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Subh Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-14-1995

Reported in : 1996CriLJ1413

Judge : N.K. Jain and; Gopal Lal Gupta, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 302 and 404; Code of Criminal Procedure (CrPC) - Sections 299 and 313

Appeal No. : Criminal Jail Appeal No. 142 of 1991

Appellant : Subh Ram

Respondent : State of Rajasthan

Advocate for Def. : S.M. Singhvi, Public Prosecutor

Advocate for Pet/Ap. : H.S.S. Kharlia, Adv.

Disposition : Appeal allowed

Judgement :

Gopal Lal Gupta, J.

1. This jail appeal has been preferred by Subh Ram against his conviction under Section 302 I.P.C. and sentence of imprisonment for life and fine of Rs. 500/- recorded by the learned Sessions Judge, Churu vide Judgment dated 3-4-1991.

2. The occurrence took place on 17-6-87 in village Dhani Alayla in which two persons Smt. Kamla (28) and her daughter Km. Guddi (6 months) lost their lives. The prosecution case is that the accused Sub Ram husband of Mst. Kamla and father of Km. Guddi had caused their death by inflicting Gandasi blows. The first information report was lodged by Ram Nath(PW-l), father of accused on 18-8-87 in which it was stated that Subh Ram reached his Dhani at about 8.00 AM on 17-6-87 and in the evening Ramnath came to know about the murder of Mst. Kamla and Guddi. On this report a case under Section 302 I.P.C. was registered in Police Station Taranagar. After completion of the investigation, the police submitted the challan. Charges under Sections 302,404 I.P.C. were framed against accused Subh Ram. He pleaded not guilty.The prosecution examined Ramnath (PW-1), Dhaii Singh (PW-2), Jaikaran (PW-3), Kirta Ram (PW-4), Dr. Hanuman Singh (PW-5), Kashi Ram (PW-6), Jamna (PW-7), Banwarilal (PW-8), Jamna Ram (PW-9), Bhadar Ram (PW-10), Bhanwar Lal (PW-11), Ami Chand PW-12), Mali Ram (PW-13), Ramavtar (PW 14), Mange Ram (PW-15) and Kami Singh (PW-16). Accused in his statement recorded under Section 313 Cr. P.C. stated that the witnesses have given false statements. He denied the recovery of Gandasi at his instance. His version is that he wanted to have the field where the occurrence is said to have taken place and that his brother and nephews did not like that he should get that field and because of that enmity he has been falsely implicated in this case. Accused examined Dhula Ram (DW-1) and Mala Ram (DW-2) in defence. The learned Sessions Judge after hearing the arguments of both the parties, acquitted the accused under Section 404 I.P.C. but convicted him under Section 302 I.P.C. and sentenced as above.

3. We haave heard the arguments of learned counsel for the appellant and learned Public Prosecutor, appearing for the State-respondent. It is not in dispute that Kamla and Guddi had sustained injuries by sharp edged weapon and had met homicidal death.

4. Learned counsel for the appellant has vehemently contended that there could not be any motive for the appellant to murder his wife and daughter and that no direct evidence has been produced in the case and the circumstances which have been relied upon by the prosecution are not proved on record. As against this, Mr.

Singhvi, has submitted that he behaviour of the accused towards his family members was not normal and that accused remained absconded for considerable period and, therefore, the learned trial Court has rightly convicted the appellant, on the basis of circumstantial evidence produced in the Court.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the record of the case. There is no direct evidence and the case hinges on circumstantial evidence. It is the cardinal principle of law that in a case resting on circumstantial evidence, it should be such, which excludes every other hypothesis, other than the guilt of the accused and the circumstances upon which such conviction is sought to be based should be of conclusive character in the sense that they should be incapable of any other explanation and must be totally incompatible with the innocence of the accused. In other words, unless the chain of evidence inexorably leads to the conclusion that it is the accused and accused alone, who has committed the crime, it will be obviously unsafe to convict him. The learned Sessions Judge has based the conviction of the accused on the following circumstances :-

1) the behaviour of the accused towards his wife and daughter was not good;

2) 'Gandasi' was recovered at the instance of the accused and it was stained with same group of blood which was that of the deceased;

3) the accused remained absconded for about 15 months.

We now take-up the circumstances one by one.

BEHAVIOUR OF THE ACCUSED

6. Jamna (PW-7) who is father-in-law of the accused has deposed that 5 years before his statement was recorded, the accused had taken his daughter Kamla to village Abohar, but left her at busstand, Abohar and took away his son Mahendra and thereafter he was not traceable for 5 years. He has further deposed that Mahendra could be traced with great difficulty, but when Subh Ram returned, he told that the boy present in the home was not Mahendra. He has further deposed that Kamla used to tell him that the accused quarrelled with her and harassed her.

On this fact, Banwari Lal (PW-8) brother-in-law of the accused has deposed that Kamla told him that she was anticipating some trouble from her husband and she thought thaat the accused would kill her with 'Kulhadi.' He has further deposed that prior to that accused had taken Kamla to Abohar, but left her and went away. He has further deposed that Mahendra, his nephew was also taken by the accused and for 5 years, he could not be traced.

7. It has come in the cross-examination of Jamna (PW-7) that there were no differences between Kamla and the accused and that she was happy while living in her in-laws house. These facts which have appeared in the cross-examination of Jamna (PW-7), clearly show that the deceased and accused were living happily. From the incident which is said to have taken place 5 years before the statement of Jamna was recorded, no inference can be drawn against the accused. It may be that the accused had left Kamla at Abohar bus stand and went away for some work, but by this fact, it cannot be said that he had misbehaved with Kamla. From this fact that the accused refused to accept the boy, who was at the house of Jamna, as Mahendra, also no inference can be drawn against the accused. It is evident that Mahendra was not traceable. The possibility that the accused himself remained in search of the boy for 5 years cannot be ruled out. The fact that he did not accept the boy as Mahendra does not go against him. He being the father was the best person to identify the son. Be that as it may, there might be some incident before 5 years, but by that incident'it cannot be inferred that the accused did not behave properly with his wife and the daughter. As regards the statement of Banwari Lal (PW-8) that two years before his statement was recorded. Kamla told that she was apprehending some trouble and that she would be killed with 'Kulhadi,' it may be stated that this important fact is not stated by Jamna who is father of deceased. If Kamla had told Banwari Lal about the risk to her life, he would certainly have informed about it to his father. When Jamna does not say about this fact, it cannot be believed that Kamla had told Banwari about the risk to her life. It may be stated here that according to Banwari Lal (PW-8), for the last 2-3 years the accused was visiting his house and in 2-3 years, Kamla did not compain against the accused. Banwari Lal has admitted in clear terms that Kamla did not tell about the quarrel with her husband. It is thus clear that there is no convicting evidence on record to hold that the behaviour of the accused towards the wife and

daughter was not good. The learned trial Judge has not properly appreciated the evidence and only on the basis of some lines appearing in the examination-in-chief of the witnesses held that the accused did not behave properly with his wife and daughter. As a matter of fact there is absolutely nothing on record to believe that the accused was not happy with his wife or daughter and he used to harass them. Thus the first circumstance relied on by the prosecution was not proved on record.

8. Coming to the second circumstance i.e. the recovery of Gandasi at the instance of accused, it may be stated that two motbirs Banwari (PW-9) and Bhadar Ram (PW-10) have not supported the recovery. They have deposed that the accused did not get the 'Gandasi' recovered from his house in their presence. PW-9 Banwari had further deposed that police had got the signatures on certain papers in the Police Station PW-10 Bhadar Ram has deposed that the police did not prepare any paper in his presence, but got the thumb impression on certain papers. Thus recovery of 'Gandasi' at the instance of the accused is not proved by independent witnesses, produced in the case.

9. Kashi Ram (PW-6) who is Investigating Officer has deposed that accused had given himthe information Ex.P-10 and thereafter he recovered the 'Gandasi' from the hut situated in the 'Dhani', A perusal of the site inspection memo Ex.P.12 shows that out from which the 'Gandasi' is said to have been recovered was seen by the then Investigating Officer Bhanwar Lal Sharma (PW-11). It is not clear as to why this 'Gandasi' which was lying in the hut was not noticed by Shri Bhanwar Lal on 18-6-87 when he inspected the site. In this hut, old and unserviceable things were lying. The recovery memo Ex.P-11 does not show that 'Gandasi' was lying wrapped in some cloth or in hidden position. It was lying on the back side of wooden logs and it was not difficult for Investigating Officer to have noticed its presence there.

10. In this connection it is relevant to state that in the first information report Ex.P-1, it was stated that murder was committed by 'Gandasi.' This fact could be stated by Jai Kishan only in two circumstances; (i) he had seen the occurrence himself (ii) he saw 'Gandasi' lying near dead body. Jaikaran has not deposed that he had seen the accused inflicting 'Gandasi' blows to the deceased and, therefore, the

only second alternative remains i.e. Gandasi was lying at the place of occurrence when Jaikaran saw the dead bodies of Kamla and Guddi lying there. It appears that the Gandasi was lying at the spot and the police in order to implicate the accused has shown this recovery at his instance. As already stated the independent witnesses have, not supported the recovery of 'Gandasi' at the instance of the accused. It is also noteworthy that in the FSL report Ex. P-21, reference of FIR No. 84/88 has been made whereas the case pertains to FIR No. 88/87. It may be stated here that even Ramavtar (PW-14) who had taken the Malkhana items to the FSL, has deposed that he had taken the Malkhana items of FIR No. 84/88. It was the duty of the public prosecutor to have got the matter clarified. Since it has not been done, it is difficult to use the FSL report Ex.P-21 to convict the accused.

11. Now we switch over to the third circumstance which is to this effect that the accused remained absconded. On this point, the prosecution has examined Kashi Ram PW-6 who has deposed that he had submitted challan against accused under Section 299 Cr. P.C. as he was absconding. In our opinion, the factum of absconding has not been properly established on record. The prosecution has not examined a single witness to depose that he had made a search of the accused in the Dhani or in village Barasar or other place; where the accused could be found. The warrants which were issued for the arrest of accused have not been proved on record.When there is no evidence on record to prove that accused was not available at the possible places, it could not be held that he had absconded. In this connection, it is relevant to state that according to Ram Nath (PW-1), the accused used to serve in the FC1. There is no evidence on record to prove that any person had gone to the place of posting of the accused. There is also no evidence on record that the accused did not attend Office during that period. It has come in the evidence that the accused was in the habit of not visiting his home for about 5 years. He had earlier also not come to his village for a considerable long period, as is evident from the statement of Jamna. That being so, the fact that accused did not come to see his wife and daughter for sometime, it cannot be inferred that he had absconded. Simply bringing this fact on record that challan under Section 299 was filed against accused, was not sufficient. It was the duty of the prosecution to prove by cogent and convincing evidence that efforts were made to locate the

accused and he was not found at the possible places. It has not been done.

12. It is thus clear that trial Judge has committed grave error in relying on the three circumstances against the accused. All the three circumstances relied on by the prosecution are not proved on record. Apart from this, if we go through the evidence which is contained in the statements of Jaikaran (PW-3) and Kirta Ram (PW-4), it transpires that they have not deposed the whole truth. By their statements, it appears that the occurrence took place on 16-6-87; whereas the prosecution case is that the murder had taken place on 17-6-87. It has come in the statement of Jai Karan (PW-3) that the marriage at Barasar took place on 14-6-87 and that on 15-6-87 he Kamla and Guddi had gone to Dhani and the accused also reached there, on the next date i.e. 16-6-87 and that on the same day, Kirta Ram informed him in the evening that Kamla and Guddi had been murdered. In the police statement Ex.D-2 also, the date of occurrence was stated to be 16-6-87. However, the prosecution case as set up is that the accused had gone in the Dhani on 17-6-87 and he' had committed murder on that date. It may be stated here that even Ramnath (PW-1) has deposed that Kamla and Guddi had gone to Dhani on 15-6-87. He did not state before the police that they had gone there on 16-6-87. It is thus evident that Kamla and Guddi had gone to their Dhani on 15-6-87, and according to Jai Karan and Kirta Ram on the second day the accused had reached there, that means he reached there on 16-6-87. Both the witnesses have deposed that in the evening of 16-6-87, they came to know about the murder of Kamla and Guddi.Thus according to them, the occurrence had taken place on 16-6-87. If we look into the medical evidence contained in the statement of Dr. Hanuman Singh (PW-5) who has conducted post-mortem examination of Kamla and Guddi, it transpires that both Kamla and Guddi had died in the morning of 17-6-87. It has, therefore, to be held that the statements of Jai Kishan and Kirta Ram, that they had seen the accused in the Dhani and he had sent them from there on one or the other pretext and Kirta Ram reached Dhani on the same evening to find the dead bodies of Kamla and Guddi, are not true.

13. The case for the accused is that there was some dispute regarding the field between the brothers and his father was siding his brothers, and hence he has been implicated in this case. As already stated, in a case resting on circumstantial

evidence, it should be such, which excludes every other hypothesis, other than the guilt of the accused. In this case the possibility that someone else might have committed murder of Kamla and Guddi and the accused even did not reach the Dhani, cannot be ruled out. As already stated the relations of Kamla and accused were not strained and there could not be any motive for the accused to have caused the death of his wife and his daughter. It is true that the murder has taken place in 'Dhani' belonging to accused-appellant, but there is no evidence on record that the accused had reached the Dhani when the murder was committed. It has come in evidence that the accused used to be out of his home even for 5 years. Therefore, simply because the occurrence took place in the Dhani of the accused, it cannot be inferred that the accused is the perpetrator of crime. Even if we accept the prosecution version that accused did not visit his Dhani for about 14-15 months after the occurrence, then also it cannot be the determining factor to hold that he had committed murder particularly in the context that the accused was in the habit of not coming to his village for years together. Their Lordships of Hon'ble Supreme Court in the case of Rajinder Singh v. State of Punjab : 1992 CriLJ2320 have observed as follows (Para 13) :

'The abscondance of the accused relied upon by the High Court remains of no consequence. In the first place it is not a determining factor and not one which could outweigh the other material appearing on the record. It by itself does not establish guilt of the appellant beyond reasonable doubt.'

14. In the backdrop of above circumstances, there is no hesitation in holding that the prosecution has not been able to establish the guilt against the

accused beyond all reasonable doubts. It may also be stated here that the prosecution had also relied on the circumstance that the accused had removed the ornaments worn by .Kamla, but the trial Court has not found this circumstance proved.

15. As a result of the foregoing discussions, we are constrained to hold that the prosecution has miserably failed to bring home the guilt of the accused beyond all reasonable doubts. The learned trial Court has erred in convicting the appellant in this case. The appellant is entitled to be acquitted.

16. Consequently, we allow this appeal, set aside the conviction and sentence of the appellant and acquit him of the offence under Section 302 I.P.C. He is in jail. He shall be released forthwith, if not required in any other'case.

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