

Ashok Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-11-2003

Reported in : RLW2004(1)Raj324; 2004WLC(Raj)UC532

Judge : Shiv Kumar Sharma and; Khem Chand Sharma, JJ.

Acts : Indian Penal Code (IPC) - Sections 201 and 302

Appeal No. : D.B. Criminal Appeal No. 494 of 2001

Appellant : Ashok Kumar

Respondent : State of Rajasthan

Advocate for Def. : S.C. Purohit, Public Prosecutor

Advocate for Pet/Ap. : Mahendra Goyal and; Aladeen Khan, Advs.

Disposition : Appeal dismissed

Judgement :

K.C. Sharma, J.

1. These two appeals, one by appellant Ashok Kumar in representative capacity and another by accused Raju through Jail arises out of the judgment and order dated 7.5.2001 passed by the Special Judge, Dacoity Affected Area, Bharatpur, thereby convicting the appellants under Sections 302 and 201 IPC and sentencing

each of them to undergo life imprisonment with a fine of Rs. 1000/- each, in default thereof, to further undergo 3 months simple imprisonment on the first count, and two years rigorous imprisonment with a fine of Rs. 300/- each, in default thereof to undergo one months' simple imprisonment on the second count. Since both the appeal arise out one judgment in Sessions Case No. 31/2001, therefore, they are being decided by a common judgment.

2. The facts leading to these appeals are that on 8.4.98, PW 6 Bharat Lal Verma lodged a Written report, Ex. P7 at Police Station Nadwai that his son Bhagwan Swaroop aged 30 years was missing since last evening. He alleged that after completing his night duty when he returned home in the morning, his wife informed that Bhagwan Swaroop did not return home in the night. On search, he found blood at some places near a primary school. He also found a chappal of one feet of Bhagwan Swaroop. He also noticed signs of dragging from the place i.e. just ahead the school, where he found the blood, ending up to the well. He alleged that one Dalip S/O Hira Lal Jatav informed him that in the night at about 8.00 PM Dalip had seen his son in the company of Raju S/O Laharia and Ashok S/O Sukhchandi sitting near 'Samadj' (religious vow) around the boundary wall of the well. He suspected that Raju and Ashok have murdered his son and has thrown his body into the well.

3. On the basis of above report, police registered a case for offence under Sections 302 and 201 IPC vide FIR, Ex.P.8 and proceeded with the investigation.

4. In the course of investigation, the police recovered the dead body and prepared Ex. R1 and the site plan Ex. P.2. The blood stained and controlled soil vide memo Ex. P.4 and a stone used in the commission of offence and a Chappal of the feet of deceased vide memo Ex.P.5 were also seized. The cloths of the deceased were also seized and the seized items were sent to the Forensic Science Laboratory for chemical examination. The FSL report is Ex.P.26. The police got conducted autopsy on the dead body and collected the post mortem report, Ex.P.9. In the opinion of doctor, the cause of death was combined effect of comma and asphyxia (due to drawing). The police arrested accused Raju on 3.5.98 vide memo Ex.P.24. Accused Raju furnished information, Ex.P.25 under Section 27 of the Evidence Act

as regards recovery of stone. Pursuant to the information, police recovered a piece of stone vide memo Ex.P.9 and prepared site plan, Ex.P.21 of the place of recovery.

5. On completion of investigation, the police submitted a charge sheet in the court of Additional Chief Judicial Magistrate No. 1, Bharatpur, who in turn committed the case to the court of Sessions.

6. The case came to be tried by the Special Judge, Dacoity Affected Area, Bharatpur. The trial court after hearing counsel for the parties and considering the evidence and material collected during investigation and placed before it, framed charges against the accused appellants under Sections 302 and 201 IPC. The accused denied the charges and claimed trial. In the course of trial, the prosecution, in support of its case examined as many as 14 witnesses and got exhibited some documents. Thereafter the accused were examined under Section 313 Cr.P.C. In their explanation, the accused stated they have been falsely implicated. Accused Ashok specifically raised the plea of alibi and stated that he was residing with his sister at Bharatpur for last three years and was doing of job of rickshaw pulling. The accused did not examine any witness in defence.

7. At the conclusion of trial and after hearing counsel for the parties, the learned trial court found the charges duly established against the appellants and accordingly convicted and sentenced both the appellants in the manner stated above. Hence these two appeals against conviction and sentence.

8. It may be stated that Shri B.L. Sharma, Advocate was appointed Amicus Curiae in Jail Appeal No. 816/2001 to represent accused Raju. Shri B.L. Sharma did not appear to argue the case on behalf of appellant Raju, on the day when both the appeals were fixed for final arguments. Therefore, keeping in view the fact that interest of both the appellants was common and the evidence was same, we directed Mr. Mahendra Goyal to represent appellant Raju and argue the case on his behalf as well. Accordingly, Mr. Mahendra Goyal represented appellant Raju and argued the jail appeal on his behalf.

9. We have heard learned counsel for the parties and have gone through the impugned judgment and the evidence and material on record.

10. At the very outset it may be stated that there is no direct evidence and the case solely hinges on circumstantial evidence. The circumstances put forward by the prosecution and relied upon by the learned trial court so as to base conviction of the accused appellants may be stated below:

1. The accused appellants were last seen together in the company of deceased;
2. Recovery of blood stained soil, pieces of stones and a chappal of the deceased, and
3. The accused remained absconded for sufficiently long time after the incident.

11. Therefore, in order to prove the above circumstances we have to examine the evidence adduced on behalf of the prosecution in regard to the circumstances enumerated above.

12. It is well settled proposition of law that the circumstance of last seen does not by itself and necessarily lead to the inference that it was the accused who committed the crime. While dealing with a case of circumstantial evidence and considering the circumstance of last seen together, the Apex Court in *Mohibur Rahman v. State of Assam (1)*, observed as under:

'The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed

the crime. There must be something more establishing connectivity between the accused and the crime. There may be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide'.

13. Keeping in view the above observations of the Apex Court we proceed to examine the evidence on record. To prove the first circumstance viz., the appellants were last seen together in the company of deceased, the prosecution has examined PW 3 Mst. Rajan Devi (wife of the deceased), PW 5 Dilip and PW 11 Prakash. Although PW 11 Prakash has been declared hostile, but he has admitted in his statement that he saw the appellants in the company of deceased Bhagwan Swaroop. PW 3 Mst. Ramdei in her examination in chief has stated that on 7.4.98 at 7-8 PM accused appellant Raju came to her house and took with him her husband to Bada Man Singh to enquire about 'Satta'. According to this witness, Bhagwan Swaroop did not return in the night. In the next morning, she came to know that Dilip had come to her house and informed that in the previous night he had seen the accused appellants at the 'Kunda' (water reservoir) and Bhagwan Swaroop was also present in their company. She further stated that she came to know about the murder of her husband by the appellants since Dilip had informed her father-in-law about causing of death of her husband by the accused appellants and then throwing his dead body into the well.

14. PW 5 Dilip has stated that on 7.4.98 at 8 PM he had gone to attend the call of nature at 'Pucca Kunda', Railway Crossing, Nadwai. When he was returning back, he saw Bhagwan Swaroop (deceased), Raju and Ashok consuming liquor near 'Samadhi' and were quarrelling with each other. According to this witness, the reason behind quarrel was some monetary dispute. Deceased Bhagwan Swaroop was demanding money from accused Raju. He believed that the amount might be connected with gambling. The witness stated that PW 11 Prakash met him on the way when he was returning home. In the next morning he disclosed the above facts to Bharat Lal (father of the deceased) when Bharat Lal came to him and enquired about his son. In cross examination, this witness deposed that he, the appellants and deceased are the residents of same vicinity. All the three were abusing and quarrelling with each other. Neither he restrained them nor he asked them to stop quarrel. The witness denied to have any relationship with Bharat Lal, father of the deceased.

15. From the evidence of Mst. Rajandei (PW 3) it is evident that on 7.4.98 at 7-8 PM accused Raju came to her house and took away her husband Bhagwan

Swaroop to Baba Man Singh so as to enquire about 'Satta'. In the next morning PW 5 Dilip disclosed to Bharat Lal that deceased Bhagwan Swaroop and the accused appellants were seen together in 'Kunda' near Railway Line, Nadwai. Similarly, it is also evident from the evidence of PW 5 Dilip that in the evening of fateful day when he was returning after attending the call of nature he saw deceased Bhagwan Swaroop and accused appellants Ashok and Raju consuming liquor near the 'Samadhi' and were quarelling with each other on the post of monetary dispute. It is also evident from the evidence of Dilip that PW 11 Prakash met him on way when he was returning home. Though PW 11 has been declared hostile, yet it stands established from his statement that deceased was last seen in the company of accused appellants. Thus from the evidence of these prosecution witnesses it is established beyond doubt that on the day of incident at about 7-8 PM accused appellant Raju visited the house of deceased Bhagwan Swaroop and took him away. Lastly, in the fateful night Bhagwan Swaroop was last seen by PW 5 Dilip in the company of accused appellants near Kunda, Nadwai consuming liquor and thereafter none saw Bhagwan Singh alive and ultimately, on the next day, his dead body was found lying in a well which was taken out by the police in the presence of villagers. We do not see any reason to disbelieve the testimony of PW 3 Mst. Rajandei and PW 5 Dilip. Having scanned the entire evidence, we have not been able to find any evidence worth the name to suggest that either Mst/Rajan Devi or PW 5 Dilip or any member of the deceased family had animosity with the accused appellants. Therefore, the possibility of there being false implication of accused appellants stands completely ruled out.

16. PW 9 Dr. Mangu Singh has deposed that probable time since death was about 12 hours at the time of autopsy, meaning thereby that deceased died at about 11 PM on 7.4.98 as autopsy was conducted on 8.4.98 at 11.30 AM. The cause of death was combined effect of comma and Ashyxia. The doctor explained that the victim was initially injured near to death and was thrown into water. Witnesses Dilip and Prakash saw the appellants in the company of deceased Bhagwan Swaroop at about 8.00 PM and deceased died at about 11 PM just within the period of 3 hours, as a result of comma due to injuries and asphyxia due to drawing. The dead body of deceased was found lying in a well situated just near, where the appellants were found in the company of deceased. So, there is close

proximity of place and time between the event of the accused appellants having been last seen with the deceased and the factum of death. The accused appellants did not afford any explanation as to how and in what circumstances the victim suffered the death. Therefore, the inevitable conclusion is that the accused appellants murdered the deceased who were last seen in the company of deceased.

17. Thus, for the reasons aforesaid, it must be concluded that the prosecution has been able to prove first circumstance that accused appellants were last seen together in the company of deceased.

18. The next circumstance put forward by the prosecution and relied upon by the trial court is the seizure of some articles. Accused Raju was arrested by PW 13 Mahaveer Singh on 3.5.98 vide arrest memo Ex.P.24. Accused Raju furnished information, Ex.P.25 under Section 27 of the Evidence Act as regards recovery of stone by which he inflicted injury on the head of deceased. Pursuant to this information, accused Raju took out a piece of stone from bunch of bushes and handed it over to the investigating officer, who prepared recovery memo Ex.P.9. The recovery was effected in the presence of PW 7 Manak Chand and PW 11 Prakash. PW 7 Manik Chand and PW 13 Mahaveer Singh have proved the recovery of stone. Mahaveer Singh has deposed that he arrested accused Raju and on his information and at his instance recovered a piece of stone, which had blood stains and also prepared site plan of the place of recovery.

19. Undisputedly, the dead body of deceased was found lying in a well situated near the place where the accused appellants and deceased were last seen together in the previous night. Similarly, there also cannot be doubt that the stone seized from the place of incident. The stone recovered at the instance of accused and the soil collected from the place of incident were found to have contained with human blood as per the FSL report, Ex.P.26.

20. As regards the last circumstance as to the absconding of accused appellant, it has come in the evidence on record that accused appellants remained absconded for sufficiently long time, just after the incident. PW 13 Mahaveer Singh, I.O. has categorically deposed that he tried to lay hands on the accused appellant

immediately after the case was registered and tried to find them out at all suspected places. In cross examination, the Investigating officer has denied the suggestion put forwarded that he did not arrest the accused appellants as the death of the deceased was accidental, inasmuch as the deceased was drunken and might have fallen in the well, resulting into his death. Thus it can well be presumed that delayed arrest of the appellants was a consequence of their absconding.

21. So far appellant Ashok is concerned, true it is that a suggestion on behalf of defence was also put to the prosecution witnesses that he was engaged in Rickshaw pulling at Bharatpur at the time of incident and hence he was not present at the time and place of incident, but, we do not find any evidence to prove the plea of alibi.

22. The accused were not found in the village where they ordinarily ought to be and hence they were absconding for more than a month. In their examination under Section 313 Cr.P.C. no explanation whatsoever was given by the appellants as to where they were during this long period of one month after the incident. The fact that accused absconded for more than a month after the incident inevitably goes to prove beyond that they had guilty mind. In *Pakkirisamy v. State of Tamil Nadu (2)*, wherein the accused was absconding only for 4 days after the incident, their Lordships of the Supreme Court while considering the absconding of accused as one of the circumstance to complete the chain the circumstantial evidence, held as under:

'The next circumstance which was relied upon by the prosecution was that the appellant was not found in the village where he ordinarily ought to be and was absconding. Only on 28th August, 1986, he went to the village Administrative Office and gave a confessional statement. (Ex.P.28) which was recorded by Ramasami (PW 12). No explanation whatsoever was given by the appellant as to where he was during these four days. The courts below in our opinion, rightly held that the appellant was absconding between 24th August, 1986 and 28th August, 1986 and this would indicate beyond reasonable doubt that the appellant had a guilty mind'.

23. From the evidence on record it is proved that deceased Bhagwan Swaroop was missing from 7.4.98 and in the evening he was last seen together in the company of accused appellants. The report of the incident was lodged by the father of the deceased on 8.4.98 wherein he suspected the murder of his son at the hands of accused appellants. As per the contents of the FIR the dead body was recovered from the well on 8.4.98 and the post mortem on the dead body was conducted on 8.4.98 itself. A perusal of post mortem report Ex.P.9 and the statement of PW 9 Dr. Mangi Singh it reveals that duration of death of deceased at the time of autopsy was 12 hours. The doctor who conducted autopsy found as many as 17 injuries i.e. lacerated wounds and contusions, on the person of deceased. He also noticed fractures of tempo parietal region, and middle cranial fossa. In his opinion, the deceased was injured to the extent that he would die and then was thrown in the well.

24. In this view of the matter, the facts thus stood proved beyond reasonable doubt are enumerated below:

1. The death of deceased was homicidal.
2. There was no enmity between the complainant and prosecution witness on the one hand and the accused appellants on the other.
3. The accused were last seen together in the company of deceased Bhagwan Swaroop on 7.4.98 and thereafter he was not seen alive till his dead body could be recovered from a well on 8.4.98.
4. The blood found on the place of incident at various places, seizure of stone from the place of incident and recovery of stone at the instance of accused Raju and all these articles were found to be contained with human blood as per the FSL report, and
5. The accused were absconding for more than a month.

25. The aforesaid circumstances coupled with the fact of failure on the part of the accused appellants to offer any reasonable explanation of any of the said circumstances is sufficient to fasten the liability of murder on the accused

appellants. At the same time it can also be said that the accused appellants have caused the evidence of commission of crime to disappear as they threw the dead body of deceased into the well. Therefore, their conviction recorded by the trial court deserves to be sustained.

26. For the foregoing reasons, the appeals of the appellants fail and are hereby dismissed. Their conviction under Sections 302 and 201 IPC as recorded by the trial court is maintained.

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