

Ramchandra Vs. State of Rajasthan

Ramchandra Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/757731

Court : Rajasthan

Decided On : Jan-23-2006

Reported in : RLW2006(3)Raj1828

Judge : Shiv Kumar Sharma and; Shashi Kant Sharma, JJ.

Acts : Indian Penal Code (IPC) - Sections 201 and 302; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : D.B. Criminal Appeal No. 617 of 2002

Appellant : Ramchandra

Respondent : State of Rajasthan

Advocate for Def. : Ashwini Kumar Sharma, Public Prosecutor

Advocate for Pet/Ap. : Dharamveer Tholia and; Sunil Meel, Advs.

Disposition : Appeal allowed

Judgement :

Shiv Kumar Sharma, J.

1. Ramchandra, the appellant herein, was charged for having committed murder of Ram Karan before learned Additional Sessions Judge, Sambharlake District Jaipur, who convicted and sentenced the appellant under Section 302 IPC to

suffer life imprisonment and fine of Rs. 5000/-, in default to further suffer three months rigorous imprisonment.

2. It is the prosecution case that on May 09, 1999, at 10 AM Ganga Ram, (PW-8) father of Ram Karan (deceased) submitted a written report (Ex. P-21) Bihari Lal, Sub Inspector (Pw.27) at Camp Khatiyon ki Dhani Mehand was, with the averments that his son was employed by Mangal ji Contractor on his Truck No. RRM 2137 for unloading Bajri (sand). Ramchandra (appellant) was the driver on the said truck. In the morning Ramdev, father in law of Ram Karan, informed him that Ram Karan was lying dead near the truck. On reaching the spot he found that somebody had killed Ram Karan and put the dead body near the truck. Informant Ganga Ram further stated that he had full suspicion that the crime would have been committed by Ram Chandra Driver. On that report a case under Section 302/201 IPC was registered, report was forwarded to Police Station Phagi, where formal FIR was drawn and investigation commenced. Dead body was subjected to post mortem, statements of witnesses were recorded, the accused was arrested, necessary memos were drawn and on completion of investigation charge sheet was filed. In course the case came up for trial before the learned Additional Sessions Judge Sambharlake, District Jaipur. Charges under Sections 302 and 201 IPC were framed. The appellant denied the charges and claimed trial. The prosecution in support of its case examined as many as 26 witnesses. In the explanation under Section 313 cr.p.c. the appellant claimed innocence and stated that he was falsely implicated in the case. Because of bad weather and storm he got the truck halted by the road side near Mehand was. He himself had slept inside the truck and the deceased slept on the sand over the truck, when he woke up in the morning he found the deceased lying dead on the road near the truck. He did not kill the deceased. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. We have given our thoughtful consideration to the submissions advanced before us and scanned the material on record.

4. Death of deceased Ram Karan was indisputably homicidal in nature. As per postmortem report (Ex.P-19) he received as many as 10 injuries including fractures of Rt. parietal, Rt. temporal of skull, Rt. maxillary fosa of face, Middle cravial fossa and Lt. 4th and 5th ribs. In the opinion of Dr. Radha Kishan (Pw.19) the cause of death was common and respiratory destror caused by severe head injury and the injury to left lung.

5. There, is no eye witness of the occurrence and the case of prosecution rests on the circumstantial evidence. As per the impugned judgment of learned Trial Court following circumstances were found established against the appellant:

(i) In the intervening night of May 8 and 9, 1999 the appellant and deceased were together.

(ii) In the very next morning dead body of the deceased was found lying near the truck of which the appellant was the driver.

(iii) On May 8, 1999 the deceased and appellant consumed liquor together.

(iv) The appellant neither informed anybody about the incident nor lodged report with the police station. Thus the conduct of the appellant after the incident was unnatural.

(v) On the basis of disclosure statement of appellant wooden stick, allegedly used in commission of offence, got recovered.

(vi) The appellant had a motive to kill the deceased. The deceased used to raise objection about illicit relations of appellant with Bagaria's women and the appellant did not like that intervention.

(vii) The appellant gave false explanation about the incident.

6. Very often, circumstances which establish the commission of an offence in the abstract, are identified as circumstances which prove that the accused is guilty of the crime imputed to him. As a priori suspicion that the accused has committed the crime, transforms itself into a facile belief that it is he who is guilty. Therefore in a case which depends wholly upon circumstantial evidence, the circumstances must

be of such a nature as to be capable of supporting the exclusive hypothesis that the accused is guilty of the crime of which he is charged. The circumstances relied upon as establishing the involvement of the accused in the crime must clinch the issue of guilt.

7. Coming to the evidence adduced in the case we notice that Jagdish (Pw.5), Ganesh (Pw.6), Nand Kishore (Pw.11) and Suraj Mal (Pw.20) who were labourers, deposed that on May 8, 1999 the deceased and appellant were together and both had consumed liquor. Informant Ganga Ram (Pw.8), father of deceased, in his deposition stated that appellant had motive to kill the deceased. The appellant had illicit relationship with Bagaria's women and the deceased used to oppose the act of appellant in visiting Bagaria's women. It is for this reason that the appellant had killed the deceased. Mangal Chand (Pw.9) owner of truck deposed that appellant told him that truck had met with accident but afterwards he came to know that no accident did ever occur. Ramu (Pw.2) stated that appellant came to him at 6 AM and told him to drop him to Phagi as his truck met with an accident. He then asked his younger brother Hanuman to drop appellant on Motor Cycle.

8. In this back drop we have to adjudge as to whether the instant case, which rests on circumstantial evidence, satisfies following necessary tests:

(i) whether the circumstances are cogently and firmly established;

(ii) whether the circumstances are of a definite tendency unerringly pointing towards the guilt of the appellant;

(iii) whether the circumstances, taken cumulatively, form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the appellant and none else.

9. Having carefully scanned the evidence adduced at the trial, we notice that the appellant and the deceased were together on the truck on May 8, 1999 and in the very next morning the deceased was found lying dead on the road by the side of the truck. The appellant in his statement under Section 313 Cr.P.C. admitted this fact that the deceased was with him on May 8, 1999 and in the intervening night of

May 8 and 9 while he had slept inside the truck, the deceased slept over the truck on Bajri (sand). Next morning when the appellant woke up he found dead body of deceased lying on the road by the side of the truck. The fact that the appellant and the deceased were together on the truck prior to the death of deceased, by itself does not lead us to infer that it was the appellant who had killed the deceased. In *State of U.P. v. Satish* : 2005 CriLJ1428 , their Lordships of Supreme Court indicated that last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when 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 the accused and the deceased were last seen together, it would be hazardous to come to conclusion of guilt in those cases. Circumstances of last seen together alone would not be sufficient to establish the guilt of the accused particularly when there is no proof of motive. In a case rests on circumstantial evidence, if a motive has been relied upon as a circumstance it has to be proved beyond reasonable doubt. In the instant case as already noticed Ganga Ram (Pw.8), father of deceased, was examined to establish motive of appellant behind killing of his son. According to Ganga Ram, his deceased son used to oppose illicit relations of appellant with Bagaria's women, therefore the appellant, who did not like intervention of his son killed him. We do not find any basis of this statement and except this vague statement there is no other evidence to prove the circumstances of motive. In view of the fact that no evidence of illicit relationship of appellant with Bagaria's women was adduced by the prosecution and the appellant and the deceased continued to work together on the truck and their relations were cordial, we are of the view that the prosecution has failed to establish any motive for the offence.

10. We find ourselves unable to agree with the observation of learned Trial Court that the conduct of appellant in not informing anybody about the incident, was unnatural in view of the statement of Ram Ratan (Pw.24), who categorically stated that the appellant came to him in the morning and informed that when he

(appellant) woke up in the morning he found his Khalasi (deceased) who slept in the night on the truck lying dead. Despite the fact that the evidence of Ram Ratan supported the defence version, he was not declared hostile. In view of the testimony of Ram Ratan we find that the appellant had not given false explanation in his statement under Section 313 Cr.P.C. The evidence of Ram Ratan is binding on the prosecution and the appellant can use it in support of his defence version. A similar question came up for consideration before the Supreme Court in Raja Ram v. State of Rajasthan JT 2000 7 SC 549. In that case, the evidence of Doctor who was examined as a prosecution witnesses showed that the deceased was being told by one that she should implicate the accused or else she might have to face prosecution. The doctor was not declared hostile. The High Court however, convicted the accused. Their Lordships of the Supreme Court held that it was open to the defence to rely on the evidence of the doctor and it was binding on the prosecution.

11. Coming to the circumstances of recovery of wooden stick, we find that the disclosure statement of appellant, about one wooden stick was incorporated in memo Ex.P-40 on May 11, 1999, but strangely recovery of two wooden sticks was made vide memo Ex P-12. Motbirs of recovery Kailash (Pw.14)and Ram Lal (Pw.15) however did not support the said recovery. Kailash (Pw.14) in his cross examination deposed that wooden sticks were not recovered in his presence. Despite the fact that Kailash did not support the prosecution case, he was not declared hostile. Ram Lal (Pw.15) also did not toe the prosecution line and stated that wooden sticks were not recovered in his presence. Ram Lal was however declared hostile. In view of the fact that motbirs of recovery have not supported the seizure of wooden sticks, we are of the view that this circumstance has also not been established.

12. It also appears that the Truck No. RRM 2137 was seized by the investigating officer on May 9, 1999 vide recovery memo (Ex.P-18) and taken to the Police Station. Thereafter recovery of a sum of Rs. 1400/- at the instance of appellant was effected from the driver seat of the truck vide memo Ex.P-39 on May 10, 1999 in the presence of police constables Bhagirath Prasad and Om Prakash. This recovery does not inspire confidence.

13. We are thus of the view that the circumstances from which an inference of guilt of appellant was drawn by the learned Trial Court are not cogently and firmly established. The circumstances so considered do not of a definite tendency pointing towards the guilt of the appellant and having taken cumulatively they do not form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the appellant and none else.

14. For these reasons, we allow the appeal and set aside the impugned judgment dated April 24, 2002 of learned Additional Sessions Judge Sambharlake, District Jaipur. We acquit the appellant Ramchandra of the charge under Section 302 IPC. The appellant, who is in jail, shall be set at liberty forthwith if not required to be detained in any other case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com