

Hukam Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jun-30-2008

Reported in : RLW2008(4)Raj3499

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

Appellant : Hukam Singh

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Shiv Kumar Sharma, J.

1. Greed of silver-anklets forced the killer to enter into the lonely room of an old and infirm lady Manphooli Devi (since deceased) and to chop off her ankles in the Intervening night of July 25 and 26, 2003. The killer, subsequently identified as Hukam Singh, appellant herein, was put to trial before learned Additional Sessions Judge (Fast Track), No. 1, Jaipur City Jaipur. Learned Judge vide judgment dated December 20, 2004 convicted and sentenced the appellant as under:

Under Section 302 IPC:

To suffer imprisonment for life and fine of Rs. 500/- in default to further suffer rigorous imprisonment for six months.

Under Section 397 IPC:

To suffer rigorous imprisonment for seven years.

Sentences were ordered to run concurrently.

2. It is the prosecution case that on July 26, 2003 informant Gopal Lal (PW.5) handed j)Ver a written report (Ex.P-3) at Police Station Brihmapuri Jaipur stating therein that his mother Manphooli Devi, an old and infirm lady was residing alone in a room near the well. On July 25, 2003 as usual the informant provided food to her and remained with her till 9.00 PM. Around 12.30 AM while the informant and his cousin Sri Narayan proceeded to field to watch cattle, the informant called his mother but she did not respond. He then lit the match-stick and found his mother lying on the ground. Her both ankles were amputated and sliver anklets were missing. She was removed to SMS Hospital Jaipur where she was declared dead. On that report, case under Sections 302 and 397 IPC was registered and investigation commenced. Necessary memos were drawn, statements of witnesses were recorded, appellant was arrested and on the basis of his disclosure statements Incriminating articles got recovered, necessary memos were drawn and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No. 1 Jaipur City Jaipur. Charges under Sections 302 and 397 IPC were framed against the appellant, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 27 witnesses. In the explanation under Section 313 Cr PC, the appellant claimed Innocence. One witness was examined in defence. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated above.

3. We have heard the submissions advanced before us by learned Counsel for the appellant and learned Public Prosecutor and with their assistance scanned the material on record.

4. There is no ocular version of the incident and the prosecution entirely based its case on circumstantial evidence. The standard of proof required to convict a person on circumstantial evidence is now well established by a series of decisions

of Supreme Court. According to that standard the circumstances relied upon in support of conviction must be fully established and the chain of evidence must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. The circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused and should not be capable of being explained by any other hypothesis, except the guilt of the accused and when all the circumstances cumulatively taken together should lead to the only irresistible conclusion that the accused alone is the perpetrator of the crime.

5. Having regard to these principles enunciated with regard to the proof of guilt by circumstantial evidence we shall now examine the various circumstances said to be appearing against the appellant.

6. According to prosecution following circumstances are found established against the appellant and they form a complete chain so as not to leave any reasonable ground for the conclusion consistent with the innocence of the appellant:

(i) Death of Manphooli Devi was homicidal in nature.

(ii) The appellant on the date of incident was found watching film 'Itihas' on TV alongwith Ram Kishore (PW.16) in the house of Badri Narayan. The film was to continue till 12.30 AM but the appellant did see the film till 11 PM only and left the house suddenly without assigning any reason. Around 12.45 AM Ram Kishan heard that ankles of Manphooli Devi were chopped off.

(iii) After the incident all the villagers gathered at the place of incident but the appellant was conspicuously absent.

(iv) On the basis of disclosure statements of appellant Incriminating articles viz. Silver anklets, axe, and clothes stained with blood got recovered from his house in the presence of Motbirs Prabhu Narayan (PW.13) and Sita Ram (PW.14) by Anoop Singh 10 (PW.25.).

(v) As per FSL report (Ex.P-31) 'A' Group human blood was found over the clothes of deceased, the axe and clothes recovered at the instance of appellant.

(vi) The silver anklets were identified before the Magistrate by the son of the deceased as belonging to the deceased.

7. Turning to the first circumstance we find that the death of Manphooli Devi was homicidal in nature. Vide postmortem report (Ex.P-8) following antemortem injuries were found on the dead body:

1. Abraded bruise is an 3 x 2cm Lt. side neck with reddish colour at the level of thyroid on further dissection the linear abraded bruise about 3 In number on further dissection of neck subcutaneous under the above injury & muscle hematoma on further dissection of neck muscle hematoma b/1 of thyroid cutting reddish in colour on further dissection of thyroid cutting from Ly. coral of hyoid cartilage with anti thick reddish colour clotted blood Lateral & Trident conjoint & heavy deeping committed on B/1 neck & thyroid cartilage. Chopped incised wound with with amputated of B/1 leg 1/3 part with multiple incised wound at the end of B/1 leg step. The wound margins are regular clear cut & were diffuse with anti mortem clotted blood.

Dr. N.L. Disaniya (PW.8), who performed autopsy on the dead body, opined that cause of death was hemorrhagic shock due to ante mortem injuries.

8. Coming to second and third circumstances we find that they relate to abnormal conduct of the appellant prior to the incident. According to Ram Kishore (PW.16) the appellant on the date of incident was watching film 'Itihas' on television in the house of Badri Narayan, but around 11.90 PM the appellant abruptly left the house In the middle of the film whereas the film continued till 12.30 AM. The Incident occurred around 12.45 AM and all the Inhabitants of small village gathered at the place of Incident; but the appellant conspicuously remained absent.

9. The conduct of accused is made relevant by Section 8 of Evidence Act. It is well settled that only that piece of conduct can be held inculpatory for which accused has no reasonable explanation except the hypothesis that he is guilty. In the

instant case when testimony of Ram Kishore was read over to appellant under Section 313 Cr PC, he replied 'Galat Hai (It is incorrect). He did not explain as to why he left the house of Badri Narayan in the middle of the film at 11.00 PM and where had he gone. In the explanation under Section 313 Cr PC the appellant however stated as under:

eS funksZ'k gwa A eq>sa bl eqdnesa esa >Bk Qalk;k gS A esjs ls dksbZ ckenxh ugh gqbZ gS A >wBh ckenxh fn[kk;h gS A eS jktiwr tkfr dk gwa vkSj xkao esa IHkh czkge.k tkfr ds gS blfy, eq>s xkao es ugh jgus nsus ds dkj.k >wBh xokgh nsdj Qalk;k gS A

This explanation appears to be false in view of the testimony of informant Gopal (PW. 10), son of deceased Manphool Devi, who had good relations with Rajputs. Gopal immediately after the incident telephoned one 'Rathore Sahab' (Rajput Gentleman). In his examination in chief Gopal stated as under:

eSus eka dks vkokt yxkbZ rks eak ugh cksy ikbZ eS csgks'k gksdj fxj x;k A eq>s 10&5 feuV esa gks'k vk x;k eS fpYyk;k rks xkao okys vk x;s A fQj eSus dSyk'k ds HkkbZ iwj.k ey dks Qksu fd;k o dSyk'k dks ?kVuk ds ckjs es crk;k mlds ckn jkBksj lkgc dks Qksu fd;k] dSyk'k us dgk eS iqfyl dks lwpuk dj jgk gwa jkBkSj lkgc us Hkh dgk iqfyl dks Qksu dj jgk gwWa A

10. Their Lordships of the Supreme Court had occasion to examine Section 8 of the Evidence Act In State v. Navjot Sandhu : 2005 CriLJ3950 . It was Indicated as under: (Paras 205 and 206)

205. Before proceeding further, we may advert to Section 8 of the Evidence Act Section 8 insofar as it is relevant for our purpose makes the conduct of an accused person relevant, if such conduct Influences or is influenced by any fact in issue or relevant fact. It could be either previous or subsequent conduct. There are two Explanations to the Section, which explains the ambit of the word 'conduct'. They are:

Explanation 1: The word 'conduct' in this Section does not include statements, unless those statements accompany and explain acts other than statements, but

this explanation is put to meet the relevancy of statements under any other Section of this Act.

Explanation 2: When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

The conduct, in order to be admissible, must be such that it has close nexus with a fact in issue or relevant fact. The Explanation 1 makes it clear that the mere statements as distinguished from acts do not constitute 'conduct' unless those statements 'accompany and explain acts other than statements'. Such statements accompanying the acts are considered to be evidence of *res gestae*. Two illustrations appended to Section 8 deserve special mention.

(f) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence - 'the police are coming to look for the man who robbed B', and that immediately afterwards A ran away, are relevant.

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

206. We have already noticed the distinction highlighted in Prakash Chand's case (*supra*) between the conduct of an accused which is admissible under Section 8 and the statement made to a police officer in the course of an investigation which is hit by Section 162 Cr.P.C. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where stolen articles or weapons used in the commission of the offence, were hidden, would be admissible as 'conduct' under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct, falls within the purview of Section 27, as pointed out in Prakash Chand's case. In Om Prakash case (*supra*) AIR 1972 SC 975, this Court held that 'even

apart from the admissibility of the information under Section, the evidence of the investigating Officer and the Panchas that the accused had taken them to PW11 (from whom he purchased the weapon) and pointed him out and as corroborated by PW11 himself would be admissible under Section 8 as 'conduct' of the accused.

11. In the case on hand the conduct of appellant prior to incident has close nexus with the fact in issue. Second and third circumstances thus stand established.

12. The fourth circumstance relates to recovery of Incriminating articles at the instance of appellant. Anoop Singh Investigating Officer (PW.25) in his deposition stated that he arrested the appelant on August 21, 2003 vide memo Ex.P-7. Appellant gave information about the axe, allegedly used in commission of offence, which was recorded in the memo Ex.P-27. Appellant also gave information about anklets which was recorded in the memo Ex.P-28. Pursuant to the information axe stained with blood got recovered from the hut of appellant vide memo Ex.P-19. The anklets got recovered from a tin placed under the cot in the room of appellant vide memo Ex.P-20. Axe and silver anklets got recovered in the presence of Prabhu Narayan (PW.13) and Sita Ram (PW.14). From the room of appellant his clothes (Jeans and shirt) stained with blood were also recovered. Prabhu Narayan (PW.13) in his deposition stated that appellant was taken by Investigating-Officer to the village Roopa ki Nangal through a jeep. Appellant entered his house and took out Kharwari without handle from hut (Chhan ki Bati) which was seized vide memo Ex.P-19. Appellant also took out anklets from a tin which was placed under the cot in his room. The police also seized pant and shirt of appellant from his room. Testimony of Prabhu Narayan gets corroboration from the statement of Sita Ram (PW.14).

13. Section 27 of Evidence Act lays down an exception to the rule that a confession made by an accused person 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 necessary warning and in India the fact of his being in custody of a police officer serves the purpose.

14. 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.

15. In *Rammi v. State of M.P.* : 1999 CriLJ4561 , the Apex Court held thus:(Paras 11 & 12)

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.

16. 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.

17. 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: (Para 5)

Another incriminating circumstance which corroborates the case of the prosecution is that the appellant led the IO 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 IO 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.

18. In the instant case Anoop Singh (PW.25) recovered axe and anklets from the place pointed out by the appellant in his disclosure statement. The appellant led Anoop Singh to the spot and got axe and anklets recovered. This incriminating circumstance corroborated the case of the prosecution.

19. The fifth circumstance relates to matching of blood group found on the clothes of the deceased and the blood group found on the axe and clothes of the appellant. As per FSL report (Ex.P-31) 'A' group of blood of human origin was found on the clothes of deceased and the axe and the clothes of appellant. FSL report (Ex.P-31) reads as under:

Descriptipn of Articles

Packet Marked Exhibit No.1. A 1 Cotton SwabB 2 Blood smeared soil3. C 3 Control soil4. A1 4 Lugari' 5 Blouse' 6 Petticoat5. AA 7 Kulhari6. CC 8 Jeans' 9 Shirt7. Nil 10 Liquid Blood.Results of Examination

On serological examination the blood stains on the following exhibits were found to be of Human origin:

1 (from A), 2 (from B) 4, 5, 6 (from A1), 7 (from AA), 8, 9 (from CC) 10 (from Nil)

Report of Blood Group

The following exhibits were found to be stained with 'A' group blood:

4, 6 (from A1), 7 (from AA), 8,9 (from CC)

Thus from the FSL report the prosecution has established that blood group of deceased matched with the blood found on the axe and the clothes of the deceased.

20. Then comes the sixth circumstance relating to identification of the anklets belonging to deceased. Shri K.P. Saxena Judicial Magistrate (PW.27) in his deposition stated that on September 10, 2003 he was posted as Additional Chief Judicial Magistrate (Communal Riots Cases) Jaipur. In compliance of the letter (Ex.P-29) of Chief Judicial Magistrate he conducted the identification of anklets on

September 16, 2003 after mixing five other anklets and in presence of witnesses vide memos Ex.P-9 and Ex.F-19. The proceedings of the Identification of anklets were sent through letter Ex.P-35. Thus the prosecution established that the anklets belonging to deceased were correctly Identified by Gopal son of deceased.

21. Gopal (PW.10) deposed that he identified the anklets before the Magistrate. Gopal was also shown anklets in the trial court and he correctly identified the same. Testimony of Gopal could not be shattered in the cross examination.

22. Learned Counsel for the appellant vociferously canvassed that the investigating officer collected the blood of the deceased from the place of incident and sprinkled it on the axe and clothes of the appellant in order to falsely implicate him in the case. We find no merit in the submission. Having closely scanned the testimony of Anoop singh IO (PW.25) we noticed that he conducted investigation fairly. We cannot approach the action of Investigating Officer with initial distrust. The investigating officer had no enmity with the appellant, it cannot be presumed that recovery of incriminating articles at the instance of appellant 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, not 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.

23. 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 and inconsistent with his innocence. All the circumstances exclude with certainty the possibility of guilt of any person other than the appellant.

24. For these reasons, we find no merit in these appeals and the same are accordingly dismissed.

25. The conviction and sentence of appellant under Sections 302 and 397 IPC are maintained.

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