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Court : Delhi

Decided On : Jan-17-1969

Reported in : ILR1970Delhi114

Judge : S.N. Andley and; T.V.R. Tatachari, JJ.

Acts : India Evidence Act, 1872 - Sections 45

Appeal No. : Criminal Appeal No. 9 of 1968

Appellant : Devinder Singh

Respondent : State

Advocate for Pet/Ap. : M.G. Chitkara,; S.S. Ahuja and; S.R. Sharma, Advs

Judgement :

T.V.R. Tatachari, J.

(1) This judgment will dispose of Criminal Appeal No. 9 of 1968 and Murder Reference No. 3 of 1968. Devinder Singh, appellant in the said Crimianal Appeal, was convicted for an offence under Section 302, Indian Penal Code, by Shri Rajinder Nath Aggarwal, Sessions Judge, Sirmur, Bilaspur and Simla Districts, and was sentenced to death, by his judgment, dated 27-3-1968. It is against that judgment that the Appeal has been preferred by Devinder Singh, and the learned Sessions Judge has made the Reference to this Court regarding the confirmation

of the sentence passed by him.

(2) The appellant, Devinder Singh, aged about 22/23 years was committed to the Court of Sessions to stand his trial on a charge under Section 302, Indian Code, by the Magistrate, I Class, Bilaspur, by an Order, dated 6-7-1967. The charge framed against Devinder Singh was as follows :

'THATyou, on or about 24th day of April, 1966 in the evening at Khameri forest, near Kosrian village, intentionally caused the death of your wife Mst. Piaro alias Piar Kaur by beheading her and thereby committed an offence punishable under Section 302 of Indian Penal Code and within the cognizance of the Court of Sessions, Bilaspur.'

(3) (AFTER stating the prosecution case in detail and discussing prosecution evidence, His Lordship proceeded:) As regards the evidence that his father demanded Rs. 500.00 from Beant Kaur but she expressed her inability to pay the amount, he stated that the said evidence was incorrect. He stated that he will nto produce any evidence in defense. Lastly, when he was asked as to whether he wished to say anything else, he stated as follows :

'The police gave beating to Satish Kumar and Krishan Lal,P.W.5. The Police also tortured the family members of Satish Kumar. There is party faction in the village. There is enmity between Radha Krishan, Pradhan, and the family of Satish Kumar. I never told Krishan Lal that I suspected the character of my wife. He has given a statement under the threat and pressure of the Police. The Police has involved me in a false case. My wife is alive. I do nto know her whereabouts. The Police has concealed her somewhere.'

(4) The charge against the accused Devinder Singh was that he had intentionally caused the death of his wife Mst. Piaro alias Piar Kaur by beheading her. According to the prosecution, accused Surinder Singh had caused the death of his wife Pier Kaur by beheading her, and that the head and the headless body found in the jungle were those of Piar Kaur. The first question, thereforee, that arises for determination in the present case is, as to whether the said head and the headless body were those of Piar Kaur. As regards the head, it was stated by Dr. S. P.

Kanwal (Public Witness -1) in his postmortem examination report (Exhibit PA) as well as in his evidence that it was decapitated, and was devoid of all soft parts, ears, eyes, nose, mouth contents and skin of scalp, and was found two furlongs away from the body. The brain was spread over the ground around the skull. He further stated that the head was severed at the highest point of its attachment with the neck at first cervical vertebre. He did nto state that the said head was the head of the headless body that was found at the distance. No other witness identified the head as that of Piar Kaur. There is thus no evidence that the said head was that of the headless body found in the jungle or that it was of Piar Kaur. (After further discussing the evidence, His Lordship continued :)

(5) From the above conclusion it would also normally follow that the prosecution failed to establish even the death of Piar Kaur.

(6) Shri Sita Ram, the learned counsel for the prosecution however, contended that even if it is held that the head and the headless body found in the jungle were nto shown to be those of Piar Kaur, the corpus delicti can still be sought to be established by the prosecution by the other circumstantial evidence in the case, and that the said other circumstantial evidence in the present case clearly goes to show that the accused Devinder Singh murdered his wife Piar Kaur. As observed by the Supreme Court in Khusidas v. State of Madhya Pradesh (1).

'THEfact of death could be proved by circumstantial evidence alone provided it is conclusive; and even though there is no trace of the dead body and no direct evidence as to the manner of death of the victim, the corpus delicti could be proved by a number of facts which rendered the commission of the crime certain.'

(7) But, in the present case, the prosecution put forward a specific case that the appellant Devinder Singh caused the death of his wife by heading her, and produced a head and a headless body as those of the wife of the accused, Devinder Singh. We

(8) A have held above that the said head and the headless body were nto those of Piar Kaur, the wife of Devinder Singh. thereforee, if the prosecution wants to establish the charge against Devinder Singh by circumstantial evidence, the said

circumstantial evidence has to be such as would lead to the irresistible conclusion that Devidnder Singh caused the death of his wife by beheading her. We shall now consider the circumstantial. evidence in the case.

(9) We have already set out the case of the prosecution. According to the prosecution, on 24-4-1966, the accused, Devinder Singh, along with his wife Piar Kaur, purchased two tickets for Jullundur and bearded a bus for Jullundur at the Batala Bus stop. The accused denied the same. The evidence regarding this is that of Beant Kaur (Public Witness -11), Laxman Singh (Public Witness -15), Kashu (Public Witness -18) and Pyai-a Singh (Public Witness -19). Beant Kaur deposed that Devinder Singh asked her to bring Piar Kaur to the Bus stand at Batala, that she and Laxman Singh, uncle of Piar Kaur, took Piar Kaur to the Bus stand, that the accused purchased two tickets for Jullunder, and that the accused and Piar Kaur left in a bus for Jullundur. This was corroborated by Laxman Singh (Public Witness -15). Kashu (Public Witness -18) stated that on that date he met Beant Kaur and one Kishan Singh at the Batala Bus stand, that on his enquiry Beant Kaur told him that she had come to leave her daughter, Piar Kaur, who had to go with the accused to Indore, and the that Piar Kaur and the accused were sitting in the bus which was to go to Jullundur. Beant Kaur stated in her evidence that she met Kashu at the Bus stop. Shri Chitkara, the learned counsel for the appellant, Devinder Singh, pointed out that Kashu did nto mention in his evidence about the presence of Laxman Singh at the Bus stop, and that Beant Kaur did nto mention about the presence of Kishan Singh at the Bus stop. These omissions by the said witnesses are nto such as would render their evidence unbelievable. We see no reason to disbelieve the evidence of Beant Kaur, Laxman Singh and Kashu. It has thereforee, to be held that the appellant, Devinder Singh along with his wife, Piar Kaur, boarded a bus at Batala Bus stand and left for Jullundur. Piara Singh (Public Witness -19) stated that he met the the accused, Devinder Singh, Piar Kaur, Beant Kaur and the uncle of Piar Kaur at the Bus stop Kotii. His statement appears . to be incorrect as Beant Kaur and Laxman Singh went only to Batala Bus stop and nto to Kotli Bus stand. His evidence has, thereforee, to be excluded.

(10) The second circumstance relied upon by the prosecution is that the appellant, Devinder Singh, and his wife, Piar Kaur, stayed in Gita Devi Sarai at Nangal on the night of 23rd April 1966. The accused denied this allegation also. The evidence relied upon by the prosecutiion consists of an entry (Exhibit PDD1)in the register of the said Sarai, and the evidence of Badri Nath (Public Witness -37),who was working as a Munshi in that Surui. Badri Nath deposed that one Ram Singh son of Hari Singh, aged 21 years, Resident of Jawar Nangal, accompanied by a woman stayed in the Sarai in room No. 3, that they were provided with one bed, that the entry with regard to the stay of Ram Singh was made by him in the register, Exhibit Fdd, at Exhibit Pdd 1, that Ram Singh told him that he was to visit Bawa Sidh and the said fact was recorded in the entry, that Ram Singh signed the entry and the signature is Exhibit Pdd 2, and that Ram Singh and the woman accompanying him left the Sarai in the morning of 24th April, 1966. In answer to a question put by the Court, he stated that he could identify the person who came to the Sarai (Dharamsala), and actually pointed our towards Amar Singh, the father of the accused, Devinder Singh, as the person who had cometotheSai'ai. The case of the prosecution is that the accused, Devinder Singh, stayed at the Sarai giving out his name as Ram Singh, and that the signature (Exhibit Pdd 2) in the register was in the handwriting of Devinder Singh. The said signature, along with some specimen signatures of Devinder Singh. were sent for a comparison to Shri S. K. Sharma (Public Witness -13), Government Examiner of Questioned Documents, Government of India. He reported (Exhibit PKK:) that the signature Pdd 2 and the genuine writings were of a common author. The learned Sessions Judge stated in his judgment that a comparison of the signature, Exhibit Pdd 2, with the admitted writings of the accused left no doubt that the signature, Exhibit Pdd 2, was of the accused. We too compared the signature, Exhibit Pdd 2, as enlarged in the photograph Exhibit Qi with the words 'Ram Singh' which occur in the photograph of the genuine writing Si of Devinder Singh. Though the word 'Ram' in QI and Si appears to be similar, the word 'Singh' appears to be dis-similar to our naked eyes. It is true that the expert gave his reasons for the opinion expressed by him. But, as pointed out by the Supreme Court in Shashi Kumar Banerjee and Others v. Suhodh Kumar Bunerjee

'EXPERT'Sevidence as to handwriting is opinion evidence and can rarely if ever, take the place of substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence.'

(11) In the present case, the only other evidence about the entry is that of Badri Nath (Public Witness -37). He, however, as already pointed out above, pointed to Amar Singh, the father of Devinder Singh, as the person who stayed at the Sarai. In view of the wrong identification on his part, his evidence cannto be regarded as a satisfactory corroboration of the opinion of the expert.

(12) The appellant, Devinder Singh, denied that the signature, Exhibit Pdd 2, was his, and he stated that there was another man by the name of Ram Singh, son of Hari Singh, aged 21 years, living in the Village Jawahar Nangal. The learned Sessions Judge commented that the accused had nto chosed to examine Ram Singh. We are unable to agree with the said comment. Even where the accused sets up a defense and fails to establish it, the prosecution has still to establish its own case against the accused. In Gurcharun Singh v. State of Punjah, the accused set up the defense of an alibi and the Court came to the conclusion that the accused failed to establish the said plea of alibi. Dealing with the same, the Supreme Court observed that the burden of proving the alibi undoubtedly lay on the accused, that the said burden was nto discharged by the accused in that case, and that 'even so, the burden of proving the case against the appellants (accused) was on the prosecution irrespective of whether or nto the accused have made out a plausible defense.' The learned Sessions Judge was not, thereforee, justified in commenting that the accused Devinder Singh did nto examine Ram Singh about whom he mentioned in his examination under Section 342, Code of Criminal Procedure. On the other hand although the name Ram Singh appearing in the entry in the register of the Sarai was known to the prosecution, yet the Investigating Officer, even after coming to know of the entry in the register, did nto investigate into the matter to find out whether such a person was living in the village Johal-Nangal. It was thus a lapse on the part of the Investigating Officer rather than the accused Devinder Singh. For the above reasons, we hold that the prosecution case that the appellant Devinder Singh stayed in Gita Devi Sarai on

the night of 23-4-1966, has nto been established.

(13) Thus, the circumstances or facts found to have been established by the prosecution are, (a) that the accused Devinder Singh and his wife Piar Kaur left by bus for Jullundur; (b) that they arrived at Brahmni Ghat at about 1 I a.in. on 24-4-1966; (c) that they left their attache case containing articles of Piar Kaur in the shop of Charan Dass, and were last seen going towards village Koserian at about 6 p.m. on that date; (d) that the Pradhan Radha Krishan accompanied by the accused went to the Police Station, Talai, and deposited the attache case (Exhibit P. 23) as unclaimed property; (e) that the accused Devinder Singh was arrested at Bombay. and was found to be in possession of gold ear rings, gold ring, and a gold 'chap' belonging to Piar Kaur: (f) that a Darnt was also recovered at his instance: and (g) that the head and the headless body of woman, which were nto established to be those of Piar Kaur, were found.

(14) The circumstances (a), (b) and (c) show that Devinder Singh and his wife Piar Kaur were last seen going together towards village Koserian at about 6 p.m. on 24-4-1966, and thereafter, the whereabouts of Piar Kaur were nto known, and subsequently the accused was found to be in possession of the gold ear rings etc. of his wife. The circumstance (d) shows that when the attache case was produced before the Police Officer, the accused did nto state that the articles in the attache case were those of Piar Kaur. The circumstance (e) shows that he was found to be in possession of the gold ear rings etc. belonging to his wife, Piar Kaur. The circumstance (f), no doubt shows that he was in possession of a Darat. But, as already pointed out, it has no value or significance. The question then is as to whether the circumstances (a) to (e) and (g) form a complete chain of circumstances which leads to an irresistible conclusion that the accused Devinder Singh caused the death of his wife by beheading her.

(15) Shri Sita Ram, the learned counsel for the prosecution, referred to the decisions in Fazaldm v. Emperor, Deoriandan v. State of Bihar. : 1955 CriLJ1647 , WasimKhan v. State of U.P. Kanbi Karsan Jadav v. State of Gujarat , Pershadi. State, and contended that the circumstances of the present case when taken together give rise to an inevitable inference that the accused Devinder Singh

caused the death of his wife Piar Kaur. The principles of law laid down in the above decisions regarding circumstantial evidence cannto be disputed, but as pointed out by the Supreme Court in Gurcharan Singh v. State of Punjab (3) reference to reported cases when facts alone are involved can be by way of illustration only, and nto by way of an appleal to precedent because on facts no two cases can be similar, and each case has its own peculiar facts and it is, thereforee, always risky to appeal to precedents on questions of fact. As already stated. the question is as to whether on the facts and circumstances found by us in the present case, it can be held that they lead to the irresistible, conclusion that the accused Devinder Singh caused the the death of his wife by beheading her. In our opinion, the the circumstances are nto sufficient to lead to such a conclusion. As regard the circumstance that they were last seen going together towards the village Koserian, it has to be remembered that according to the evidence of Mahantu (Public Witness -1O), a third person was also with them. The learned Sessions Judge dlsbelieved this part of the evidence of Mahantu on the ground that when his statement was recorded by the Police on the fourth or fifth day of the occurrence, he made no mention of any man accompanying the accused. Even if the said statement of Mahantu is excluded from consideration we have the main facts that the accused and his wife were last seen going towards the village Koserian, and thereafter the whereabouts of his wife Piar Kaur were nto known and the accused was subsequently .found to be in possession of certain golden articles of the wife.

(16) It is true that in a case where two persons were last seen together, and thereafter one of them is found to have been murdered and and other person is found to be in possession of articles belonging to the deceased, it would be reasonable to infer that the person found to be in possession of the articles must have murdered the deceased person, in the absence of any Explanationn by the accused as to what had happened to his companion. But, in a case like the present one, in which the fact of the death of Piar Kaur has nto been established, no inference can be drawn that the husband Devinder Singh must have murdered his wife. The only inference, if at all, that can be drawn is that the husband was responsible for the whereabouts of his wife Piar Kaur nto being known. But, that was nto the charge against the present appellant Devinder Singh. The specific

charge against him was that he caused the death of his wife by beheading her. Such an inference does nto follow from the facts mentioned above viz., that he and his wife were last seen together going towards the village Koserian, that the whereabouts of his wife thereafter were nto known, and that he was found to be in possession of some gold articles belonging to her.

(17) Shri Sita Ram, the learned counsel for the prosecution also referred to the decisions in Deonandan Mishra v. The State of Bihar, Fazuldin v. Emperor, and Pershadi v. The Sfate(s) and submitted that it was held in those decisions that if the accused fails or refuses to offer an Explanationn or offers an Explanationn which is nto acceptable, that itself would be a circumstance which completes the chain of circumstances established by the prosecution. In Deonandan's case, the Supreme Court observed as follows :

'IT is true that in a case of circumstantial evidence nto only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case where the various links have been satisfactorilly made out and the circumstances point to the accused as the probable assaillant, with reasonable definitness and in proximity to the deceased as regards time and situation, and he offers no Explanationn, which if accepted, though nto proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of Explanationn or false Explanationn would itself be an additional link which completes the chain.'

(18) In FazaJdin's case, it was observed by the High Court of Lahore that :

'WHEREthe evidence against the accused is that the deceased was last seen alive in his company and that the accused disappeared immediately after the murder and the accused sets up a palpably false defense that he did nto know the deceased and was never in her company, these facts and circumstances are sufficient to bring the offence of murder home to the accused.'

(19) In Pershadi's case, on a difference of opinion between Desai and Mahrotra Jj, Agarwala J, on the facts of that particular case, held that the circumstances

established by the prosecution were sufficient to hold that the accused was guilty of the offence of murder. In the course of his judgment, Agarwala J. observed as follows:

'ONEof. the well-known maxims of criminal trials is that it is better that ten guilty persons be acquitted rather than one innocent person be convicted. This maxim is often misunderstood. It means nothing more than this that the greatest possible care should be taken by the Court in convicting an accused. The presumption is that he is innocent till the contrary is clearly established. The burden of proof of proving that the accused is guilty is always on the prosecution. If there is an element of reasonable doubt as to the guilt of the accused, the benefit of that doubt must go to him. The maxim merely emphasises these principies in a striking fashion. It does nto mean that even an imaginal or unreal and improbable doubt is enough for holding the accused nto guilty if the evidence, on the whole, points to the only conclusion on which a prudent man can act, till the accused is guilty.'

(20) The above observations were made in those decisions in the context of the circumstances in those cases. In all those cases the fact of death was established by the prosecution, and that circumstance distinguishes those cases from the present case. it is true that the Supreme Court observed in Deonaadan's case that the absence of Explanationn or false Explanationn would itself be an additional link which completes the chain. But, it has to be noted that the said observation was made after pointing out that it was 'with reference to a case where the various links have been satisfactorily made out and the circumstances point to the accused as the probable assailant, with reasonable difiniteness and the proximity to the deceased as regards time and situation.' A reading of the judgment and thecontext in which the observation was made by the Supreme Court shows that the Supreme Court did nto mean to lay down that where the prosecution fails to establish the various links or a material link, it can seek to fill up the lacuna and get the missing link or links supplied by pleading that it is for the accused to state what he did with or what had happened to the corpus delicti. As accused in a criminal case is nto in the position of a defendant in a civil suit. It is open to him to put forward a defense or explain the evidence against him or not. As pointed out by the Supreme Court in Gurcharan Singh and another v. State of Punjab, even

where the accused puts forward a defense by pleading an alibi and fails to establish the same, 'the burden of proving the case against the accused is on the prosecution irrespective of whether or nto the accused have made out a plausible defense.'

(21) In the present case, the prosecution failed to establish the fact of death of Piar Kaur, and that material link which the prosecution failed to establish cannto be supplied by pleading that it is for the accused to state what had happened to and where Piar Kaur is. The accused, Devinder Singh , stated in his examination under Section 342, Criminal Procedure Code, that his wife, Piar Kaur, was living in Indore, that she was alive, that he did nto know her whereabouts, and that the police had concealed her somewhere. This version of his was quite consistent with his statement in the letters. Exhibit Px, dated 25-4-1966, Exhibit Pu, dated 27-4-1966, Exhibit Pxi, dated 11-5-1966, and Exhibit Pyi, dated 29-5-1966, to the mother and the brother of his wife, Piar Kaur. The said letters contain his statement that Piar Kaur was alive. Thus, on his part, the accused consistently maintained that Piar Kaur was alive. He gave his addresses at Indore in those letters. But, the police or the investigating officer did nto enquire or search for Piar Kaur at those addresses in Indore. This was clearly a lapse and a serious omission on the part of the prosecution, and it is not, thereforee, open to the prosecution to cover up the said lapse or omission by pleading that is the accused who has to state where Piar Kaur is. According to him, she was living in Indore, and as he was arrested at Bombay, he was nto aware of the subsequent whereabouts of Piar Kaur. For the foregoing reasons, it has to be held that the facts and circumstances found to have established by the prosecution are nto sufficient to hold that the accused, Devinder Singh, caused the death of his wife by beheading her.

(22) After the judgment was reserved in this case, Shri Sita Ram, the learned counsel for the prosecution, filed an application, Cr. M. P. No. 7 of 1968, drawing our attention to certain decisions. The first decision is that of the Supreme Court in Ram Lochan Ahir vs. State of West Bengal. In that case, it was held that a superimposed photograph of the deceased over the skeleton of a human body (skull) recovered from a tank was admissible under Section 9 of the Evidence Act

to prove the fact that the skeleton was that of the deceased. We are unable to see how this decision helps the prosecution in the present case. The second decision referred to by the learned counsel is King Emperor vs. Narotam and Others'). In this case, Lyie and Ashworth, A.J.Cs., after pointing out that the reason for the acquittal of , the accused by the lower Court was certain inconsistencies and improbabilities in the evidence of the prosecution witness which made him feel suspicious of the prosecution story and the difficulty of finding any Explanationn justifying the rejection of the alibi, observed that :

'ITdoes nto seem to have occurred to the learned Sessions Judge that if the prosecution story is to be rejected in substance there must be some other Explanationn of the injuries to the deceased, to his wife and to his brother. Failing any such Explanationn it is nto permissible to reject the prosecution evidence owing to immaterial discrepancies or improbabilities. It was also for the accused to prove their alibi.'

(23) The said observation was made on the facts of that particular case, and we have already dealt with the question as to the extent to which an accused is bound to give an Explanationn.

(24) The third decision referred to by Shri Sita Ram is Emperor vs. Janki Prasad and Another in which it was observed that :

'IT is the duty of every Criminal Court to go to the bottom of a case and to bring all relevant evidence upon the record and to see that justice is done. It might possibly be a different thing in the case of a Civil Court trying a civil suit where it is the duty of the parties to place their case as they think best before the Court.'

(25) The said observation was made by the learned Judges in pointing out that the trial Court in that case should have brought all relevant evidence upon the record. We are unable to see how this case has any relevance to the present one. The next case referred to by Shri Sita Ram is Jit Singh vs. The Crown In this case, the learned Judges merely relied upon the observation in Janki Prasad's case quoted above. The last two decisions referred to by Shri Sita Ram are the decisions in Peare Lal vs. Nanak Chand(I3), and the decision in re M. S. Mohiddin : AIR1952

Mad561 in which the said decision of of the Privy Council was followed. Referring to an observation of the Privy Council in Peare Lal's case, it was observed in M. S. Mohinddins' case that while a finding that a witness is speaking the truth is of the greatest value when it is made by a Judge who saw the witness and observed his demeanour, a finding 'by a Judge who never saw him is of very small value, and that the trial Court's view as to which set of witnesses is to be believed is to be adopted unless there are weighty reasons showing the trial Court's view to be clearly wrong. There can be no dispute about the said principle, but it does nto mean that a first appellate Court cannto reassess the evidence and arrive at its own conclusion.

(26) For the above reason, we hold that the prosecution has failed to establish that the appellant, Devinder Singh, caused the death of his wife, Piar Kaur, by beheading her. We, thereforee, allow the appeal (Criminal Appeal No. 9 of 1968) filed by Devinder Singh, set aside the conviction and sentence passed by the learned Sessions Judge, and acquit the accused of the charg agninst him. and we direct that the accused be set free immediately The Criminal Reference No. 3 of 1968 made by the learned Sessions Judge is nto accepted.

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