

Sandeep Thakran Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-20-2006

Reported in : RLW2006(4)Raj2709; 2006(2)WLC197

Judge : Shiv Kumar Sharma and; Vineet Kothari, JJ.

Acts : [Identification of Prisoners Act, 1920](#) - Sections 3, 4 and 5; Indian Penal Code (IPC) - Sections 201, 302 and 394; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : D.B. Criminal Appeal No. 1301 of 2002

Appellant : Sandeep Thakran

Respondent : State of Rajasthan

Advocate for Def. : Ashwini Kumar Sharma, Public Prosecutor

Advocate for Pet/Ap. : A.K. Gupta,; Rinesh Gupta and; Alka Bhatnagar, Advs.

Disposition : Appeal allowed

Judgement :

Shiv Kumar Sharma, J.

1. Though the offence for which Sandeep Thakran and Pradeep Kumar, the appellants herein, have been charged, is gruesome and revolts the human

conscience but it is to be seen whether the prosecution is able to bridge the gap between 'may be true' and 'must be true' by clear, cogent and unimpeachable evidence before condemning the appellants guilty. The appellants who were placed on trial before learned Special Judge (Fake Currency Notes Cases), Jaipur City, Jaipur were convicted and sentenced as under-

Under Section 302 IPC:

Each to suffer life imprisonment and fine of Rs. 2500/-, in default to further suffer six months simple imprisonment.

Under Section 394 IPC:

Each to suffer rigorous imprisonment for five years and fine of Rs. 1500/-, in default to further suffer three months rigorous imprisonment.

Under Section 201 IPC:

Each to suffer rigorous imprisonment for three years and fine of Rs. 1000/-, in default to further suffer two months rigorous imprisonment.

Substantive sentences were directed to run concurrently.

2. The prosecution case is as under:

On September 03, 1999, Jeewan Singh, Sub Inspector, (PW-1) submitted a written report (Ex. P/2) at Police Station Gandhi Nagar, Jaipur stating therein that he around 2 a.m. while patrolling in the jeep with Constable Mangal Chand reached near Shakti Stambh at Mangal Marg; found one person lying on the road having injuries on the neck, left temporal region and head caused by sharp edged weapon. The person had already died. A case under Sections 302 and 201 IPC was registered and investigation was taken up. Pocket diary, visiting card and Driving licence got recovered from the clothes worn by the deceased. In course of the investigation it was revealed that name of deceased was Satveer who resided in delhi and serving as driver on Maruti Car No. DL6CE/3962. The I.O. asked all the nearby police stations to remain alert and got success in nabbing the appellants. Autopsy on the dead body was performed, Maruti Car got recovered,

chance finger prints were taken up from the mirrors of the card and on completion of investigation charge-sheet was filed. In due course the case came up for trial before the learned Special Judge (Fake Currency Notes Cases) Jaipur City, Jaipur. Charges under Sections 302, 201 and 394 IPC were framed. The appellants denied the charges and claimed trial. The prosecution in support of its case examined as many as 30 witnesses. In the explanation under Section 313 Cr.P.C., the appellants claimed innocence and examined one witness in defence. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. In the absence of any eye-witness to prove its case the prosecution relied upon the following s to connect the two appellants with the offences alleged against them:

(i) Satveer was driver of Maruti Car No. DL6CE/3962 which was hired by two persons aged 18-19 years on September 2, 1999 around 11 a.m. and all the three came from Delhi to Jaipur in the said card.

(ii) Satveer was found dead near Kanodia College Jaipur at 2 a.m. on September 3, 1999 and his death was homicidal in nature.

(iii) Maruti Car No. DL6CE/3962 found standing lonely at a distance of 2 k.m. from Manoharpur on Jaipur Delhi Highway, got seized on September 3, 1999. Sports of blood were seen inside and outside the Card.

(iv) Appellants were arrested on September 3, 1999 and knives allegedly used in commission of offence got recovered at their instance.

(v) At the time of arrest when the personal search of appellant Sandeep was effected, driving licence of deceased was found in the purse. Sandeep was holding a bag that contained a Tape-recorder. Handkerchief stained with blood also got recovered from his pocket. The clothes worn by Sandeep were also found stained with blood.

(vi) Finger prints of appellants Sandeep and Pradeep were found on Maruti Card No. DL6CE/3962.

4. On consideration of the evidence adduced by the prosecution in proof of the above circumstances the trial Court held that it succeeded in establishing each of them and as according to the trial Court, those circumstances considered together unerringly pointed to the guilt of the appellants.

5. We have heard learned Counsel for the parties.

6. It is not in dispute that Satveer met with a homicidal death at Jaipur in the night intervening September 2 and September 3, 1999. It is also not in dispute that Satveer was driver on Maruti Car No. DL6CE/3962 that was hired from Delhi by two persons aged about 19 years and Satveer came with those two persons to Jaipur. We, therefore, instead of dilating on the above aspect of the case, proceed to consider whether the findings of the learned trial Court that the prosecution succeeded in proving that each of the appellants had a role to play in the commission of the aforequoted crime, can be sustained or not.

Recovery of Driving Licence:

7. To prove the role of the appellant Sandeep, the prosecution relied upon recovery memo (Ex. P/47) of driving licence of deceased Satveer found in the possession of Sandeep at the time of his arrest. Strangely how the driving licence of deceased Satveer (which had already been recovered from the clothes worn by the deceased vide Ex. P/4 much prior to the arrest of Sandeep) could reach to the possession of appellant Sandeep. The prosecution is not able to explain as to how one driving licence could be found at two places. Recovery of driving license thus cannot be treated as incriminating piece of circumstantial evidence.

Finger Prints:

8. The other incriminating circumstance on the basis of which trial Court upheld the conviction of appellants is that their finger prints were found on the mirrors of the Maruti car. From the evidence adduced in proof of above circumstance it appears that the Photographer visited the crime scene on September 3, 1999 and took five chance-prints from the mirrors of Maruti Car NO. DL6CE/3962 and they were sent for comparison to the Finger Print Bureau. Opinion of Bureau (Ex. P/34)

reads as under:

Chance print photographs marked A,B,C,D & E have been examined and compared with the specimen ten digit finger and palm prints of two persons sent. The result of examination and comparison is as under:

I. Chance print photograph marked D is similar and identical with the specimen right ring Finger print photograph marked S of Pradeep Kumar. Both the prints are of whorl pattern and the following identical ridge characteristics are present at the same relative positions in both the prints:

1. Ridge end upwards is the starting point.
2. Ridge and upwards on north west of point No. 1 with 5 ridges intervening.
3. Bifurcation downwards on north east of point No. 2,
4. Ridge end towards right on north east of point No.3 with 1 ridge intervening.
5. Ridge end towards left on east of point No. 4.
6. Ridge end upwards on south east of point No. 5 with 3 ridge intervening.
7. Ridge end upwards on south west of point No. 6 with 2 ridges intervening.
8. Ridge and upwards on south west of point No. 7 with 2 ridges intervening.

II. Chance print photograph marked C is similar and identical with the specimen left thumb print photograph marked SI of Sandeep Thakran. Following identical ridge characteristics are present at the same relative positions in both the prints:

1. Ridge end towards left is the starting point.
2. Ridge end towards left on west of point No. 1.
3. Ridge end towards left on north west of point No. 2 with 1 ridge intervening.
4. Ridge end towards right on north west of point No. 3.

5. Ridge end towards right on north west of point No. 4 with 2 ridges intervening.
6. Ridge end upwards on north west of point No. 5 with 1 ridge intervening.
7. Bifurcation upwards on east of point No. 5.
8. Ridge end towards left on north east of point No. 7 with 1 ridge intervening.

III. Chance print photograph marked A is similar and identical with the specimen left index finger print photograph marked S2 of Sandeep Thakran. Both the prints of tented Arch pattern & following identical ridge characteristics are present at the same relative positions in both the prints:

1. Bifurcation downwards is the starting point.
2. Ridge and downwards on south east of point No. 1 with 4 ridges intervening.
3. Bifurcation upwards on south west of point No. 3 with 2 ridges intervening.
4. Bifurcation upwards on south west of point No. 3 with 1 ridge intervening.
5. Bifurcation towards left on south west of point No. 4 with 1 ridge intervening.
6. Ridge end towards left on north west of point No. 5 with 2 ridges intervening.
7. Bifurcation upwards on south west on point No. 6 with 1 ridge intervening.
8. Ridge end downwards on north east of point No. 7.

IV. Chance print photograph marked B does not tally with the specimen left & right finger and palm prints of Pradeep Kumar and San-deep Thakran.

V. Chance print marked E is unfit for comparison, ridge details are not readable.

9. Shravan Singh (PW-21) Inspector Finger Prints Bureau, in his deposition stated that after Rajendra Sharma, Senior Photographer (PVV-22) photographed the chance prints found on the Maruti Card No. DL6CE/3962, which was standing outside Manoharpur town, he had developed the said prints.

10. After careful consideration of the evidence adduced in proof of the above circumstance, we noticed a glaring missing link, in that, the prosecution has failed to establish that finger prints of the appellants were taken before or under the order of a Magistrate in accordance with Section 5 of the Identification of Prisoners Act. Even it is not proved that finger prints of the appellants were taken before the police. The Investigating Officer did not appear before the trial court to establish that he had ever taken the finger prints of the appellants. In Mohd. Aman v. State of Rajasthan : 1997 CriLJ3567 , their Lordships of Supreme Court indicated that the police, is although, competent to take finger prints under Section 4 of the Identification of Prisoners Act, but to dispel any suspicion as to its bonafides or to eliminate the possibility of fabrication of evidence it was eminently desirable that they were taken before or under the order of a Magistrate. In the instant case since the prosecution has failed to establish that finger prints of the appellants were taken by the police for the purpose of comparison, the report of Finger Prints Bureau could not be read against the appellants.

Recovery of Knives:

11. The prosecution, on the basis of disclosure statements of the appellants, got recovered knives vide recovery memos Ex. P/10 and Ex. P/11. Witnesses Prithviraj (PW-10) and Surendra Singh (PW-15), who were the motbirs of recovery, did not toe the prosecution line and they were declared hostile. The only person who could have proved the recovery of knives, was the Investigation Officer, but he did not choose to appear before the trial Court. Thus the prosecution has failed to establish this circumstance against the appellants.

CONCLUSION

12. Thus none of the pieces of evidence, relied on as incriminating by the trial Court, can be treated as incriminating pieces of circumstantial evidence against the appellants.

13. In Subhash Chand v. State of Rajasthan : (2002)1SCC702 , their Lordships of Supreme Court observed that the Investigating Officers should be vigilant and well versed with the techniques of investigation. It was indicated as under:

Before parting with the case we would like to place on record, an observation of ours, touching as aspect of the case. There are clueless crimes committed. The factum of a cognizable crime having been committed is known but neither the identity of the accused is disclosed nor is there any indication available of the witnesses who would be able to furnish useful and relevant evidence. Such offences put to test the wits of an investigating officer, A vigilant investigating officer, well versed with the techniques of the job, is in a position to collect the threads of evidence finding out the path which leads to the culprit. The ends, which the administration of criminal justice serves, are not achieved merely by catching hold of the culprit. The accusation has to be proved to be hilt in a court of law. The evidence of the investigating officer given in the court should have a rhythm explaining step by step how the investigation proceeded leading to detection of the offender and collection of evidence against him. This is necessary to exclude the likelihood of any innocent having been picked up and branded as a culprit and then the gravity of the offence arousing human sympathy persuading the mind to be carried away by doubtful or dubious circumstances treating them as of 'beyond doubt' evidentiary value.

14. In the instant case we find that the Investigating Officer did not make serious efforts to collect the threads of evidence in order to find out the path which leads to the culprit. The appellants after their arrest were not subjected to identification parade so that Rajesh Kumar (PW-18), who had seen those two persons at Taxi-stand on September 2, 1999 around 10-11 a.m. could have identified them. No efforts were made to collect the evidence of those persons who had seen the appellants leaving Maruti car at Manoharpur town. Finger prints of appellants were not taken before the Magistrate, as was required under Section 3 of the Identification of Prisoners Act. Even if the finger prints of appellants were taken by the Investigating Officer himself it was necessary to draw a memo for taking such finger prints before motbirs but no such memo was drawn. The Investigating Officer, who was an important witness, did not choose to appear before the learned trial Judge. Thus we find that the prosecution has failed to bridge the gap between 'may be true' and 'must be true' by clear, cogent and unimpeachable evidence and guilt against the appellants is not proved beyond reasonable doubt. There are many missing links in the chain of circumstantial evidence and this

aspect was not properly considered by the learned trial Judge.

15. For these reasons, we allow the appeals and set aside the impugned judgment dated September 18, 2002 of the learned Special Judge (Fake Currency Notes Cases) Jaipur City, Jaipur. We acquit the appellants Sandeep Thakran and Pradeep Kumar of the charges under Sections 302, 394 and 201 IPC. Appellants, who are in jail, shall be set at liberty forthwith, if not required to be detained in any other case.

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