

Dharambir Alias Jonni Vs. the State

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Court : Delhi

Decided On : Sep-09-1981

Reported in : 1981(3)DRJ82

Judge : D.K. Kapur and; J.D. Jain, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 162; [Evidence Act, 1872](#) - Sections 25

Appeal No. : Criminal Appeal No. 239 of 1978

Appellant : Dharambir Alias Jonni

Respondent : The State

Judgement :

(1) The appellant was tried under Section 302 Indian Penal Code . for the alleged murder of Baldev Raj of village Mundka. He was convicted and sentenced to rigorous imprisonment for life under Section 302 Indian Penal Code . by an Additional Sessions Judge. Against his conviction and sentence the appellant filed this appeal in the High Court. The appellant was not arrested at the spot. He was, however, arrested on 26-11-77 from Company Bagh opposite Delhi Railway Station. The alleged incident took place on the night between 17th and 18th November 1977. At that time of arrest he had some old injuries on both of his hands. He was got medically examined. According to the prosecution, during the course of interrogation of the appellant by the police the accused made a

disclosure statement, inter alia, saying that during the scuffle with the deceased his shirt and vest were torn and the deceased bit his thumb, as a result of which he i.e. appellant sustained injuries due to tooth bite and he got the same bandaged from a doctor in village Chuchhak was and that he could point the shop of the doctor. The appellant actually pointed out the shop of the doctor at village Chuchhak-was. There was no direct evidence connecting the accused with the crime although number of witnesses were examined by the prosecution. The trial court in the absence of any dire

(2) The second circumstance considered against the accused was that he absconded on 18-11-77, although his name was not mentioned in the F. I. R. and was arrested only on 26-11-77. Held that there is solitary evidence of Head Constable Public Witness . 18, that under instruction from the Inspector, he went to village Aboharasthan on 20-11-77, in search of the accused, as sister of the father of the accused was residing there. However, the accused was not available there. His temporary absence from village, the assuming it to be so, for about 10 days after the occurrence in question cannot per se be termed as abscondence which admittedly implies that the appellant had intentionally disappeared to evade arrest. The onus lay on the prosecution to establish the factum of abscondence. The learned Sessions Judge was in error in observing that the accused ought to have adduced evidence that he remained in the village from 18-11-77 to 26-11-77. It is not at all possible to draw any adverse inference against the appellant from this circumstance either. Indeed abscondence can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused.

(3) The third circumstantial evidence was with regard to the disclosure statement made by the appellant before the police that he suffered a tooth bite by the deceased during scuffle with the deceased.

(4) Held that the learned Sessions Judge has slipped into a grave legal pitfall by relying upon the confessional statement of the appellant, to the effect that he had sustained the tooth bite from Baldev Raj deceased during the course of scuffle. Under Sections 25 and 26 of the Evidence Act, no confession made to a police

officer can be proved against the accused. Section 27 of the Evidence Act being the solitary exception. U/s 27 of the Evidence Act only a material fact which is discovered as a sequel to disclosure statement is admissible and the information which does not distinctly relate to the fact discovered or that portion of the information which merely explains the material thing discovered is not admissible. After noticing the observations of the Hon'ble Supreme Court in *Himachal Pradesh Administration v. Om Parkash*, : 1972 CriLJ606 , it was further held that assuming that the information with regard to his treatment by Dr. Prem Parkash was imparted by the appellant himself, the only fact admissible U/s 8 of the Evidence Act would be pointing out of the shop of Dr. Prem Parkash by the appellant and not the fact as to how he had received the tooth bite. Needless to say that this circumstance of tooth bite may in itself be exculpatory but it is inextricably intermingled with the inculpatory fact of his having a scuffle with the deceased on the night of occurrence. So the whole of the confessional statement must be excluded. Hence, the conclusion of the learned Sessions Judge 'that the accused had a bite mark on the thumb and that it was deceased who had bit at the thumb of the accused' which is evidently based upon the confessional statement of the appellant is contrary to law.

(5) Held that previous statement of a prosecution witness falling under Section 162 of Criminal Procedure Code can be used only for the purposes of contradicting the said witness under Section 145 of the Evidence Act, not for any other purpose, for instance, corroborating prosecution or a defense witness or even Court witness, nor can it be used as substantive evidence in favor of or against the accused.

(6) It is well settled that in a case resting on circumstantial evidence alone, each of the circumstances relied upon must be clearly established and the chain or proved circumstances should be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused.

(7) Considering the facts and circumstances of the case the appeal was allowed.