

Ram Charan Vs. State of U.P.

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Court : Allahabad

Decided On : Oct-14-1996

Reported in : 1997CriLJ3198

Judge : D.K. Trevedi and ;I.M. Quddusi, JJ.

Acts : [Evidence Act, 1872](#) - Sections 27 and 114; Indian Panel Code, 1860 - Sections 302 and 411; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Crl. Appeal No. 77 of 1980

Appellant : Ram Charan

Respondent : State of U.P.

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : S.R. Rizvi, ;Avadhesh Kumar and ;Anoop Srivastava, Adv.

Disposition : Appeal allowed

Judgement :

D.K. Trivedi, J.

1. The present Criminal Appeal is directed against the judgment and order dated 24-4-1979 passed by the 1st Additional Sessions Judge, Sitapur, convicting the

appellant under Section 302 I.P.C. and sentencing him to Imprisonment for Life in connection with an incident which is alleged to have taken place in the night between 9/10-6-1977 in village Budauli, Police Station, Maholi. District Sitapur.

2. The prosecution case, in brief, is that P.W. 1 Hira Lal went to his Kothar at about 5 O'clock, in the morning and there he saw that the deceased was lying with Razai covered on his face. He called him but when he found no reply then he removed the Razai and found that Govardhan was dead and a piece of cloth had been found tied all around his neck. After sending information about the death of Govardhan P.W. 1 Hira Lal went to the Police Station and lodged the report Ext. ka at 7-35 A.M. The distance of the Police Station from the place of the incident is three miles. In the First Information Report it is said that the complainant had a suspicion that appellant Ram Charan had killed the deceased with the help of two other accused persons namely Piarey and Kaushal who have been acquitted by the learned Additional Sessions Judge. F.I.R. was lodged in the presence of P.W. 9 Inspector Shyam Singh who immediately proceeded to the place of the incident and recorded the statement of Hira Lal and other witnesses. He also prepared inquest report and other relevant papers Ext. ka-7 to ka-12 and sent the dead body to mortuary for post mortem examination. He also recovered the blood stained Razai, Batua and Angauchha and sealed the same and prepared the recovery memo. He Arrested appellant Ram Charan on 15-6-1977 at about 4-00 A.M. and on his interrogation Ram Charan informed the Investigating Officer that he had concealed the Tabeez. and Batua of the deceased in his Kothri. On his disclosure the Investigating; Officer called the witnesses and thereafter recovered the Batua and Tabeez from the room of the appellant on his pointing out. The investigation was thereafter handed over to Inspector Shyam Raj P.W. 3 who submitted charge-sheet in this case.

3. The post mortem examination on the dead body of the deceased was conducted by Dr. K.K. Misra P.W. 7 on 11-6-1977 at about 3-00 P.M. The Doctor has mentioned in his post mortem report Ext. k-4 that the death was caused due to asphyxia as a result of strangulation. The Doctor found multiple abrasions in the anterior side of the neck.

4. The prosecution, in support of its case examined nine witnesses in all P.W. 1 Hira Lal is the complainant. P.W. 2 Babu Lal brought the dead body of the deceased from the Police Station to the mortuary for post mortem examination P.W. 3 Inspector Shyam Raj is the Second Investigating Officer who submitted charge-sheet in this case. P.W. 4 Raghubar Dayal is the witness of recovery of the Tabeez and Batua from the house of the appellant on his pointing out P.W. 5 Smt. Balli is the mother of the appellant and she proved the motive as well as the fact that in the previous night, she saw that Ram Charan was returning home late in the night. P.W. 6 Babu Ram is the Thekedar who brought similar articles for identification of Tabeez P.W. 7 Dr. K.K. Misra conducted post mortem examination on the dead body of the deceased and proved the post mortem report Ext. ka-4. P.W.8 Bhagwan Saran is the Malkhana Moharrir who proved entries of Malkhana etc. Inspector Shyam Singh P.W. 9 conducted the main investigation in this case.

5. On the other hand the accused denied the prosecution case and stated that they have been falsely implicated in this case.

6. The learned additional Sessions Judge, after considering the circumstantial evidence came to the conclusion that the prosecution has successfully proved the guilt of the appellant and, therefore, he convicted and sentenced the appellant as mentioned above. Two other accused namely Piarey and Kaushal were, however, acquitted.

7. Aggrieved by the said judgment and order the appellant filed the present appeal.

8. We have heard the learned counsel for the appellant as well as the Government Advocate and perused the record.

9. There is no eye witness account in this case. There are two main circumstances against the appellant. Firstly it is said that in the night on which Govardhan deceased was murdered, P.W. 1 Hira Lal and P.W. 5 Smt. Balli were sleeping outside the house and at about mid-night saw that accused Ram Charan was returning to his home. The other circumstance is that the golden amulet of Govardhan deceased and a purse was recovered from the house of the accused

on his pointing out and it is said that this is the recovery under Section 27 of the Evidence Act. The golden amulet was put up for identification before the Magistrate and was correctly identified by the witnesses. However, the purse was not put up for identification.

10. As regards the circumstance about seeing of the appellant Ram Charan in the night is concerned there is evidence of P.W. 1 Hira Lal and P.W. 5 Smt. Balli. Both these witnesses stated that they were sleeping outside their house and in the mid-night they woke up hearing the dog barking and saw the accused coming to his house. These circumstances, in our opinion, cannot connect the accused with the murder of the deceased. It is not the case of the prosecution that the accused was seen near the place of the incident. The only thing is that he was seen coming to his house late in the night. Apart from this. P.W. 5 Smt. Balli before the Investigating Officer denied this story. He admits that in her statement under Section 161 Cr. P.C. it is mentioned that she had not seen the accused coming late to his house. It was the case of P.W. 1. Hira Lal and P.W. 5 Smt. Balli that both of them woke up and saw the accused coming to his house in the night but in view of the statement of P.W. 5 Smt. Balli before the Investigating Officer it is not possible to believe this circumstance.

11. The second and the main circumstance believed by the Additional Sessions Judge is the recovery of the articles of the deceased on the pointing out of the accused. In the instant case the learned Additional Sessions Judge, believed the recovery and thereafter drew a presumption that since the accused did not give any explanation for the possession of the article of the deceased, therefore, it must be presumed that he committed the murder also. The Additional Sessions Judge, in our opinion, committed an error in believing the recovery and secondly also raising such a presumption in the absence of any other evidence. It is not the case of the prosecution that the accused was in the company of the deceased or was last seen or was seen near the place of the incident at the time of murder, and, therefore, in the absence of any other circumstance, it is not possible to raise a presumption by invoking illustration to Section 114 of the Evidence Act on the basis of the recovery that the accused is the person who committed the murder. Even if the first circumstance that he was seen coming late in the house is

believed the same cannot be said to connect the accused with the murder along with the recovery. The circumstance that Tabeez was recovered from the possession of the accused even if it is believed, the same does not connect the accused with the murder. At the most he can be convicted under Section 411 I.P.C. for being in possession of stolen property for which he has no explanation. However, in the instant case as pointed out above the recovery itself is not proved and it cannot be said to be genuine or reliable recovery.

12. It is the case of the prosecution that the accused was arrested by the Investigating Officer after five days of the incident just in front of his house where he was sitting. The Investigating Officer admits that he visited the house on several occasions earlier also but the accused was not found and nothing incriminating was also recovered. In these circumstances, it is not possible to believe that the accused was sitting just in front of his house and was arrested and thereafter he stated that he got the Tabeez of the deceased recovered from his house. The recovery witnesses also stated that when they reached the house of the accused they found the accused sitting in Police custody and in their presence the accused stated that he will get the articles recovered from his house. This is also not believable that he will state only at the arrival of the witnesses that he will get the articles recovered.

13. Apart from this there is another apparent infirmity in the search made by the Investigating Officer. It is the case of the prosecution that after recovery, recovery memo was prepared. The recovery memo is Ext. ka-3. It has been mentioned in the recovery memo that Fard was prepared and the same was handed over to the accused but the accused handed over the copy of the Fard to his wife. It is not possible to believe how this averment could be made in the body of the recovery memo. It is the settled law that copy of the recovery memo is to be given only after it is completed and signed, and before this the same could not be given to the accused. If recovery memo has already been signed then there is no question of finding these averments in the recovery memo. This also casts doubt on the authenticity of the recovery memo and, therefore, it is not possible to hold that the recovery of these articles is genuine or reliable recovery. Therefore, it cannot be said that the prosecution has successfully proved the guilt of the appellant. No

doubt the accused is the relation of the deceased and his mother also came forward to prove the motive part but it is well settled that in a case of circumstantial evidence, the prosecution has to prove each of the circumstances and the circumstances so proved should conform a complete chain to prove the guilt of the accused. The said circumstance should also exclude every other hypothesis, however, remote it is. In the instant case as pointed out above, the prosecution has failed to prove both the circumstances as alleged by the prosecution and even if both the circumstances are proved then the accused can only be convicted under Section 411 I.P.C. and in no case he can be held guilty under Section 302 I.P.C. In the instant case the prosecution has failed to prove its case beyond reasonable doubt, hence the appeal succeeds.

14. The appeal is allowed. The conviction and sentence awarded by the learned Court below is hereby set aside. The appellant is on bail. He need not surrender in Court. His bail bonds and sureties are hereby discharged.

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