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Court : Rajasthan

Decided On : Jan-08-2008

Reported in : RLW2008(3)Raj1905

Judge : Shiv Kumar Sharma and; Mahesh Chandra Sharma, JJ.

Appellant : Rampal

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Shiv Kumar Sharma, J.

1. A married woman of thirty years (Maya) was throttled to death. This was the graveman of charge put against the appellant Rampal. Learned Special Judge SC/ST (PA cases) Alwar, vide judgment dated March 26, 2003 convicted and sentenced the appellant as under:

Under Section 376 IPC:

To suffer rigorous imprisonment for ten years and fine of Rs. 2000/-, in default to further suffer imprisonment for six months.

Under Section 302 IPC:

To suffer imprisonment for life and fine of Rs. 1000/-, in default to further suffer imprisonment for six months.

The substantive sentences were ordered to run concurrently.

This appeal has been filed by the appellant in challenge of the said judgment.

2. We shall state the facts of the case as put forth by the prosecution:

Maya was a married woman. Since she could not adjust herself in her in-laws house, she came back to her parental house and started residing there. On March 11, 2002 around 11.30 AM she had gone to jungle to collect wood-sticks and came back around 1 PM with a bundle of sticks. She left her house again at 2 PM for collecting another bundle of sticks but did not return back. She was vigorously searched whole night. In the next morning her dead body was found lying in a field of Rampal Yadav. She was half naked. Her 'Salwar' was lying on her breast and her scarf was tied on her neck. In between her naked thighs near vagina nylon underwear (chaddi) was found thursted. Devraj (PW.3) submitted a written report to ASI Police Station Shahjahanpur who reached at the spot. On that report a case was registered against unknown person under Section 302 IPC and investigation commenced. The police recorded the statements of witnesses and arrested the appellant who was wearing underwear stained with semen. Seized articles were sealed and sent for examination to FSL and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Special Judge SC/ST (PA Cases) Alwar. Charge under Section 302 and 376 IPC and Section 3(2)(5) SC/ST (PA) Act were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 16 witnesses. In the explanation under Sec. 313 Cr PC, the accused claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions arrived at the conclusion as indicated herein above.

3. Death of Maya was undeniably homicidal in nature. As per Post Mortem report (Ex. P. 1) following ante mortem injuries were found on the dead body:

Rigor mortis is present all over the body. PM standing present on dependent parts of body. Face is congested & lucid. Eyes are suffused also bulging. Pupil dilated. Tongue is swollen & dark coloured. Petechial hemorrhage are present on skin of eye lids and forehead. Bloods froth is coming from both nostrils. Double knot ligature (chunni) is present in neck. Knot is present entirely ligature is transverse completely encircling the neck below the thyroid cartilage. Base is soft and reddish & 3 cm is width, enzymatic is present above the edges of ligature. Cyarnis is present on nails of upper limb. Hands are partly open.

In the opinion of Dr. Ram Narayan Meena (PW. 1) the cause of death was asphyxia due to strangulation.

4. Since there was no eye witness of the occurrence and the prosecution founded its case on circumstantial evidence. We have therefore to examine whether:

(i) the circumstances from which an inference of guilt is sought to be drawn, have been cogently and firmly established;

(ii) those circumstances are of a definite tendency unerringly pointing towards the guilt of the appellants;

(iii) 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 appellants and none else.

5. Before considering the rival submissions, we deem it necessary to have a look on the incriminating circumstances on which learned trial Court based the conviction of appellant. The circumstances are:

(i) The appellant helped the deceased in collecting wood- sticks and was seen her company before her death.

(ii) The deceased had gone to the jungle second time and never returned back.

(iii) The appellant too was missing from the jungle and was not found in the village. He could only be nabbed on March 13, 2002.

(iv) At the time of arrest appellant was wearing underwear (Chaddi) which was found stained with semen.

(v) Deceased was found half naked and nylon-chaddi thursted between her naked thighs near vagina, was stained with human semen.

(vi) Chappal and shawl of deceased and rope used in tying wood-sticks got recovered at the instance of the appellant.

6. It is discerned from the testimony of Babli (PW. 5) and Suman (PW. 6) that Maya deceased was their Nanad (sister-in-law) and because relations of Maya with her husband were strained, she left her husband's house and started residing in her parental house. On the date of incident deceased had gone around 11 AM to collect sticks and came back at 1 PM but she again left the house for collecting another bundle of sticks and never returned back.

7. Geeta (PW. 8) deposed that Maya had gone with her for collecting wood-sticks. When they reached in jungle Rampal and Bhagwana were sitting. Rampal then started helping Maya by cutting sticks for her. Maya collected sticks and sent back to her house. In the afternoon when she had gone to 'Johadi' she had seen Bhagwana, Hajai and Dhanpat only, Rampal was not there:

eS tksgMh esa okil xktj ysdj vkbZ rks ogka ij Hkxokuk] gtkjh /kuir cSBs gq, feys ogka ij jkeiky eq>s ugh feyk A ml le; nksigj yus ds le; Fkk A

8. Bhagwana (PW. 9) although was declared hostile, deposed in his cross examination as under:

;g lgh gS fd ek;k o jkeiky nwljh rjQ ydM+h ysus pys x;s vkSj eS vkxs dh rjQ pyk x;k Fkk A blds ckn esSus 'kke rd nksusk dks ugh ns[kk A

9. Gyanendra Singh 10 (PW. 15) in his deposition stated that he arrested the appellant and on the basis of disclosure statements under Section 27 of Evidence act (Ex.P. 26) of appellant vide memo Ex. P. 13 he recovered Hawai Chappals and red shawl of deceased and a rope which were concealed by the appellant in the field of Rampat, where crop of mustard was standing. He deposed thus:

vius bRryk vuqlkj vfHk;qDr jkeiky ds [ksr tksukp;k dyk xkao esa igqapdj jkeir ;kno ds [ksr es ?kql dj ,d gokbZ pIiy nka;s iSj dh] ,d IykfLVd dh jLlh vkSj xgjs yky jax dk 'kky ljlks ds [ksr esa ls fudky dj cjken djk;k ftls eSus tfj;s QnZ izn'kZ ih 13 tCr fd;s A

Hajari Lal Khatana SHO PS Shahajahanpur (PW. 16) deposed that he conducted the investigation of the case and took the dead body for post mortem. Clothes of deceased were seized vide memo Ex. P. 11. Pink Kurta and scarf containing knot was seized vide memo Ex. P. 10. Nylon underwear and Salwar were seized vide memo Ex. P. 22. He also stated that underwear was having spot of semen.

10. On the basis of disclosure statement of appellant Hawai Chappals red Shawl and nylon rope got recovered from the field of mustard crop.

11. Section 27 of Evidence Act lays down an exception to the rule that a confession made by an accused whilst he is in custody must be excluded from evidence and permits the admission of such a confession under the conditions prescribed by it. The law in India on the subject dealt with in Section 27 is wider than the common law in England. It appears from the provisions of Section 27 that it has been taken bodily from the English law. In both the laws there is a greater solicitude for a person who makes a statement at a stage when the danger in which he stands has not been brought home to him then for one who knows of the danger. In English Law, the caution gives him a necessary warning and in India the fact of his being in custody of a Police Officer serves the purpose.

12. Section 27 seems to be based on the view that if a fact is actually discovered in consequence of information gives some guarantee is afforded thereby than the information was true and accordingly can be safely allowed to be given in evidence. It is not correct to presume that information given by the accused under Section 27 is compelled testimony, so as to attract Article 20(3) of the Constitution.

13. In Prakash Chand v. State (Delhi Admn.) : 1979 CriLJ329 the Apex Court held that the evidence of circumstance simpliciter that an accused led a police officer and pointed out the place where weapon was found hidden, would be admissible as conduct, under Section 8, irrespective of whether any statement made by him contemporaneously with or antecedent to such conduct falls within the purview of

Section 27.

14. Their Lordships of the Supreme Court in Vijender v. State of Delhi (supra) had occasion to consider Section 27 of Evidence Act and observed as under:

Another elementary statutory breach which we notice in recording the evidence of the above witnesses is that of Section 27 of the Evidence Act. Evidence was led through the above three police witnesses that in consequence of information received from the three appellants on June 30, 1992 they discovered the place where the dead body of Khurshid was thrown. As already noticed, the dead body of Khurshid was recovered on June 27, 1992 and therefore the question of discovery of the place where it was thrown thereafter could not arise. Under Section 27 of the Evidence Act if an information given by the accused leads to the discovery of a fact which is the direct outcome of such information then only it would be evidence but when the fact has already been discovered as in the instant case evidence could not be led in respect thereof.

15. In State of Haryana v. Jagbir Singh (supra) the Supreme Court indicated as under:.Since the dead body was recovered on the basis of information already known, Section 27 of the Evidence Act has no application. As observed by this Court in Aher Raja Khima v. State of Saurashtra : 1956 CriLJ426 if a recovery of the incriminating articles alleged to have been made by the accused while in custody is inadmissible in evidence if the police already knew where they were hidden. That takes the case out of the purview of Section 27 of the Evidence Act.

16. In Rammi v. State of MP : 1999 CriLJ4561 , the Apex Court held thus:

Regarding the recovery of weapons, the prosecution could utilise statements attributed to the accused on the basis of which recovery of certain weapons was effected. Section 27 of the Evidence Act permits so much of information which lead to the discovery of a fact to be admitted in evidence. Here the fact discovered by the police was that the accused had hidden the blood stained weapons. In that sphere what could have been admitted in evidence is only that part of the information which the accused had furnished to the police officer and which led to the recovery of the weapons.

True, such information is admissible in evidence under Section 27 of the Evidence Act, but admissibility alone would not render the evidence, pertaining to the above information, reliable. While testing the reliability of such evidence the Court has to see whether it was voluntarily stated by the accused.

17. In Himachal Pradesh Administration v. Om Prakash : 1972 CriLJ606 the Apex Court interpreted Section 27 of Evidence Act thus:

A fact discovered within the meaning of Section 27 must refer to a material fact to which the information directly relates. In order to render the information admissible the fact discovered must be relevant and must have been such that it constitutes the information through which the discovery was made. What should be discovered is the material fact and the information that is admissible is that which has caused that discovery so as to connect the information and the fact with each other as the cause and effect' that information which does not distinctly connect with the fact discovered or that portion of the information which merely explains the material thing discovered is not admissible under Section 27 and cannot be proved. The concealment of the fact which is not known to the police is what is discovered by the information and lends assurance that the information was true. No witness with whom some material fact, such as the weapon of murder, stolen property or other incriminating article is not hidden, sold or kept and which is unknown to the police can be said to be discovered as a consequence of the information furnished by the accused. What makes the information leading to the discovery of the witness admissible is the discovery from him of the thing sold to him or hidden or kept with him which the police did not know until the information was furnished to them by the accused.

18. In Ghanshyam Das v. State of Assam (2005) 13 SCC 387 the Supreme Court held that evidence regarding pointing the place where weapon was thrown and its recovery can be looked into to throw light on the conduct of accused under Section 8. It was observed as under:

Another incriminating which corroborates the case of the prosecution is that the appellant led the 10 PW. 12 to Kharbhanga riverside and pointed out the place where he had thrown away the Khukri. According to the evidence of PW. 12 the 10

and PW. 6, the Khukri was recovered from the river with the help of a diver. Though both the courts have eschewed this circumstance from consideration on the ground that no information was recorded by PW. 12 the 10 so as to attract Section 27 of the Evidence Act, we are of the view that the evidence of PW. 12 and PW. 6 to the effect that the accused led them to the spot and pointed out the place where the Khukri was thrown, which fact stands confirmed by its recovery, can be looked into to throw light on the conduct of the accused under Section 8 of the Evidence Act.

19. In addition to the evidence of recovery of incriminating articles at the instance of accused, the prosecution has examined Geeta (PW. 8) and Bhagwana (PW. 9) to establish the fact that at the time of incident appellant and deceased were seen together and after disappearance of deceased appellant was also disappeared.

20. We cannot approach the action of Investigating Officers with initial distrust. The investigating officers had no enmity with the appellant. Even if independent person fails to support the recovery of incriminating articles at the instance of appellant, it cannot be presumed that recovery is untrustworthy. The Supreme Court in State Govt. of NCT Delhi v. Sunil (2001) 1 SCC 652 indicated in para 21 thus:

It is for the accused, through cross examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the Court has any good reason to suspect the truthfulness of such records of the police the Court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.

21. The articles belonging to deceased recovered at the instance of appellant were concealed in mustart crop., which could only be known by the appellant. As per FSL report (Ex. P. 33), on both chaddis and salwar human semen was detected.

22. Learned Counsel for the appellant vociferously canvassed that question in regard to recovery of Chaddi stained with semen from the appellant, was not asked in the examination under Section 313 Cr PC, therefore circumstance that the appellant was wearing Chaddi stained with semen at the time of arrest could not be established. We find this submission devoid of merit. On March 13, 2002 i.e. after two days of incident the appellant was arrested and at that time he was wearing chaddi stained with semen that got recovered vide recovery memo Ex. P. 16. While examining him under Section 313 Cr PC the appellant was asked question in regard to recovery memo Ex. P. 16 to which appellant replied 'Pata Nahin' (Do not know). Hazari Lal Khatana 10 (PW. 16) deposed in his examination in chief thus:

eSus vfHk;qDr jkeiky dh iguh gqbZ pM~Mh mrjok dj tIr dh ftldh QnZ izn'kZ ih&16 gS A

But he was not cross examined on this aspect. In State of Punjab v. Swaran Singh : 2005 CriLJ3445 , the Apex Court indicated thus:

The questioning of the accused is done to enable him to give an opportunity to explain any circumstances which have come out in the evidence against him. It may be noticed that the entire evidence is recorded in his presence and he is given full opportunity to cross-examine each and every witness examined on the prosecution side. He is given copies of all documents which are sought to be relied on by the prosecution. Apart from all these, as part of fair trial the accused is given opportunity to give his explanation regarding the evidence adduced by the prosecution. However, it is not necessary that the entire prosecution evidence need be put to him and answers elicited from the accused. If there were circumstances in the evidence which are adverse to the accused and his explanation would help the Court in evaluating the evidence properly, the Court should bring the same to the notice of the accused to enable him to give any explanation or answers for such adverse circumstance in the evidence. Generally, composite questions shall not be asked to the accused bundling so many facts together. Questions must be such that any reasonable person in the position of the accused may be in a position to give rational explanation to the questions as had

been asked. There shall not be failure of justice on account of an unfair trial.

23. The prosecution is able to establish following circumstances:

(i) The appellant helped the deceased in collecting wood- sticks and the appellant was seen in company of deceased before her death.

(ii) When the deceased gone to jungle on second time she did not return and the appellant also disappeared.

(iii) At the time of arrest the appellant was wearing underwear (Chaddi) which was found stained with semen.

(iv) Chappal and shawl of the deceased were recovered at the instance of appellant from the place which could only be known by the appellant himself.

(v) On both chaddis and salwar human semen was detected.

24. Placing reliance on Malaram v. State 1984 Cr LR (Raj.) 421 learned Counsel canvassed that the recovery of articles can be used only to corroborate the other evidence. It cannot in itself prove the case of the prosecution and does not connect the accused with the commission of offence.

25. We do not dispute this legal proposition but in our opinion the instant case is not founded solely on the recovery of articles. As already noticed there are other circumstances also that connect the accused with the crime.

26. The other contention raised on behalf of accused persons was that since the recovery of incriminating articles got effected from the places accessible to other, it vitiates the evidence under Section 27 of the Evidence Act. We find no substance in this submission. As earlier noticed the recovery of chappal and shawl got effected from the place that was known alone to the appellant. The Supreme Court in State of Himachal Pradesh v. Jeet Singh 1999 Cr LJ 2025 held as under:

There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible of recovery of the articles was made from any place which is 'open or accessible to other'. It is fallacious notion that when recovery of

any incriminating article was made from a place which is open or accessible to others it would vitiate the evidence under Section 27 of the Evidence act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried on the main road-side or it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the articles would remain out of the visibility of others in normal circumstances. Until such article is disinterred its hidden state would remain unhampered. The person who hide it alone knows where it is until he discloses that fact to any other person. Hence the crucial question is not whether the place was accessible to others or not, but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others

27. From the facts established we find that the circumstantial evidence in the instant case does not fall short of the required standard of proof. The circumstances so established are consistent only with the guilt of appellant Rampal and inconsistent with his innocence. All the circumstances exclude with certainty the possibility of guilt of any person other than the appellant. Learned trial Judge in our opinion committed no illegality in convicting the appellant. Possibility that the appellant committed crime, cannot be ruled out. As a result of the above discussion, appeal of appellant stands dismissed and his conviction and sentence under Sections 376 and 302 IPC are maintained.

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