant to mention that as per prosecution case the information was given by the accused appellant on 26.8.2007 with regard to silver ornament (Kadiya) at about 2.15 p.m. therefore, before arrest on 25.8.2007 there was no evidence on record to substantiate the allegation of taking away the silver ornament (Kadiya) by the appellant from the body of the deceased.

It is also apparent from the record that information was given by the accused appellant under Section 27 of the Evidence Act on 26.8.2007 at 2.15 11 p.m. but so called recovery of silver ornament (Kadiya) were made on 27.8.2007 at 1.00 p.m. Meaning thereby, recovery was made after 24 hours from the said information.

A specific question was put to the investigating officer why the delay of 24 hours caused for recovery, the investigating officer PW-11 Ram Singh stated in his statement that \$ \$- ' ' ' 8 , \$ \$- 24 \$ " The said statement made by the investigating officer is creating doubt upon the prosecution case with regard to recovery of the silver ornament because as per the established law as soon as information is given by the accused with regard to recovery of any article it is the duty of the investigating officer to recover the article immediately without any delay but here in this case, the silver ornaments (Kadiya) were recovered after 24 hours of the information given by the accused appellant.

Likewise, second information was given by the accused appellant on 28.8.2007 at about 11.10 a.m. for sleeper and instrument used to open the silver ornament from legs of the deceased but the recovery of those articles were made immediately on the same day on 28.8.2007 at about 3.00 p.m. In both the proceedings of recovery the witness Kishan Lal and Rajmal were witnesses of recovery.

We have perused the 12 statement of Kishan Lal PW-7.

In his cross-examination the said witness gave following answers to the questions put by the counsel for the appellant, which reads as under:- \$ N '\$ \$ P .

' S \$N N \$N .

U S 8 -1 \$N N / \$ \$ \$.

\$ V .

\$.

/ \$ 4-5 ' / ' ; \$ S \$.

\$ 300-400 \$ \$ N \$ \$.

Meaning thereby there are material contradiction in the statement of witnesses PW-7 Kishan Lal and PW-12 Rajmal with regard to contents of recovery memo.

Admitted, the place of recovery of article is agricultural field of PW-5 Goverdhan Lal, which is open place and upon such evidence, the prosecution has tried to prove the recovery of articles from the accused appellant.

It is also relevant to mention here that to prove the prosecution case list of 22 prosecution witnesses was submitted along with charge-sheet in the court but out of that 7 witnesses were not produced in the court to prove the prosecution case.

We have considered the argument of the learned counsel appellant that appellant has been implicated in this case so as to grab his agricultural land.

In this connection 13 the PW-2 Roshan Lal, Patwari of the area concerned categorically said that on 1.9.2007 upon the request made by the SHO, Police Station Gangapur a certified copy of the revenue record was given to the investigating officer because as per record the accused appellant and deceased Ratni were having half of the share in the land situated in KhaSr.No.2031 measuring 0.75 hectare.

Meaning thereby, it can be presumed that land of accused appellant and Ratni is situated in KhaSr.No.2031 and after death of Ratni and sentence to accused appellant the said land is obviously goes to the author of FIR, therefore, it was the duty of investigating officer to make investigation about the fact that who was to be benefited upon death of Ratni and after conviction of accused appellant on the basis of evidence of last seen.

Nothing has been said by the investigating officer in the court.

It is settled principle of law that in absence of eye witnesses, the prosecution is required to prove its case beyond reasonable doubt, so also, there must be trustworthy and reliable evidence on record so as to convict the offender, but here in this case, on the basis of above discussion it cannot be said that prosecution has proved its case beyond reasonable doubt by leading reliable evidence of last seen so also, so called recovery of silver article which is said to be made after 24 hours from the information given by the accused under Section 27 of the Evidence Act.

In our opinion, only on the basis of so called recovery of 14 article which is not properly proved, the conviction of accused appellant is not sustainable in law.

The Hon'ble Supreme Court in the case of State of Rajasthan versus Talevar & Anr.

Reported in 2011 Cr.L.R.(SC) 618 gave the finding that if recovery is not in close proximity of time from the date of incident no presumption can be drawn under Section 114 of the Evidence Act.

Para no.8 and 9 of the said judgment is as follows: 8.

In the instant case, accused Kuniya was arrested on 24.12.1996 and a silver glass and one thousand rupees were alleged to have been recovered on his disclosure statement on 29.12.1996.

Again on disclosure statement dated 2.1.1997, a scooter alleged to have been used in the dacoity, was recovered.

Similarly, another accused Talevar was arrested on 19.1.1997 and on his disclosure statement on 26.1.1997, two thousand rupees, a silver key ring and a key of Ambassador car alleged to have been used in the crime were recovered.

Thus, it is evident that recovery on the disclosure statements of either of the respondents/accused persons was not in close proximity of time from the date of incident.

More so, recovery is either of cash, small things or vehicles which can be passed from one person to another without any difficulty.

In such a fact situation, we reach the inescapable conclusion that no presumption can be drawn against the said two respondents/accused under Section 114 Illustration (a) of the Evidence Act.

No adverse inference can be drawn on the basis of recoveries made on their disclosure statements to connect them with the commission of the crime.

9.

The instant appeal has been prepared by the State against the judgment and order of acquittal of the respondents by the High Court.

The law on the issue is settled to the effect that only in exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal.

The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence.

Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

We have also considered the judgment rendered by the Hon'ble Supreme Court in the case of Sharad Birdhichand Sarda versus State of Maharashtra reported in AIR 1984 SC1622 the Hon'ble Supreme Court held that if case is based upon circumstantial evidence then prosecution is required to prove its case beyond reasonable doubt while leading complete chain of evidence so as to hold accused guilty.

The following adjudication is made by the Hon'ble Supreme Court in paras Nos.152 and 153 of the said judgment, which reads as under: A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established: (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established.

There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahabao Bobade & Anr.v.State of Maharashtra (') where the following observations were made: "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) The facts so established should be consistent only with the hypothesis of the guilt of the 16 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, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

.

Last seen evidence is one of species of circumstantial evidence.

Last seen evidence as per Part III Section 7 of Indian Evidence Act, 1872, is relevant evidence against accused.

For proving this evidence it is essential for the prosecution to prove two things, being that the accused was seen alone in company of deceased and at place where no other person is expected to interfere.

Once this is proved burden of proof under Section 106, Indian Evidence Act, 1872, falls upon accused to prove his innocence.

It is pertinent to mention that fiRs.burden of proof is on prosecution to prove above said elements and it is only after prosecution successfully proves them that burden shifts on accused to prove his defence.

Last seen evidence does not by itself necessarily leads to inference that accused committed crime unless same is duly supported by other links in chain of circumstantial evidence unerringly pointing out guilt of accused.

Theory of last seen together 17 evidence is thus held to be not of universal application based on which conviction of accused can be sustained.

It shall also be noted that last seen evidence is only relevant evidence to complete chain of circumstantial evidence; however, conviction cannot be based if complete chain is not so as to convict the accused.

In this case prosecution has failed to prove its case beyond reasonable doubt on the basis of so called evidence of last seen and recovery of silver rings (Kadiya) against the accused appellant Narayan.

Therefore, the appellant is entitled for benefit of doubt.

In view of the above, the instant cr.

jail appeal is allowed.

The judgment dated 25.9.2008 passed by the learned Addl.

Sesions Judge No.1 Bhilwara in Sessions Case No.20/2007 is hereby quashed and set aside.

The accused appellant be released forthwith if not needed in any other case.

(ANUPINDER SINGH GREWAL),J.

(GOPAL KRISHAN VYAS),J.

cpgoyal/-

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com