

Mintoo Shah Vs. State of Nct of Delhi

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Court : Delhi

Decided On : Apr-23-2002

Reported in : 97(2002)DLT962

Judge : B.A. Khan and V.S. Aggarwal, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 201 and 302

Appeal No. : Crl. A. Nos. 607 and 733 of 2001

Appellant : Mintoo Shah

Respondent : State of Nct of Delhi

Advocate for Def. : Ravinder Chadha, Adv.

Advocate for Pet/Ap. : Rajesh Mahajan, Adv

Disposition : Appeal allowed

Judgement :

V.S. Aggarwal, J.

1. By this common judgment, both the appeals (Crl. A. No. 607/2001 and Crl. A. No. 733/2001) can conveniently be disposed together. Both the appeal are directed against the common judgment of the learned Additional Sessions Judge, New Delhi and the order of sentence dated 3.1.2001 and 4.1.2001 respectively.

The learned Trial Court held the appellants guilty of the offences punishable under Sections 302 and 201 read with Section 34 of Indian Penal Code, They were sentenced to undergo imprisonment for life with fine of Rs. 500/- each for the offence punishable under Sections 302/34, IP.C and to undergo rigorous imprisonment for four years with fine of Rs. 500/- each for the offence punishable under Section 201/34, IPC In case of default of payment of fine, they have to further undergo rigorous imprisonment for six months on each count.

2. The facts of the prosecution case are that on 3.1.1997 at about 8.50 a.m. an information was received at Police Station Kapashera that a headless body was lying near Tandon Farm/Geeta Farm. On basis of this information, Daily Diary No. 11 was recorded at Police Station Kapashera. Copy was given to Sub-Inspector Lalit Mohan, who Along with certain members of police force went to the spot. Inspector Hanuman Dhan, the then Station House Officer of Police Station Nazafgarh also reached the scene. The dead body was found lying amongst bushes. It was of a female. The age of the deceased was assessed at 25-30 years, dark colour and slim body. The dead body was wearing chain of yellow metal and a black thread, besides a ring of yellow metal. There was one ear ring of yellow metal lying near the body on the ground. It appeared that the head of the dead body had been severed with the help of a sharp edged weapon. Four bangles of plastic, red in colour and two glass bangles of yellow colour, though in broken condition, had been lying around the body. When the area was searched, a white blue printed saree, blue blouse, white sweater, dark scarf and blue petticoat in torn condition, dark green shawl, one pair of footwear made of cloth were found lying. All these articles and footwears were converted into a parcel and were sealed. The clothes were blood stained.

3. The area around the place was searched. At that time, the drain was full of water, The S.H.O. had called for a pump to drain out the water. The body of deceased could not immediately be identified. A Rukka was prepared on basis of which formal First Information Report was recorded. The scene of incident was photographed. Rough site plan was prepared and blood was lifted from the earth, They were converted in to separate parcels and sealed and then taken into possession. The dead body was removed to the mortuary and was directed to be

preserved.

4. The water level in drain had gone down. On 4.1.1997 the severed head was found. The said scene of incident was again photographed. The identity of the deceased was established to be Renu Singh wife of Hari Mohan. It was identified by Shiv Nath Singh, who was Manager in Garment Exports firm. Renu Singh was stated to be working there. The dead body was also identified by Ram Narain Singh (father) and Umesh Kumar (brother-in-law) of the deceased.

5. The dead body and the severed head were subjected to post-mortem. The cause of death was found to be asphyxia and that the head was decapitated just after the death. It had been opined that the death had occurred 1 or 2 days before receipt of the dead body. It was confirmed that the head and the dead body were of the same individual.

6. It is the prosecution case that Chander Shekhar had gone to leave Renu at her residence when he met Krishan Gupta and Mintoo Shah. Sunder Lal, the landlord where the deceased was staying also found that both the accused were last seen with her. The house of Mintoo Shah was raided. Krishna Gupta was also found present. Both were arrested. They were interrogated. Disclosure statement was made and in pursuance thereto, a suit case with the name of Renu Singh on a sticker pasted inside containing her clothes was recovered. Mintoo Shah also got recovered one trouser and one printed shirt and a pair of hawai chappal. Appellant Krishan Gupta led the police party to a place 60-70 yards from the temple under construction in the area of jungle of Gram Sabha Kapashera and got recovered a knife with blade of 24.5 cm. The knife was converted into a sealed parcel and taken into possession vide a recovery memo. He also got recovered a pair pf glass with plastic frame. Dr. Sharma had opined that the decapitation injury on the person of the deceased could he caused by the knife.

7. The learned Trial Court had framed charges against the appellants for the offences punishable under Sections 302/201/34, IPC, to which both the appellants had pleaded not guilty and claimed trial.

8. The prosecution had in all examined twenty one witnesses. It was the case of the prosecution that appellant Krishan Gupta was working as a watchman in Vindyachal Farm, Kapashera. In August, 1996 Hari Mohan, younger brother of Shyam Bihar Singh had come and started living with his wife Renu Singh, deceased. The deceased had become friendly with Krishan Gupta, After 15 days, Hari Mohan shifted his wife to village Kapashera and started working as a watchman in the area of Vasant Kunj. Appellant Krishan Gupta used to secretly meet Renu Singh. Hari Mohan had fallen sick and returned to his native village but deceased did not go back with him. He got a tenanted accommodation for her in the house of Vijay Pal where both would meet. Later on, the landlord also got involved in the same relations with Renu Singh and he took another tenanted room in the house of Jai Lal, Krishan Gupta wanted to marry her with the result that Renu Singh deceased sent her daughter to native village. In other words, it is the prosecution case that she was a woman of easy virtues and did not change her habit of keeping relations with others despite objections of Krishan Gupta, which promoted him to commit the offence.

9. The learned Trial Court had considered the evidence and believed the evidence that deceased was last seen with, both the appellants and they got recovered the belongings of deceased besides the weapon with each. The head of deceased was decapitated and concluded, and that prosecution had proved the prosecution case beyond reasonable doubts. With, these findings, the above said conclusions were arrived, at. Hence the present appeals.

10. Learned Counsel for the appellant urged vehemently that the case of the prosecution rested totally on circumstantial evidence and the facts/circumstances to bring home the guilt have not at all been proved. Consequently it was contended that the learned Trial Court was not justified in recording the order of conviction. As against this learned Counsel for the State Counsel opposed the assertions by setting that the circumstances were so, established and there is no ground to interfere in the order of the learned Trial Court.

11. The principle, of law as to under what circumstances, a conviction of circumstantial evidence can be based has been well settled. One can refer to only

some of the precedents on the subject. In one of the earliest decisions of the Supreme Court in the case of Hanumant Govind Nargundkar and Anr., v. State of Madhya Pradesh, : 1953 CriLJ129 . The Supreme Court cautioned that there is always a danger with conjectures or suspicion may take place on legal proof. The circumstances may be consistent with only hypothesis that accused is guilty. The Supreme Court held:

'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 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.....'.

12. The same principle was reiterated in the case of Kedar Nath Bajoria and Anr., v. The State of West Bengal, : AIR 1954 SC660 , wherein the Supreme Court held that in cases based on circumstantial evidence each of the circumstances relied upon must be clearly established and proved circumstances taken together must be such as reasonably to conclude the probability of innocence. Identical was the view point expressed in Deonandan Mishra v. The State of Bihar, : 1955 CriLJ1647 , when the Supreme Court held :

'It is true that in a case of circumstantial evidence not 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 like this where the various links as stated above have been satisfactorily made out and the circumstances point to appellant as the probable assailant, with reasonable definiteness and in proximity, to the deceased as regards time and situation, and he offers Explanationn, which if, accepted, though not proved would of fords 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.'

13. In the case of Gambhir v. State of Maharashtra; : 1982 CriLJ1243 , following principles in this regard were provided :

'...When a case rests upon the circumstantial evidence, such evidence must satisfy three tests, (1) the circumstances from which on 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. The circumstantial evidence in order to sustain conviction must be complete and incapable of Explanationn of any other hypothesis then that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.....'

14. Identical was the view expressed by the Supreme Court in the case of State of U.P. v. Ashok Kumar Srivastava, : [1992]1SCR37 . From the aforesaid it is clear that the Court has to adopt a cautious approach and conviction can only be based when all links in the chain are complete pointing to the guilt of the accused and it must lead to the only hypothesis which would be against the innocence of the accused. If there are two reasonably possible views necessarily the view favorable towards the accused should be adopted. It is on these principles that the facts of the case have to be examined.

15. One important circumstance relied upon has been that the deceased had been last seen with the appellants. The prosecution had examined Chander Shekhar PW 10 to establish the said fact. During his statement on oath he took a complete somersault from his earlier statement recorded under Section 161, Code of Criminal Procedure and deposed that he knows nothing about this matter. When cross-examined by the Public Prosecutor he added that he does not know anything and his statement even had not been recorded. He stated that he did not know the deceased. He again resoled that he had told the police that on 1.1.1997

he was returning to his house and met Renu Singh on the way and that appellants were also seen by him. Cross-examination by the Public Prosecutor hardly yielded any good results and necessarily the statement of this witness has to be ignored to establish the said fact.

16. Reliance was strongly being placed on the testimony of Sunder Lal PW 2 who deposed that he had identified the clothes of the deceased. He further stated that on 1.1.1997 at 7.30 p.m. he had seen the deceased go with both the appellants near his plot at Udyog Vihar. The deceased was his tenant He identified the cloths of the deceased. During cross-examination he admitted that in his statement made to the police he had stated that Krishan Gupta, appellant had met him and not the other appellant. In this regard he was confronted with his statement made to the police where the name of Krishan Gupta was not recorded. This fact which was not recorded in his earlier statement cannot be termed to be an omission. It is clear improvement of his earlier statement. In that view of the matter it will be difficult to pin faith in his testimony so as to hold that the said fact had been so established because there is no other corroboration to it from any other evidence on the record. In its isolation it will not be sufficient to establish the guilt of the appellants.

17. Learned Counsel for the Public Prosecutor alleged that the knife as such was recovered in pursuance of the disclosure statement made by the accused/ appellant Kishan and that he got the same recovered from near the temple. However what cannot be ignored is an important fact that Dr. K.C. Sharma, PW 7 who conducted the autopsy on the mortal remains of the deceased had clearly opined that the death was due to asphyxia. In other words the weapon referred to was not used for causing the death of Mrs. Renu Singh.

18. Our attention was further being drawn to the fact that the recovery of the belongings of the deceased were also effected from the possession of the appellants in pursuance of their disclosure statement and this according to the learned Counsel was an important fact which establishes the guilt of the appellants but the evidence on the record indicate that recovery had been effected first, thereafter the disclosure statement had followed. This is apparent from the

statement of Ramnarayan Singh, PW 3, father of the deceased. In his own words the statement reads :

'.....Both the accused persons were arrested by the police and their personal search was conducted vide memo Ex. PW 3/B and C, which bear my signatures at points B and C. Beneath the clot of the accused, a box was lying, which was opened by the police in my presence and was found to be containing saree, blouse, petticoat and ear-rings which I identified to be of my daughter-Renu Singh, The disclosure statement of both the accused persons were recorded at their Jhuggi by the police in my presence, which bear my signatures and points D and E. The disclosure statement of accused-Krishan Gupta is Ex. PW 3/D and that of Mintoo Shah is Ex. PW 3/E.....'

19. The statement as recorded clearly indicates that the recovery had preceded the disclosure statement and it knocks the bottom of the very basis that in pursuance of the statement the clothes of the deceased were recovered from the possession of any one of the appellants.

20. The sequence of events thereforee clearly shows that the prosecution case fumbles and falters at each step. The circumstances set up to establish the guilt of the appellants have not been so established to permit the Court to hold that the appellants were last seen with the deceased. They were in possession of the clothes of the appellants or that any other material circumstances that they caused the death of the deceased. thereforee, the appellants must be held entitled to the benefit of doubt.

21. For these reasons both the appeals are allowed and the judgment and order of sentence are set aside. Appellants, if not required in any other case may be set at liberty.

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