Tahir and ors Vs. State

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SooperKanoon Citation : sooperkanoon.com/690097

Court : Delhi

Decided On : Aug-01-2000

Reported in : 2000(56)DRJ566

Judge : Arijit Pasayat C.J. and; D.K. Jain, J.

Acts : Evidence Act, 1872 - Sections 27; Indian Penal Code (IPC), 1860 - Sections 302

Appeal No. : Crl. Appeal No. 158, 171, 191 and 216 of 1994

Appellant : Tahir and ors

Respondent : State

Advocate for Def. : Anil Soni, Adv.

Advocate for Pet/Ap. : Ms. Neeraja Mehra and; Ms. Vaishalee Mehra, Advs

Judgement :
ORDER

Arijit Pasayat, C.J.

1. These four appeals have been filed by four accused persons, (hereinafter referred to as the accused appellants by their respective names), questioning their conviction for offences punishable under Sections 302/186 of the Indian Penal Code (in short, IPC) read with Sec. 34 IPC for allegedly having caused homicidal

death of Billoo, (hereinafter referred to as the deceased.) They were sentenced to undergo imprisonment for life and to pay Rs.10,000/- as fine each with default stipulation of six months RI.

2. Sans unnecessary details, accusations which led to trial of four appellants is as follows :

On 16.3.1988, at 11.15 p.m. Kalawati (PW-7) lodged a missing report in police station wherein it was stated that on 14.3.1988, deceased had gone to his factory at 8.30 p.m. but had not come back to the house and his whereabouts could not be known inspire of search. The information was recorded and SI Ranbir Singh was directed to investigate into the matter. SI Ranbir Singh along with constables was present at 12.30 p.m. at Loni Road when Karam Singh father of the deceased came to him and informed that he got foul smell from inside the factory of his son, when his son Shanker (PW4) broke the lock of the room inside the factory they found dead body of the deceased lying on a cot. Immediately Ranbir Singh along with some other persons came to the premises and found the dead body. It was noticed that some employees of the factory were missing and a case under Section 302 IPC was registered. During investigation, it transpired that that accused appellants Jallauddin, Kabir Mohd. Tahir and Shekhawat were employees of the factory and on being pointed out by Shanker Singh, (PW4) accused Shekhawat and Jallauddin were arrested from DTC bus stand near New Delhi Rly Station. They pointed out the place of occurrence and Shekhawat also got recovered the plastic rope with which the deceased was strangulated. Accused Takhir and Kabir Mohd were arrested later on. After registration of case and on completion of investigation, charge sheet was placed; charge was framed under Section 302/34 IPC and a separate charge was also framed under Section 201 IPC. In order to establish its version, when the Sessions cases were taken up, prosecution examined 23 witnesses. Learned trial Court found that the case was one of circumstantial evidence and mainly three circumstances were highlighted to fasten the guilt on the accused. Firstly, it was observed that on 14.3.1988, Shanker, brother of the deceased, (PW. 4) had seen all the accused persons in the factory and he left at 9 p.m. Secondly, Lal Singh (PW. 5) saw the accused persons standing outside the factory at 11.45 p.m. Thirdly, the plastic rope which

was used to strangulate the deceased was recovered on being pointed out by one of the accused persons. First two circumstances were highlighted to bring in application of 'last seen theory. As the case rested on circumstantial evidence, afore said circumstances were held to be sufficient to prove guilt of the accused. As indicated above, the accused were found guilty and were convicted and sentenced.

3. In support of the appeal, learned Counsel submitted that the case being one of circumstances evidence, a complete set of circumstances which ruled out possibility of any person other than the accused person as author of the crime was to be established with reference to evidence of PW. 5. It is submitted that at 11.45 p.m. the deceased was not seen in the company of the accused and thereforee question of they being last seen together does not arise. The rope was discovered from a place which is easily accessible to others and thereforee is of no consequence. Counsel for the prosecution, on the other hand submitted that the very fact that the accused persons were giving out story about the deceased having gone for 4-5 days clearly establishes the guilt. Mere fact that rope was found from a place which is easily accessible to others is not to be considered upon any rigid formula.

4. Before analysing factual aspects it may be stated that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.

5. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only

when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See Hukam Singh Vs . State of Rajasthan, : 1977 CriLJ639 , Eradu Vs . State of Hyderbad : 1956 CriLJ559 Earabhadrappa v. State of Karnataka, , State of U.P. Vs . Sukhaasi, : 1985 CriLJ1479 , Balawinder Singh Vs . State of Punjab : 1987 CriLJ330 , Ashok Kumar Chatterjee Vs . State of M.P. : 1989 CriLJ2124 .

6. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram Vs . State of Punjab, : AIR 1954 SC621 it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

7. In Padala Veera Reddy Vs . State of A.P., : AIR 1990 SC79 , it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of Explanationn of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

8. In State of U.P. v. Ashok Kumar Srivastava 1992 CrI LJ 1104, it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favor of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

9. Sir Alfred Wills in his admirable book 'Wills' Circumstantial Evidence' (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence : (1) the Facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum, (2) The burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability, (3) In all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits, (4) In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of Explanationn, upon any other reasonable hypothesis than that of his guilt, (5) If there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted.'

10. It is no doubt true that conviction can be based solely on circumstantial evidence but it should be tested by the touch stone of law relating to circumstantial evidence laid down by the Apex Court as far back as in 1952 in Hanuman Govind Naragundkar and Anr. Vs . State of Madhya Pradesh, : 1953 CriLJ129 , wherein it was observed thus:

'It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused

and it must be such as to show that within all human probability the act must have been done by the accused.

11. A reference may be made to a later decision of the Supreme Court in Sharad Sirdhichand Sarda Vs . State of Maharashtra, : 1984 CriLJ1738 . There in, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and that infirmity of lacuna in prosecution cannot be cured by false defense or plea. The conditions precedent in the words of the Apex Court, before conviction could be based on circumstantial evidence, must be fully established. They are-

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the 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 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 as 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.

12. We may also make a reference to a decision of the Supreme Court in C. Change Reddy and others Vs . State of A.P. : 1996 CriLJ3461 , wherein it has been observed thus:

'In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of

evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence...'

13. The last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible. It would be difficult to positively establish that the deceased was last seen with the accused since there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt. PW.5 has not stated that he saw deceased with accused person, when he saw accused persons at about 11.45 pm. PW4's statement is that he saw accused persons at 9 p.m. in the factory. That is not sufficient to bring in application of 'last seen theory'.

14. Emphasis was laid as a circumstance on recovery of weapon of assault, on the basis of information given by the accused while in custody. The question is whether the evidence relating to recovery is sufficient to fasten guilt on the accused. Section 27 of the Indian Evidence Act, 1872 (in short, Evidence Act) is by way of proviso to Secs. 25 to 26 and a statement even by way of confession made in police custody which distinctly relates to the fact discovered is admissible in evidence against the accused. This position was succinctly dealt with by the Apex Court in Delhi Administration v. Balkrishna AIR 1977 SC 3 and Md. Inayatullah Vs . State : 1976 CriLJ481 . The words 'so much of such information' as relates distinctly to the fact thereby discovered: are very important and the while force of the Section concentrates on them. Clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. The ban as imposed by the preceding Sections was presumably inspired by the fear of the Legislature that a person under police influence might be induced to confess by the exercise of undue pressure. If all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion,

and that in practice the ban will lose its effect. The object of the provision i.e. S. 27 was to provide for the admission of evidence which but for the existence of the Section could not in consequences of the preceding Sections, be admitted in evidence. It would appear that under S.27 as it stands in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under S. 27 if the information did not come from a person in the custody of a police Officer or did come from a person not in the custody of a police officer. The statement which is admissible under S. 27 is the one which is the information leading to discovery. Thus what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is thereforee necessary for the benefit of both the accused and prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basis idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. It is now well-settled that recovery of an object is not discovery of fact envisaged in the Section. Decision of Privy Council in Pulukwi Kottaya v. Emperor AIR 1947 PC 67 is the most quoted authority for supporting the interpretation that the 'fact discovered' envisaged in the Section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given

must relate distinctly to that effect. (See State of Maharashtra Vs . Danu Gopinath Shirde and Ors. : 2000 CriLJ2301) No doubt, the information permitted to be admitted in evidence is confirmed to that portion of the information which 'distinctly relates to the fact thereby discovered'. But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability, mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given. Evidence in the case at hand, falls short of the requirement. It is not clear when the information alleged given was recorded, in any event it was not brought on record during trial.

15. It is also pleaded by learned counsel for accused that the nylon rope was discovered from a place easily accessible on 28.3.1988 i.e. after about two weeks of alleged occurrence on the basis of information given at least 24 hours earlier i.e. on 27.3.1988. There is nothing in Section 27 of the Evidence Act which renders statement of the accused inadmissible if recovery of the article was made from any place which is 'open or accessible to others'. It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others it would vitiate the evidence under section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried on the main road side or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office the article would remain out of the visibility of others in normal circumstances. Until such article is discovered its hidden state would remain unhampered. The person who had hid it alone know where it is until he discloses that fact to any other person. Hence the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the place of concealment is accessible to others. [See: State of Himachal Pradesh Vs . Jeet Singh : 1999 CriLJ2025]. In the case at hand, prosecution evidence is silent on the aspect as to manner of concealment and place of concealment.

16. Judged in the background of legal principles set out above relating to circumstantial evidence and S. 27 of the Evidence Act, evidence tendered by the

prosecution falls short of requirement to bring home the accusations. Inevitable conclusion is that prosecution has failed to establish the case against the accused and they are entitled to orders of acquittal. They be set at liberty forthwith unless required in connection with any other case. The bail bonds executed by accused appellants who are on bail shall stand discharged. Appeals allowed.