

State Vs. Bhupinder Singh @ Putli

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Court : Delhi

Decided On : Apr-09-2009

Reported in : 2009CriLJ4248

Judge : Mool Chand Garg, J.

Acts : Evidence Act - Sections 30; Indian Penal Code - Sections 34, 302, 365 and 376

Appeal No. : Cri. Rev. P. No. 749/2007

Appellant : State

Respondent : Bhupinder Singh @ Putli

Advocate for Def. : Ashwin Vaish and ; Vinod Kr. Pandey, Advs.

Advocate for Pet/Ap. : Navin Sharma, AP

Disposition : Petition dismissed

Judgement :

Mool Chand Garg, J.

1. This is a revision petition filed by the State who are aggrieved with an order passed by the learned ASJ in case FIR No.173/2006 under Sections 302/365/376/34 IPC registered at P.S. Maurice Nagar against respondent and one

Sh. Ajay Luthra on the allegations that one Ms. Lucy Kashung was brought to Hindu Rao Hospital by two persons including Ajay Luthra on 16.12.2006 at around 8:30 am, who was declared brought dead by the doctors. She was brought by accused Ajay Luthra and his neighbor/friend Sh. Anand Thukral. An FIR was registered in respect of this incident after a complaint was made by the brother of the deceased, Lucy Kashung.

2. It is the case of the petitioner that on investigation it came out that the deceased was friendly with accused Ajay Luthra and that:

i) On the intervening night of 15/16.12.2006 accused Ajay Luthra along with his friend Bhupinder Singh had planned to go out for a drive in his Car No. HR-06B-6499 to take some drinks and meat etc. and make merry. They had picked up the deceased from outside her working place.

ii) That accused Ajay Luthra and the respondent accused with deceased Lucy Kashung had taken alcohol and other non-vegetarian items and were driving in the car in the area of Vijay Nagar and Kingsway Camp etc. Accused Ajay Luthra had stopped the car near the forest area of Hindu Rao Hospital and respondent accused had stood outside to guard the car. During this time Accused Ajay Luthra had asked the deceased for sex which she refused on which accused Ajay Luthra tried to commit rape on her. When she threatened to complaint to the police, the accused Ajay Luthra got angry and sat on her stomach and closed her mouth with his hands. This resulted in the death of Ms. Lucy Kashung. After that the respondent Bhupinder Singh, who was there outside the car keeping the watch had gone away and Ajay Luthra had brought the dead body of Lucy Kashung in his car HR-06B-6499 to his house.

iii) That in the morning, the accused Ajay Luthra went to the house of his neighbour and friend Anand Thukral and told the entire event to him. Both of them took the deceased to the Hospital where she was declared brought dead.

3. The body of the deceased was sent for post-mortem. The post mortem report has revealed:

i) That deceased Lucy Kashung died due to asphyxia by sustained constriction/compression of chest and abdomen from outside. There were certain injuries, which were ante mortem and recent in nature. The report of external injuries is as under:

1) Bruise 0.8*0.2 cm on knuckle of R ring finger 2) Scratch Abrasion horizontally placed over middle thigh of Leg, size 4*0.1mm 3) Bruise 1*0.5 cm over lower inner aspect of right leg 4) Bruise 3*1.5cm over upper thigh aspect of (L) leg.

ii) That the Post Mortem report also established the presence of meat and consumption of alcohol by the deceased supporting the case of the prosecution. The Doctor has not ruled out homicide on consideration of PM report and CFSL report. The opinion of the Doctor is as follows:

On perusal of postmortem report and CFSL report of the deceased, it is opined that death in this case is due to Traumatic Asphyxia by sustained constriction/compression of chest and abdomen, from outside and possibility of homicide cannot be ruled out.

4. It is submitted that the presence of the respondent accused in the car had been established by a chance hand print of the respondent yet this important circumstance connecting the respondent with the offence alleged has not been considered at all by the learned Court below which has resulted in miscarriage of justice.

5. It is also submitted that the learned trial Court also failed to notice that Anand Thukral a friend and neighbor who is an independent and natural witness was confided with, by accused Ajay Luthra, when he confessed about the crime and has also disclosed the role of the co-accused Bhupinder Singh, i.e., respondent herein. The extra judicial confession is a valid and legal piece of evidence in terms of Section 30 of the Indian Evidence Act.

6. After completing investigation, the respondent and Ajay Luthra were sent for trial. However, the learned ASJ while framing the charges against Ajay Luthra under Section 302 IPC held that no admissible evidence was available against the

respondent at all and discharged him vide order dated 21.9.2007.

7. It is this portion of the order which has been assailed by the petitioner before this Court. According to the petitioner, the order dated 21.09.2007 is not sustainable because the investigation reveals that there is evidence available on record against the respondent, Bhupinder Singh @ Putli to the following effect:

i) Extra Judicial confession of co-accused Ajay Luthra-Accused Ajay Luthra confessed before witness Sh. Anand Thukral s/o Sh. Mohan Lal Thukral R/o N-5 Malka Ganj, Delhi that Bhupinder Singh was with him and Lucy. He further confessed that when he (Ajay Luthra) raped Lucy in the car Bhupinder was keeping watch outside the car. He killed Lucy when she objected to the same. At that time also Bhupinder was present. Thereafter Bhupinder went to his home.

ii) Matching of Finger Prints: The finger prints proficient in his report stated that chance prints found on the liquor bottle found in the car of accused Ajay Luthra in which murder took place, matched with specimen finger prints of accused Bhupinder Singh. It clearly showed that Bhupinder Singh was with Ajay Luthra at the time of crime.

iii) Disclosure statement of accused Bhupinder Singh and Ajay Luthra.

iv) Statement of Witness Mr. Kuruvilla Virges- In his statement witness Kuruvilla Virges w/o Sh. K.M. Virges R/o 1/45 Nirankari Colony Delhi stated that he last seen Lucy with accused Ajay Luthra when she was going with him. At that time one Sardar was sitting in the car. Matching of finger prints of Bhupinder Singh with lifted chance prints found on liquor bottle in the car clearly show that Bhupinder Singh was present in the car at the time of crime.

8. On the other hand, the learned Counsel appearing for the respondent has submitted that insofar as the disclosure statement of the respondent is concerned it is not admissible in evidence as nothing has been recovered at the instance of the respondent, which may establish that either respondent committed intercourse with the deceased Lucy or committed her murder.

9. Insofar as the extra judicial confession made to Sh. Anand Thukral, it is submitted that the said statement is only against Ajay Luthra and the said extra judicial confession is not admissible against the petitioner unless and until there is any other corroborating evidence.

10. Moreover, the statement made by Anand Thakural is again a hearsay statement based upon the information given by accused Ajay Luthra to him relating to the role of the respondent which is as follows:

On my asking as to why you did the Murder of Lucy, Ajay Luthra replied and said that last night we had consumed too much of Alcohol and when he had asked Lucy for Sex, she was not agreeable for sex, on this I raped her. He further said Lucy, thereafter, threatened him with police complaint, on this Ajay Luthra in anger sat on the stomach of Lucy and pressed her mouth. Ajay Luthra has further told me that last night his friend Bhupinder @ Putli was also with him and at that time he was keeping a watch on the car and in the night he went back to house. Ajay Luthra further told me that he had left the dead body of Lucy in the car bearing No.HR-06B-6499 and had parked the car at Mahila Park Malkaganj, and thereafter he went back to his home.

11. A perusal of the statement shows that it is nothing else but is the information conveyed to Anand Thukral by Sh. Ajay Luthra, which is also part of his confessional statement and is inadmissible.

12. It is well established that when the confessional statement made by Ajay Luthra is itself not admissible a reference made by him in the extra judicial confession about the role of the respondent without there being any other substantive evidence qua the respondent, it cannot fasten the liability of the offence under Section 302 IPC against the respondent. Reference can be made to a judgment delivered by the Supreme Court in the case of State of Madhya Pradesh through CBI, etc. v. Paltan Mallah and Ors. : 2005 CriLJ918 also relied upon by the petitioner wherein it has been held that:

18. Another incriminating circumstance sought to be proved against the accused is the extra-judicial confession alleged to have been made by the ninth accused

Paltan Mallah wherein he named A-1, A-2, A-5 and A-6. It is alleged that he made the confession to PW 105 Satyaprakash Nishad and A-9 is alleged to have disclosed to PW 105 that these accused persons had given him money and he murdered Shankar Guha Niyogi for the sake of money. Under Section 30 of the Evidence Act, the extra-judicial confession made by a co-accused could be admitted in evidence only as a corroborative piece of evidence. In the absence of any substantive evidence against these accused persons, the extra-judicial confession allegedly made by the ninth accused loses its significance and there cannot be any conviction based on such extra-judicial confession.

13. Reference can also be made to other judgments in this regard: i) Abdulvahab Abdul Majid Shaikh v. State of Gujarat : AIR 2007 SC2492 ii) Akhlaq v. State of Uttar Pradesh : 2007 CriLJ2277 .

14. Having examined the matter thoroughly in the light of the circumstantial evidence relied upon by the petitioner, it is apparent that the evidence relied upon by the petitioner is inadmissible evidence and in any case is not sufficient which even if remains unrebutted can result in his conviction in the aforesaid case. Hence, I do not find any reason to interfere with the orders passed by the learned ASJ.

15. The revision petition is accordingly dismissed.