

Sanjay Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-24-2005

Reported in : RLW2006(1)Raj58; 2005(3)WLC39

Judge : Shiv Kumar Sharma and; Jitendra Ray Goyal, JJ.

Acts : Evidence Act - Sections 27 and 106; Code of Criminal Procedure (CrPC) - Sections 102, 154, 162 and 313; Indian Penal Code (IPC) - Sections 201, 302 and 394

Appeal No. : D.B. Criminal Appeal No. 652 of 2000

Appellant : Sanjay

Respondent : State of Rajasthan

Advocate for Def. : Arun Sharma, Public Prosecutor

Advocate for Pet/Ap. : Naina Saraf and; Vinod Gupta, Advs.

Disposition : Appeal dismissed

Judgement :

Jitendra Goyal, J.

1. The appellant Sanjay has been charged, convicted and sentenced as under:-

Under Section 302 IPC :-Life imprisonment and a fine of Rs. 1,000/-, in default of payment of fine six months imprisonment.

Under Section 394 IPC :-'Seven years rigorous imprisonment and fine of Rs. 500/-, in default of payment of fine, to further undergo three months imprisonment.

Under Section 201 IPC :-Two years rigorous imprisonment. The sentences were ordered to run concurrently.

2. It is the case of prosecution that deceased Harjeet Singh who was the driver on the truck No. DL 1GB-0688 [owner by his uncle Ashok Kumar (PW20)] departed on 7.8.1998 from Yamuna Nagar for Indore along with cleaner Sanjay Kumar. The truck was loaded with the ply wood.

3. On the way they had a halt at Ladwa. They moved for Indore on the next day and met with an accident on 9.8.1998 at Kalanaur. PW20 Ashok Kumar having information of the accident sent Baldev Raj (PW1) (brother of the deceased) and one mechanic to Kalanaur. After a compromise with the concerned persons of other truck involved in the said accident and after necessary repairs of the truck they proceeded for Indore on 10.8.1998. When the truck did not reach Indore till 17.8.1998, both PW20 Ashok Kumar and PW1 Baldev Raj along with one person Sitaram left in search of the truck but the same could not be traced out. Thereafter, they went to the residence of appellant Sanjay Kumar at village Telipura, District Bijnor and upon an inquiry, he disclosed that driver Harjeet Singh was murdered by him and his dead body was thrown away near a beer factory of Shahjahanpur and thereafter he took away the truck and left it near Railway crossing, Hapur. Thereupon, Baldev Raj and others went to Police Station at Shahjahanpur. Having seen the clothes and photos of the dead body, they identified the same as of deceased Harjeet Singh. PW1 Baldev Raj lodged a written report Ex.P4. A formal F.I.R. No. 212/1998 Ex.P 1 was registered under Sections 302, 394 & 201 IPC on 5.9.1998. A memo Ex.P2 regarding identification of photos and clothes of the deceased was prepared. Papers of bulity etc. were seized vide Ex.P3. During investigation the Investigation Officer collected Ex.P26-Marg report No. 4/1998 which was already registered at Police Station Shahjahanpur along with other documents prepared with the Marg report including the clothes, photographs,

memo of descriptions of the dead body, the postmortem report and the said truck already seized under Section 102 Cr.P.C. by Police Station Hapur Rural. Accused Sanjay was arrested on 10.9.1998 vide arrest memo Ex.P17. On the basis of the information given by Sanjay under Section 27 of the Indian Evidence Act, ply wood worth price more than rupees 2 Lakhs was recovered vide memo Ex.P7 on 13.9.1998. The site-plan of the place of recovery Ex.P8 was also prepared. Further upon information supplied by the accused Ex.P29 site-plan of the place where the dead body was thrown was prepared on 15.9.1998. Thus, having completed usual investigation, the charge-sheet came to be filed.

4. In due course the case came up for trial before learned Additional Sessions Judge, Behror. Charges under Sections 302, 201 & 394 IPC were framed and were explained to the accused appellant who pleaded not guilty and claimed trial.

5. Prosecution examined 23 witnesses to prove its case. The appellant was examined under Section 313 Cr.P.C. While claiming himself to be innocent he did not produce any evidence in defence. After hearing final submissions, learned trial Judge convicted and sentenced the accused appellant as indicated hereinabove.

6. Aggrieved of the aforesaid judgment dated 2.9.2000 the accused appellant preferred this appeal.

7. Undisputedly, there is no eye-witnesses of the occurrence and conviction of the appellant is solely based on circumstantial evidence.

8. By now it is well settled principle of law that when case rests purely on circumstantial evidence, the facts and circumstances from which the conclusion of guilt is sought to be drawn must be fully established beyond any reasonable doubt and such circumstances must be consistent and must unerringly point to the guilt of the accused and the chain of circumstances must be established by the prosecution. In *Hanumant Govind Nargundkar v. State of M.P.*, reported in : 1953 CriLJ129 , the Hon'ble Supreme Court observed in para 10 as under :-

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should

in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

Reference may also be made to the judgment rendered by the Hon'ble Supreme Court in the case of Sharad Birdhi Chand Sarada v. State of Maharashtra, reported in : 1984 CriLJ1738 wherein their Lordships have held that before conviction could be based on circumstantial evidence, following conditions must be fully established:-

1. the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be' established;
 2. the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
 3. the circumstances should be of a conclusive nature and tendency;
 4. they should exclude every possible hypothesis except the one to be proved, and
 5. there must be a chain of evidence to complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.
9. The case at hand has to be gauged in the background of the aforesaid principles. Prosecution has mainly relied on following circumstances:-

(i) Deceased Harjeet Singh and accused Sanjay Kumar were employed on the said truck No. DL IGB-0688 as driver and cleaner respectively and after loading

the ply wood both departed from Yamuna Nagar for Indore on 7.8.1998, halted, on their way at Ladwa and lastly they started for the destination to Indore from Kalanaur on 10.8.1998. Thus they were last seen together.

(ii) An unidentified dead body was found near beer factory, Shahjahanpur on 13.8.1998 which was identified to be that of deceased Harjeet Singh.

(ii) Truck No. DL IGB-0688 was seized under Section 102 Cr.P.C. near Railway crossing, Hapur on 17.8.1998.

(iv) Conduct of the accused appellant Sanjay Kumar (cleaner) was unnatural as he went away to his home town Telipura, Bijnor without informing about the truck and its driver to the owner of the vehicle.

(v) Ply wood was recovered at the instance of the accused Sanjay Kumar.

10. Learned Counsel for the appellant firstly submitted that as per the prosecution witnesses Baldev Raj (PW1) and Ashok Kumar (PW20), first FIR was registered at Police Station Yamuna Nagar, hence second FIR Ex.P1 which was registered at Police Station Shahjahanpur on 5.9.1998 is not admissible as per Section 162 Cr.P.C. Reliance has been placed on the judgment T.T. Antony v. State of Kerala and Ors., reported in : 2001 CriLJ3329 , wherein it was held that there can be no second FIR and no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or same occurrence giving rise to one or more cognizable offences. Only information about commission of a cognizable offence which is first entered in station house diary by officer in charge of the police station can be regarded as FIR under Section 154. Reference has also been made to the judgment of this Court in Jaswant Singh and Ors. v. State of Rajasthan, reported in 2000 (2) R.C.C. 898, wherein it was held that investigation, commenced and thereafter FIR was lodged, in these circumstances FIR is inadmissible being hit by Section 162 Cr.P.C.

11. On the other hand learned Public Prosecutor supported the impugned judgment and contended that it is not a case of second FIR and thus Ex.P4 report is not hit by Section 162 Cr.P.C.

12. We have given our anxious consideration to the above submissions. It is evident from the statement of Ashok Kumar (PW20) that when he could not trace out the truck, he lodged a report about the missing of his truck. He did not state that any report was lodged about the murder of deceased Harjeet Singh. Nor any document has been placed on record by the defence that any such type of report of murder was lodged prior to the report Ex.P4. Thus, it cannot be said that Ex.P4 is a subsequent FIR about the incident of the murder and thus it is not hit by Section 162 Cr.P.C.

13. Learned Counsel for the appellant next submitted that prosecution could not establish beyond reasonable doubt that appellant Sanjay Kumar ever served as a cleaner on the said truck and that he was last seen with the deceased Harjeet Singh. It was also submitted that prosecution witnesses namely Baldev Raj (PW1), Ashok Kumar (PW20) and Asharani (PW14), being close relatives of the deceased are interested witnesses, that Sitaram (PW2) is a neighbourer of the deceased and further their statements are contradictory on the material points and thus cannot be relied upon.

14. It is settled principle of law that testimony of the relative witnesses cannot be discarded only on this count that they are close relatives of the victim. Hon'ble Supreme Court in the case of Dilip Singh v. State of Punjab, reported in : [1954]1SCR145 observed that a witness is normally to be considered independent witness whether he or she springs from sources which are likely to be tainted and that usually means that unless the witness has the cause, such an enmity against the accused to wish to implicate him falsely, ordinarily a close relative would be the last to screen the last culprit and falsely implicate an innocent persons. In Lehna v. State of Haryana, reported in : [2002]1SCR377 , their Lordships observed that relations by itself cannot be a ground to doubt the testimony of such witnesses.

15. To prove the facts of last seen together, prosecution has relied on the evidence of Baldev Raj (PW1), Ashok Kumar (PW20), Sitaram (PW2), Asharani (PW14), Praveen Kumar (PW18) and Sushil Kumar (PW21). Baldev Raj (PW1) deposed that on 7.8.1998 Harjeet Singh after loading the plywood in his truck at

Yamuna Nagar started for Indore along with cleaner Sanjay, that he saw both Sanjay Kumar and Harjeet Singh together at Ladwa, that on an information about the accident he went there and got the dispute compromised with the owner of other truck involved in the said accident and after necessary repairs, both Harjeet Singh and appellant Sanjay Singh left for Indore. Ashok Kumar (PW20), owner of this truck while corroborating the statement of PW1 stated that Harjeet Singh and Sanjay Kumar were respectively serving as his driver and cleaner on this truck. He further stated that on receiving telephonic information given by Harjeet Singh about the accident, he sent PVV1 Baldev Raj and one 'Mistri' at the place of accident who came back and informed him about compromise and onwards journey of the truck. Sitaram (PW2) endorsed the testimony of Baldev Raj (PW1) and Ashok Kumar (PW20). It was also stated by him that appellant Sanjay Kumar was working as a cleaner on the truck and went along with driver Harjeet Kumar after loading the ply wood from Yamuna Nagar. Asharani (PW14) who is widow of deceased Harjeet Singh also deposed that she knows the appellant Sanjay Kumar who was the cleaner on the truck whereon her husband Harjeet Singh was the driver. She further stated that her husband after loading the goods from Yamuna Nagar came at Ladwa and told her to prepare the food and after taking the meals her husband and Sanjay Kumar both went away. After sometime her husband came back and told her that there was some fault in the vehicle and then he went back in the morning from the house. Praveen Kumar (PW18) who was the 'Munim' in Sunny Road Lines, also stated that on their behalf one truck No. DL IGB-0688 was loaded from Goyal Industries for the destination of Indore on 7.8.1998 and Harjeet Singh was the driver and Sanjay Kumar was the cleaner. He further stated that bulity No. 8 was issued and thereafter driver and conductor both started for the destination. Sushil Kumar (PW21) who is an independent witness and owner of Goyal Industries also certified that on 7.8.1998 after loading the plywood worth Rs. 2,05,752/- in the truck No. DL IGB-0688 for transporting the same at Indore, driver Harjeet Singh and Sanjay Kumar cleaner started for its destination. He also stated that he was acquainted with driver and 'Khalasi' because they usually used to come in their factory. These all are the natural witnesses and their testimony remained consistent. It is also significant to note that no specific allegation has been levelled against the witnesses about having enmity, ill-will or any reason to

falsely implicate the appellant. As such, this circumstances is amply proved that appellant Sanjay Kumar was the cleaner on the truck No. DL IGB-0688 who went from Yamuna Nagar along with driver Harjeet Singh after loading the ply wood from Goyal Industries, Yamuna Nagar for the destination to Indore, they halted at Ladwa, took their meals at the residence of the deceased and then they moved for Kalanaur on 10.8.1998 where they had to stay for necessary repairs in the truck on account of the accident occurred near Kalanaur. Thus, appellant Sanjay Kumar was last seen with the deceased on 10.8.1998.

16. To prove the IInd circumstance that the dead body was found near beer factory, Shahjahanpur, prosecution has relied on the testimony of Sitaram (PW11), Mahesh (PW13), Dilip Singh (PW22), Ram Singh (PW19) and SHO Hari Sharan Sharma (PW23). PW11 Sitaram was an executive officer in the beer factory Shahjahanpur who deposed that when he was coming from factory, he sensed foul smell and when he turned his scooter, he saw that one dead body was lying in the dense bushes. Thereafter, on his information, police came at the spot, prepared the inquest report, clothes of the deceases were seized and photographs of the dead body were also taken. Dilip Singh (PW22) who was the contractor in the beer factory, Shahjahanpur also endorsed the statement of Sitaram (PW11). He stated that He saw one dead body lying near beer factory, Shahjahanpur. Police prepared 'Panchnama' and seized the clothes of the deceased. Mahesh (PW13) who is photographer stated that on the requisition of the police he went at the spot, took the snaps of the dead body which was lying near beer factory at Shahjahanpur. Recovery of the dead body near beer factory, Shahjahanpur is also not disputed by the appellant Sanjay Kumar. Only it was contended that the said dead body was highly decomposed according to the statements of Dr. Pankaj Jain (PW10) and Dr. Banwari Lal (PW12) and could not be identified on the basis of photographs and clothes of the deceased. It was also contended that autopsy of the unknown dead body was conducted on 13.8.1998 wherein it was opined by the panel of the doctors that deceased died 5 to 7 days ago while the prosecution case is that deceased was last seen on 10.8.1998, thus, it is clear that unidentified dead body could not be of deceased Harjeet Singh.

17. We have carefully considered the submissions in the light of the evidence and material available on record. It has come in the evidence that dead body was in the process of decomposition. Dr. Pankaj Jain (PW10) and Dr. Banwari Lal (PW12) conducted the postmortem on the dead body on 13.8.1998. Dr. Pankaj Jain (PW10) stated that they conducted autopsy on the dead body at the spot. He further stated that many organs of the dead body were decomposed. Foul smell was coming out. According to his opinion, period of death was 5 to 7 days. In the cross-examination, he further stated that maggots were crawling on the dead body. He admitted that this was his second case of postmortem. Dr. Banwari Lal (PW12) also opined that on the dead body many maggots were crawling, many organs were decomposed. He also opined that duration of death was 5 to 7 days. It is settled principle of law that value of the evidence of doctor is only opinionative and as such does not have any binding force and cannot be said to be the last word or what he deposes or meant or implicit acceptance. The Hon'ble Supreme Court in the case of Main Pal and Anr. v. State of Haryana and Ors., reported in : 2004 CriLJ2036 observed that opinion of the doctor cannot have any binding force and evidence of doctor is to be shifted, analyzed and tested in the same manner as that of any other witnesses keeping in view only the fact that he has some experience and training in the nature of the functions discharged by him.

18. On scrutiny of the evidence of Dr. Pankaj Jain (PW10) and Dr. Banwari Lal (PW12) in the light of Modi's Medical Jurisprudence & Toxicology, 22nd Edition Page 234, we find that opinion given by the doctors about the duration of death of deceased person is not acceptable. It is clear from Modi's Medical Jurisprudence that on the dead body the houseflies, blow flies are attracted and lay their eggs, the eggs hatch into maggots or larvae within 8 to 24 hours. The maggots crawl into the interior of the body and helps in destroying the soft tissues. It is also clear that maggots become pupae in 4 to 5 days. In the instant case, both the doctors did not state that they found pupae on the dead body. The period of death of the deceased thus cannot go beyond 3 to 4 days. It also matches with the prosecution story that driver Harjeet Singh was murdered in the mid-night of 10 and 11th August, 1998. So far identification of the deceased is concerned, it is an admitted case that Baldev Raj (PW1) (brother of deceased Harjeet Singh) and Ashok Kumar (PW20) (owner of the truck) did not see the dead body as the same was

cremated earlier, but they all identified the deceased on the basis of his photographs and clothes taken away by the police from the body of the deceased. Their evidence remained unimpeachable. The contention of learned Counsel for the appellant that deceased could not be identified on the basis of photographs is not acceptable as a perusal of photographs Ex.P6, P8 & P9 goes to show that face and structure of the deceased is visible.

19. The third circumstance of the recovery of truck lying abandoned at a place near Railway crossing, Hapur has been amply proved by Shambhu Dutt Sharma (PW3), Head Constable, Police Station, Hapur who stated that on 18.8.1998 an abandoned truck No. DL IGB-0688 loaded by plywood was standing near Mandigate, Hapur. They seized and took the truck to the police station on 18.8.1998 which was handed over to A.S.I., Shahjahanpur on 8.9.1998 on the orders of A.C.J.M.-Ist, Hapur.

20. To prove the fourth circumstance, the prosecution has relied on the testimony of Baldev Raj (PW1), Sitaram (PW2) and Ashok Kumar (PW20). According to their statements when truck did not reach Indore till 17.8.1998, they went in the search of the truck but the same could not be traced out for a long period, then they went at the native place of appellant Sanjay Kumar where he was found. As discussed above, it has been found proved that deceased was in the company of appellant and was last seen together when they started from Kalanaur to Indore but thereafter the deceased was not seen alive and only his dead body was found in decomposed condition. It is significant to mention here that Section 106 of the Indian Evident Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death and certain other facts unless the accused by virtue of his special knowledge regarding such facts failed to explain which might lead the Court to draw a different inference. In the instant case, the prosecution has proved these facts that deceased was in the company of appellant, they both departed from Yamuna Nagar after loading the ply wood in the truck No. DL 1GB-0688, stayed at Ladwa and took their meals at the residence of deceased Harjeet Singh and thereafter truck met with an accident at Kalanaur,

after necessary repair both started from Kalanaur and thereafter deceased was not seen alive and dead body was found in the dense bushes in decomposed condition. This fact is also on the record that appellant without informing about the whereabouts of the truck and its driver to the owner or any other relative of the deceased ran away to his native place Telipura, Bijnor. Further the appellant did not offer any explanation about the happenings with the truck as well as with the deceased Harjeet Singh. Thus, in our view, it was quite unnatural conduct of the appellant who was having special knowledge about all these aspects. Thus, inference can be drawn of his guilt.

21. Next important circumstances, which weighed with the Trial Court to base conviction, is the recovery of ply wood at the disclosure statement of the accused. Learned Counsel for the appellant contended that disclosure statement under Section 27 of the Indian Evidence Act and recovery of ply wood is doubtful as no reliance can be placed on the testimony of Mangu Singh (PW6) and other 'Motbir witnesses' namely Subhash (PW4) and Ramkumar (PW5). He further contended that wife of Mangu Singh was not examined by the prosecution whereas she was an important witness as per the prosecution case.

22. We have considered the said submissions. In the instant case, the appellant was arrested on 10.8.1998 vide arrest memo Ex.P17. He gave information under Section 27 of the Evidence Act about the recovery of goods (ply wood). In pursuance of the information accused went along with Investigating Officer, 1 Balveer Singh (PW16) at village 'Dhundli' and at the instance of the appellant 284 pieces of ply wood were recovered from the house of Mangu Singh (PW6) vide recovery memo Ex.P.7 Mangu Singh (PW6) also supported the fact of recovery and stated that Sanjay Singh kept the ply wood at his residence through Mool Singh who is resident of the same village. Ramkumar (PW5) and Subhash (PW4) who are the 'Motbir witnesses' and residents of the same village proved that Rajasthan Police came in their village and recovered the ply wood from the shop of Mangu Singh. The fact of recovery is further affirmed by the unimpeachable evidence of I.O. Balveer Singh, ASI (PW16). Thus, in our view, prosecution has succeeded in proving the fact that on the information given by the appellant, 284 pieces of ply wood were recovered.

23. Learned Counsel for the appellant next submitted that doctors who conducted the autopsy on the dead body could not opine about the cause of death, thus the prosecution failed to prove that the deceased died on account of homicidal death.

24. We are unable to agree with this submission. It is true that the dead body was highly decomposed and on this count the doctors could not opine about the cause of death but in our opinion if from the circumstances such a situation emerges which leads to the unescapable conclusion that person has died and that the accused is the person who had committed the murder, in that case without conclusive opinion of the doctors about the cause of death, conviction can be based. In the case of Ram Gulam Chaudhary and Ors. v. State of Bihar, reported in : 2001 CriLJ4632 corpus delicti was not found. The Hon'ble Supreme Court observed that even so accused can be convicted if there is direct or circumstantial evidence conclusively showing that the victim had died and that accused committed his murder. In the instant case, it has been proved that appellant and deceased Harjeet Singh travelled together in the said truck, they were carrying the ply wood in the truck and were last seen together and in the suspicious circumstances the dead body of deceased Harjeet Singh was found in the dense bushes near beer factory, Shahjahanpur, thereafter the appellant took the truck and removed some ply wood from the truck which were recovered at his instance from the house of Mangu Singh (PW6) at village 'Dhundli'. Truck was also seized under Section 102 Cr.P.C. while it was standing under the suspicious circumstances near Railway crossing, Hapur. It has also come in the evidence of Ashok Kumar (PW20) the appellant knows driving also. Further the unnatural conduct of the accused that he ran away to his village Telipura and did not inform about the truck and its driver to the owner of the truck or any other relative of the deceased and no explanation has been offered by him about the special knowledge which he was having and thus under these circumstances irresistible conclusion can be drawn that the appellant has murdered the deceased and after throwing the dead body in the dense bushes took away the truck full of ply wood.

25. Therefore, the circumstances highlighted by the prosecution present the complete, picture and chain of circumstances which completely rules out the role of any other person and inevitably points the finger at the accused and in that view

of the matter the Trial Court was justified in convicting the accused.

26. For the reasons mentioned above, we do not find any infirmity in the impugned judgment and therefore, this appeal is hereby dismissed.

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