

Bachubha Vs. Saurashtra State

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SooperKanoon Citation : sooperkanoon.com/732889

Court : Gujarat

Decided On : May-07-1953

Reported in : 1953CriLJ1723

Judge : Shah, C.J. and; Baxi, J.

Appellant : Bachubha

Respondent : Saurashtra State

Judgement :

Baxi, J.

1. This is a petition for a certificate under Article 134(1)(c) of the Constitution of India. The petitioner was convicted by the Sessions Judge, Central Saurashtra Division, of the offence of murder punishable under Section 302, I.P.C. and sentenced to death. The learned Sessions Judge made a reference to this Court for confirmation of the sentence, while the petitioner preferred an appeal against his conviction and sentence. We dismissed the petitioner's appeal and confirmed his sentence of death. The petitioner now applies for a certificate that the case is a fit one for appeal to the Supreme Court.

2. The facts upon which the petitioner has been convicted are shortly as follows. On 10.11.1951 the petitioner, who belongs to Navania in the Jalawad District, came to the Vada (a small open plot) of the deceased Ranmal, situated a little to

the west of the village Ridad in Central Saurashtra District, after sunset from the direction of the adjoining vadi of Ramji Bacher. Ranmal and Ms sons TapUj Ramji and Nanji were stacking fodder in the vada. The petitioner came flashing an electric torch and carried a gun and a 'thela' or bag. After a little chat with Ranmal, he returned towards Ramji's vadi, and a little thereafter, the sons returned to their respective homes for supper, while Ranmal went to his Khala (thrashing floor), which was to the west of Ramji's vadi. The petitioner then went to Ranmal's khala and sent him to the village for tea. Ranmal, who was messing with his son Ramji, came home and told him that the petitioner had come to the khala and had sent him to bring tea. Tea was accordingly prepared and put into a 'lota' (a brass pot) and Ranmal left for the khala with the lota and brass saucer. The petitioner and Ranmal then proceeded in company from the khala and the petitioner shot Ranmal dead in a field, which belonged to Soma Mangla.

The motive for the offence as made out by the prosecution, was that the petitioner wanted to join a gang of daccits headed by Rajput Bhupat Maruji, and in order to qualify himself for admission to the gang, he had to commit a murder with a gun. He therefore, placed two jasachithis (threatening letters) in a temple outside the village and two in the chora. One of the jasachithis placed in the choraj Ex. 26, declares his motive in very clear terms. The petitioner's visit to Ranmal's vada is proved by the testimony of Tapu, Ramji and Nanji, but there is no direct evidence of what happened after he left the vada. No one saw him and the deceased together either at the khala or at the scene of the offence; nor has any one seen him firing the shot, and nothing incriminating has been found on him. The evidence of what happened after the petitioner left Ranmal's vada is, thus, purely circumstantial. Similarly there is no direct evidence to Drove that the petitioner placed the jasachithis either at the temple or at the chora. It is not necessary to recapitulate, at this stage all the circumstances on which the conclusion of the petitioner's guilt is founded, and we shall refer to them later in their proper place.

3. As this Court is asked, under Article 134(1)(c) of the Constitution, to certify the case as a fit one for appeal to the Supreme Court, it has to be determined whether the petitioner has made out any ground upon which such certificate can be granted. In - K.S Nirmalkumarsinhji v. Saurashtra State AIR 1953 Sau 170 (A), we

held, after reviewing relevant case-law/ on the subject, that the test, to be applied by the High Court in granting a certificate of fitness under Article 134(1)(c), is not different from the one laid down by the Supreme Court in - Pritam Singh v. The State : 1950 CriLJ1270 , when granting special leave under Article 136 of the Constitution. In that case their Lordships laid down that generally speaking, the Supreme Court will not grant special leave to appeal in criminal cases, unless it is shown that exceptional and special circumstances exist that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against. Their Lordships further laid down that, though the Supreme Court was not bound to follow the principles of Privy Council too rigidly, yet some of these principles furnished a sound basis for invoking the discretion of the Court in granting special leave.

4. We shall now discuss the grounds urged on behalf of the petitioner in the light of the above principles. Mr. Kripalsinhji the learned Advocate for the petitioner, first contended that although the investigation was complete on 11.11.51 by 11 p.m., i.e. on the next day after the commission of the offence, the charge-sheet was submitted on 20.6.52, and this delay of more than eight months, in submitting the charge-sheet, was fatal to the prosecution and his client should have been acquitted. This ground, he submitted, raised a substantial question of law and justified the grant of the certificate. His next contention was about the admissibility of the first information report. Information of the offence was first given by Ranmal's son Keshu to the Police Patel at the Village Kerala at about 3 a.m. on 11.11.51. The Police Patel prepared a report, Ex. 20, addressed to the Officer in charge, Police Station at Padadhari. This report merely stated that the petitioner had killed the deceased with a gun in the western sim (outskirts) of the village, but gave no other details. Keshu and the Police Patel then proceeded to Sarapdad, where Nurnahmad, the head constable in charge of the police outpost there, recorded Keshu's information, Ex. 4. The Police Patel's report Ex. 20, was also handed over to him at that time. Exhibit 4 has been treated as the first information report in the case, though Ex. 20 was also admitted in evidence. Mr. Kripalsinh argued that the Police Patel's report Ex. 20, which was the information received first in time by the Police, should have been treated as the first information report

and Ex. 4 i.e. the information recorded later by the head constable Nurmahmad at Sarapdad, should not have been admitted in evidence; and as no details were mentioned in the Police Patel's report, that fact considerably detracted from the credibility of prosecution witnesses. His next ground for grant of the certificate was that the circumstances, from which the conclusion of the petitioner's guilt was drawn, were not fully established, and the evidence, on which they were held proved, was either tainted or otherwise unreliable, and in any event the circumstances were not incompatible with the petitioner's innocence. The petition states in detail the grounds on which these submissions have been based.

5. The petitioner's objection against the delay in submission of the charge-sheet has been discussed by us in our judgment in appeal where we held that the investigation was not over on the next day after the commission of the offence, as alleged by the petitioner. The petitioner was not apprehended on that date, and the gun and the bag, which he carried at the time of his visit to Ranmals' vada, were not yet traced. The petitioner was arrested on 28.5.52, and on 1.6.52 statements of prosecution witnesses Ravishanker, Ex. 10, and Kalu Vaja, Ex. 18, were recorded by the Deputy Superintendent of Police, Rajkot Division. On these facts, we held that the investigation was not complete till 1.6.52, and, therefore, there was no undue delay in submitting the charge-sheet. This is a finding of fact and a certificate cannot be granted on the ground that it is erroneous. Moreover, the petitioner has been convicted on evidence, which except the Handwriting Expert's evidence was gathered by 11.11.51, and it cannot be suggested that evidence, which might have been obtained by the police later, except of course the Handwriting Expert's evidence, played any part in influencing the Court's decision. There has, therefore, been no failure of justice by the delay in submitting the charge-sheet, and the question, whether the delay in submitting the charge-sheet should affect his conviction, becomes at best a question of law; but having regard to the facts stated above, it is not a substantial question of law, which might justify the grant of a certificate. In - Nirmalkumai's case (A) we held that a substantial question of law might arise if the law was not well settled, or where there was some doubt as to the principles of law involved. No such substantial question of law arises in this case.

6. Turning next to the question of the admissibility of Ex. 4 as the first information report, we held, after reviewing evidence that the information, received by the head constable Nurmahmad from Keshu, and recorded by him in Ex. 4, was received by him first in point of time, and was properly admitted as the first information report. The question, thus, resolves itself into one of fact and in any event improper admission of evidence does not justify the issue of the certificate see - Jagdhari Koeri v. Ambika Singh .

7. We shall now take up the petitioner's next objection, viz., that the circumstances proved against him were not sufficiently established. They may be summarised as under. (After summarising these facts his Lordship proceeded). All these facts, we held proved by evidence it is urged that the evidence by which these circumstances are proved is either tainted or is otherwise untrustworthy, and the case may, therefore, be permitted to go to the Supreme Court. But in - Pritam Singh's case (B) it was laid down by their Lordships, that it would be opposed to all principles and precedents, if the Supreme Court were to constitute itself into a third Court of fact and, after weighing the evidence, comes to a conclusion different from that arrived at by the trial Judge and the High Court. In - Muhammad Nawaz v. Emperor (D), the Privy Council held that the Judicial Committee was not a revising Court of criminal appeal, that is to say, it was not prepared or required to retry a criminal case, and did not concern itself with the weight of the evidence, or the conflict of evidence or with inferences drawn from evidence, or with question as to corroboration or contradiction of testimony, or as to whether there was sufficient evidence to satisfy the burden of proof.

In - Suka v. The King AIR 1950 PC 72 (E), it was laid down that where there was evidence, upon which the trial Court could find the appellant guilty of the crime with which he was charged, though another tribunal might have come to a different conclusion upon it the Privy Council would not interfere. In - Lachhman Singh v. The State : 1952 CriLJ863 , it was held by the Supreme Court that it was not its function to reassess evidence, and an argument on a point of fact, which did not prevail with the Courts below, cannot avail the appellants in the Supreme Court. In - Raja Ram v. State : AIR1953 All133 , it was held that a question, as to the weight to be attached to the evidence of witnesses on record in a criminal case, cannot

be deemed to be sufficient ground for allowing leave under Article 134(1)(c). These decisions clearly establish that the Supreme Court will not enter into questions of fact decided on appreciation of evidence by the Courts below. When therefore, the trial Court and the High Court, in appeal, concurrently hold, after appreciating evidence on record, that the circumstances alleged by the prosecution are proved, a certificate cannot be granted on the ground that the appreciation of evidence was erroneous. The petitioner's contention, therefore, that the circumstances found against him have not been proved by evidence cannot avail him.

8. It was next urged that the circumstances were not incompatible with the petitioner's innocence. The principles, which should guide the Court in drawing conclusions from circumstantial evidence, have been laid down by the Supreme Court in - *Hanumant Govind v. State of Madhya Pradesh* : 1953 CriLJ129 . We followed these principles in deciding the appeal, and held that the circumstances proved against the petitioner showed that he first placed the *jasachithis* declaring his intention of committing a murder, that he visited *RanmaPs vada* and later his *Khala* and from there took the deceased to the scene of the offence. We also concluded that the similarity of the prints of shoes at the place where the *jasachithis* were placed and of the prints, which were found to emerge from the *Khala* to the scene of the offence, showed that the petitioner must have committed the murder, for it was not probable that the *jasachithis* could have been left by him and the murder committed by someone else wearing similar shoes or vice versa. These conclusions resolve themselves into questions of fact and we would not be justified in granting a certificate on the ground that they are erroneous. The petition is therefore ordered to be dismissed.

Shah, C.J.

9. I agree.