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Court : Rajasthan

Decided On : Dec-18-1998

Reported in : 1999CriLJ1987; 1999(1)WLC408

Judge : V.G. Palshikar and; Bhagwati Prasad, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 302; Constitution of India - Article 136

Appeal No. : Crl. Appeal No. 454 of 1993

Appellant : Omprakash

Respondent : State

Advocate for Def. : L.R. Upadhyay, Public Prosecutor

Advocate for Pet/Ap. : J.R. Beniwal, Adv.

Disposition : Appeal allowed

Judgement :

V.G. Palshikar, J.

1. Being aggrieved by the judgment and order of conviction passed by the Additional Sessions Judge, Nagaur, in Sessions case No. 43/97 on 8-9-1993, convicting the accused under Section 302, IPC, to suffer imprisonment for life, the

appellant has filed this appeal. He has preferred this appeal on the grounds mentioned in the memo of appeal as also orally canvassed before us.

2. Facts giving rise to the prosecution are stated briefly that a First Information Report was lodged in the Police Station, Khinvsar on 14-5-1992 by one Nenuram, stating that at about 11 -00 a.m., on that day, he heard that one Omprakash has killed Shivpyari, his wife, due to old quarrel. Thereafter, investigation was conducted. The accused was arrested and the prosecution commenced. The prosecution has examined 22 witnesses during the trial to prove its case along with certain documents which were duly proved. On appreciation of this oral and documentary evidence, the learned Additional Sessions Judge came to the conclusion that the accused has committed murder under Section 302, IPC and, therefore, proceeded to punish him to suffer imprisonment for life as aforesaid.

3. Assailing the order of conviction as recorded by the learned Additional Sessions Judge, Mr. J. R. Beniwal, learned counsel for the appellant, argued that the order of conviction is unsustainable in law as conclusions of guilt are not supported by the evidence on record. According to the learned counsel, the entire conviction is rested upon the sole testimony of an interested witness, who is younger brother of the deceased Shivpyari and the corroboration which is sought to be used for supporting the testimony of P.W. 1 Omprakash is the recovery of blood stained knife and clothes at the instance of the accused. Mr. Beniwal very strenuously argued, after pointing out the evidence to us, that the order of conviction is unsustainable in law. The delay caused in lodging the First Information Report is not satisfactorily explained. The explanation for the so-called delay does not overrule the possibility to concoct the entire case against the accused, the investigation is very faulty and the evidence, as is accepted by the learned trial Judge, is not sufficient to safely convict the accused of murder. According to the learned counsel, the evidence admits of reasonable explanation which can exclude the participation of the accused and in such circumstances, conviction on such evidence is not legal and proper. Assailing the investigation, it was pointed out by the learned counsel that the Police visited the scene of occurrence immediately on the receipt of the First Information Report and had seen the premises. The accused was arrested thereafter and then, it is alleged that at his

instance, the blood stained knife and clothes were recovered. The learned counsel argued that the possibility of plantation of these articles cannot be overruled. He then argued that the Investigating Officer has committed a blunder in not connecting the knife to the accused. According to him, assuming that the knife and clothes were discovered at the instance of the accused, mere discovery is not enough, unless the knife, connected to the accused, is shown to have been used by him. It was the submission of the learned counsel for the appellant that the police could have ascertained the fingerprints from the knife and could have either proved or excluded use of the knife by the accused. Failure on the part of the prosecution is a serious lacuna, which raises a reasonable doubt regarding involvement of the accused and, therefore, the evidence, as is accepted, is grossly insufficient for sustaining the order of conviction.

4. With the assistance of the learned counsel for the appellant and the learned Public Prosecutor, we have gone through the evidence and re-appreciated the oral evidence as also the documentary evidence. The prosecution has examined as many as 22 witnesses to prove its case and it was on appreciation of these evidence that the learned trial Judge found the accused guilty of murder.

5. The material evidence which is used by the learned trial Judge for basing her order of conviction is the deposition of PW. 1 Omprakash, who is a boy of 15 years old and is real brother of deceased Shivpyari. Corroboration of this testimony, which is not an eye-witness, is again sought from the recovery of the blood stained knife and clothes at the instance of the accused and the evidence of the Forensic Science Laboratory that the blood group of the deceased matched with the blood found on the stained articles. The learned Judge has taken this evidence along with the evidence of previous quarrel between the accused and the deceased, and found it proper to convict the accused as aforesaid.

6. P.W. 1 Omprakash is the real brother of deceased Shivpyari, who has given a graphic description of the entire happenings in his deposition in the Court. The witness deposed practically in detail that has occurred from the moment of their departure from the hometown to the place where Shivpyari was found dead. The graphic description as given by a witness of 15 years, in such a great detail, raises

a reasonable question in the mind as to whether the witness is speaking on recollection or on tutor. In our opinion, in order to give such a graphically detailed statement, the memory has to be photogenic or phenomenal. Ordinarily, a rustic boy of 15 years old, may not be in a position to recall such details. Apart from this aspect, the witness has stated in his deposition that he heard the shouts of his sister and, therefore, went into the room, where he heard the noises and saw the accused stabbing the deceased with a knife. The witness then stated that when he tried to prevent the accused, he threatened him also. He has deposed that immediately, thereafter, Ramavtar and Devaram also came to the scene of the occurrence. According to the witness, therefore, these two persons were also present, immediately after the occurrence, at the scene, where the offence was allegedly committed. However, both theses witnesses, who have been examined, have turned hostile and have denied, even their presence or any knowledge about the incident. Material corroboration to the sole testimony of PW. 1 which could have come from these witnesses is, therefore, not available in the present case. It is, therefore, very difficult to accept the uncorroborated testimony of P.W. 1 who is only 15 years of age and has deep rooted interest in the matter.

7. There is undoubtedly ample evidence on record in the shape of several prosecution witnesses to prove that the accused had quarrelled with his wife on many occasions earlier and may, therefore, have a grudge against her, which can be said to be a motive for killing her. However, in our opinion, mere proof of motive is not sufficient to sustain the order of conviction Under Section 302, IPC. No connection is established between such motivity and the factual commission of the offence. In our view, the prosecution has failed to prove such connecting evidence.

8. The First Information Report has been lodged almost 12 hours after the incident occurred and at least three prosecution witnesses have stated the reasons which contributed to this delay. In itself, the reasons are acceptable and merely because there is a delay in lodging the First Information Report by itself cannot be a ground for rejecting the FIR as a corroborative piece of evidence. However, if the FIR is accepted as corroborative evidence all that is stated in the FIR, is hearsay evidence. The report was not lodged by PW. 1 Omprakash, who is the sole eyewitness. No reason is forthcoming as to why he did not lodge the First

Information Report. There is also no explanation as to why immediately on disclosure of the incident by him, the FIR was not lodged. Even after these deficiencies are excluded and the FIR is accepted as a corroborative piece of evidence, it does not lead reasonable credence and support the testimony of P.W. 1 Omprakash as what has been stated in the FIR is the same thing which the reporter heard from Omprakash. In effect, it is using statement of Omprakash to corroborate his deposition in Court which is not corroboration at all. There is, thus, no corroboration to the testimony of the sole eyewitness.

9. That brings us to the consideration of the recoveries as made at the instance of the accused. The accused has denied ownership either of the blood stained pent or blood stained knife. The police has visited the scene of occurrence after the FIR was received. They have seen the body and the Panchanama of the dead body was prepared. It was, therefore, expected from the police in the course of their natural duty that they would search the premises reasonably for any possible evidence connected with the crime. So, search for discovery of blood stained clothes or knife was possible. There is no reason to believe that such search was not made. Consequently, recovery of the said articles after the arrest of the accused at the same premises, raises a reasonable doubt that the same might have been planted there or were negligently not recovered by the police when they first arrived on the scene. Even if we assume that every thing was done in normal course, there is no reason to discard the same. Even the recovery does not help the prosecution. We may assume that the blood stained pent and blood stained knife were recovered at the instance of the accused. There is ample evidence on record of previous quarrels between the deceased and the accused to show that he has beaten his wife on several occasions earlier. Presence of blood on his wife, therefore, may relate to one such quarrel, prior to that killing. After the accused had denied the ownership of the pent, the prosecution could have made evidence by fitting it on his body to show that the pent belongs to the accused. The prosecution has also failed to prove any connection of the accused with the knife. They could have taken the fingers printed on the knife and could have matched the same with that of the accused and could have proved the same, proving consequently use of the knife by the accused, which could definitely be an incriminating circumstance, leading complete credence to the testimony of

Omprakash. However, such evidence, which could have been brought on record by the prosecution is not forthcoming. We would also like to point out that such evidence, if obtained, could have also positively decided the use of the knife by the accused or could have excluded use of the same by him. The possibility that the knife was not used by the accused, having not been overruled in the present case, though it was plausible for the prosecution to do, again there raises doubt in the mind of a reasonable prudent man as to whether it is safe to connect the accused on the sole eye-witness of a 15 years old boy, who is brother of the deceased and has given unexpected detailed deposition in regard to the happenings leading to the death of the deceased.

10. The Supreme Court, in Anil Phukan v. State of Assam (1993) 3 SCC 282 : 1993 Cri LJ 1796, while appreciating an appeal under Article 136 of the Constitution, has observed as to the need of corroboration of a sole eyewitness as also to the need of such corroboration when the witness is related to the deceased. The Supreme Court has observed in this case as under :-

Conviction can be based on the testimony of a single eye-witness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eyewitness is wholly reliable witness the Courts have no difficulty in basing conviction on his testimony alone. However, where the single eye-witness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the Courts generally insist upon some independent corroboration of his testimony, in material particulars before recording conviction. It is only when the courts find that the single eye-witness is a wholly unreliable witness that his testimony is discarded in to and no amount of corroboration can cure that defect.

11. Therefore, in this case also, it is necessary to see corroboration for the testimony of the sole eyewitness. In view of the fact that the two persons named by the witnesses have turned hostile and no other evidence of corroboration is possible, it would be unsafe to rely on the sole testimony of this witness.

12. In the same, the Supreme Court further observed in relation to the testimony of an interested witness as under :-

Mere relationship of the witness with the deceased is no ground to discard his testimony, if it is otherwise found to be reliable and trustworthy. In the normal course of events, a close relation would be the last person to spare the real assailant and implicate a false person. However, the possibility that he may also implicate some innocent person along with the real assailant cannot be ruled out and, therefore, as a matter of prudence, Court should look for some independent corroboration of his testimony to decide about the involvement of the other accused in the crime.

13. In the present case also, therefore, corroboration of testimony of P.W. 1 Omprakash is necessary. As already observed above, no such corroboration is possible from the evidence of recovery, even if it is accepted to be proper and legal.

14. Taking into consideration all these aspects, we find it unsafe to rely on this evidence for confirming the order of conviction and sentence as made by the learned Judge. In our opinion, in such circumstances, this conviction is improper and unsustainable in law. We do not find it safe to rely on uncorroborated testimony of this interested witness.

15. In the result, the appeal succeeds and is allowed. The judgment of conviction and sentence is set aside. The accused is given benefit of doubt and is acquitted of the offence with which he was charged. He is in jail and shall be released forthwith, if not required in any other case.

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