

Subhash Vs. State and ors.

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Court : Delhi

Decided On : Mar-22-2010

Judge : A.K. Pathak, J.

Acts : Code of Criminal Procedure (CrPC) - Section 313; ;Indian Penal Code (IPC) - Sections 34, 201, 302, 363, 365 and 377

Appeal No. : Crl. Rev. P. No. 597/2003

Appellant : Subhash

Respondent : State and ors.

Advocate for Def. : M.P. Singh, APP

Advocate for Pet/Ap. : R.S. Mahla, Adv.

Disposition : Petition dismissed

Judgement :

A.K. Pathak, J.

1. Vide judgment dated 21st January, 2003 learned Additional Sessions Judge acquitted respondent No. 2 of the charges under Sections 365/377/302 of the Indian Penal Code (IPC); acquitted respondent Nos. 2 and 3 of the charges under Sections 201/34 IPC.

2. Respondent No. 1 (State) did not prefer any appeal against the acquittal of respondent Nos. 2 and 3. However, father of the deceased (complainant) preferred an appeal in this Court challenging the acquittal of respondent Nos. 2 and 3.

3. Vide order dated 8th August, 2003 a Division Bench of this Court held that appeal against the acquittal filed by a private party was not maintainable. Accordingly, appeal was ordered to be treated as revision petition. Consequently, present petition was registered as criminal revision.

4. Brief facts of the case are that Lalit, aged about 12 years, was found missing from his house on 11th March, 2001 at about 7:00 PM. Complainant lodged a missing report with the police station Samaipur Badli, pursuant whereof FIR No. 145/2001 under Section 363 IPC was registered.

5. During investigation one Naim Singh informed that he had last seen the deceased with respondent No. 2 at about 7:30/7:45 PM. Thereafter, Investigating Officer went to the house of respondent No. 2 and apprehended him. Respondent No. 2 made a disclosure statement that he was having love affair with Kusum, aunt of deceased; on one occasion deceased saw him with Kusum and informed this fact to his father Subhash (PW21) at which Subhash along with his other family members beat him up, as a result of which, he decided to take revenge from the deceased; he got a churri prepared from an iron rod from one blacksmith Mohd. Sharif (PW13) by paying him Rs. 15/-. On 11th March, 2001 at about 7:00 PM he took Lalit with him on his cycle to the fields of Mukhmail Pur via Peer Baba Ki Mazar and there he committed sodomy with him and also stabbed him to death with the iron churri; thereafter, he returned home; his father noticed blood stains on his clothes and made enquiries from him at which he narrated the incident to him. He also washed his blood stained clothes. Pursuant to this disclosure statement, respondent No. 2. took the police party to the fields of Mukhmail Pur via Peer Baba Ki Mazar and on his pointing, dead body of the deceased was recovered. On the basis of this disclosure Sections 377/302/201/34 IPC were added in the FIR.

6. On 13th March, 2001, during interrogation, respondent No. 2 disclosed that he had kept the iron rod churri in his house. Thereafter, he led the police party to his house at House No. 162- A, DCM Colony, Ibrahim Pur Extension, Delhi and got recovered iron churri from 'tand' of his house. Churri was seized after preparing its sketch. Respondent No. 3, father of respondent No. 2, was also present in the house and he also made a disclosure statement and pursuant thereof got recovered the blood stained clothes of respondent No. 2.

7. Charges under Sections 365/377/302 IPC were framed against respondent No. 2; separate charge under Sections 201/34 IPC was framed against respondent Nos. 2 and 3, by the learned trial court.

8. Prosecution examined twenty five witnesses to prove its story. Thereafter, statements of respondent Nos. 2 and 3 were recorded under Section 313 Cr.P.C., wherein they denied their complicity in the crime and claimed themselves to be innocent.

9. Learned trial court held that since case was based on circumstantial evidence, prosecution had to establish chain of circumstantial evidence which has to be complete in all respects, so as to indicate guilt of the respondent Nos. 2 and 3 beyond shadow of doubts and being inconsistent with the hypothesis of their innocence.

10. As per learned trial court following circumstances were required to be proved by the prosecution in order to establish the culpability of respondent Nos. 2 and 3 in the offences for which they were charged.

1. Whether PW18, Naim Singh last saw the accused along with deceased on 11.03.01 at about 7/7:30 p.m.?

2. Whether the dead body has been recovered at the instance of the accused in pursuance to the disclosure statement Ex. PW21/E dated 12.03.01?

3. Whether the weapon of offence and blood soaked clothes had been recovered at the instance of accused Kaptan Singh on the basis of his disclosure statement Ex. PW11/A?

4. What is the effect of the blood having been found on the weapon of offence and clothes of the accused Kaptan Singh as per FSL Report Ex. PW25/B?

5. Whether the prosecution has been able to establish the motive of the accused to kill the deceased Lalit?

11. On the basis of evidence adduced by the prosecution before it, learned trial court came to the conclusion that prosecution had failed to prove the chain of circumstances; evidence led by the prosecution failed to inspire confidence and the chain could not be completed as there were many missing links therein. Consequently, accused were acquitted.

12. I have perused the trial court record carefully and do not find any manifest error or perversity in the impugned judgment.

13. It is well settled that in a case where an offence is said to have been established on circumstantial evidence alone, all the links in the chain must be found to be complete, so as to indicate guilt of the accused, as has been held in *Sharad Birdhichand Sarda v. State of Maharashtra* reported in : 1984 CrI.L.J. 1738 in the following terms:

A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be' or should be proved as was held by this Court in *Shivaji Sahebrao Bobade v. State of Maharashtra* where the following observations were made:

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict, and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(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 so 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.

153. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

14. It is, thus, clear that circumstances from which the conclusion of guilt is to be drawn, should be fully established so as to establish hypothesis of guilt of the accused and the chain of evidence should not leave any reasonable ground for the conclusion consistent with the innocence of the accused.

15. I have perused the trial court record and find that prosecution failed to prove the circumstances establishing the guilt of the accused as propounded by it. PW18 claimed that he had seen the deceased going with respondent No. 2 on 11th March, 2001 at about 7/7:30 PM towards the fields of Mukhmail Pur via Peer Baba Ki Mazar; next morning at about 8/8:30 AM police came to him along with Subhash wherein he disclosed this fact to them. However, in his cross-examination he deposed that he opened his shop at about 8/8:15 AM on 12th March, 2001; on coming to know at about 11/11:30 AM that a dead body was lying in the fields of Mukhmail Pur, he closed his shop and went there; he found police officials as well as Subhash present there; he was called at police station at about 3:00 PM and his statement was recorded, wherein he stated that he had seen respondent No. 2 along with the deceased. His this statement in the cross-examination is inconsistent with the prosecution story.

16. As per PW24 SI Kaushal Ganguli, initial Investigating Officer, while he was searching for the deceased, PW18 met them at about 12:00 Noon and disclosed that he had seen deceased with respondent No. 2; his statement was recorded and thereafter, respondent No. 2 was interrogated at his house and later apprehended; at about 3:30/4:00 PM he made disclosure statement of having murdered the deceased and leaving the dead body in the fields of Mukhmail Pur and only thereafter dead body was recovered. His this version is contrary to statement of PW18. Both these statements do not run parallel to each other, being inconsistent.

17. As per PW18, dead body was recovered at about 11/11:30 AM whereas as per PW14, dead body was recovered in the evening pursuant to disclosure statement of respondent No. 2. Statement of PW14 Inder Singh is also not in line with the statement of PW18. PW15 Sh. Shashi Kumar, who had taken photographs of the dead body deposed that on 12th March, 2001 at about 10/11:00 AM; he accompanied the police officials to the fields at Mukhmail Pur via Peer Baba Ki Mazar and found dead body of a boy lying there. He took ten photographs from different angles. As per this witness, he had taken photographs of the dead body at about 10/11:00 AM; meaning thereby that dead body was recovered by the police in the fields in the morning at about 10/11:00 AM. His this statement is in line with statement of PW18 Naim Singh that the dead body was discovered in forenoon. Version of PW18 and PW15 clearly demolishes the prosecution story that dead body was recovered pursuant to disclosure of respondent No. 2 and the last seen evidence also becomes doubtful in view of above discrepancies.

18. With regard to third circumstance regarding recovery of weapon of offence and blood stained clothes, the view taken by the learned trial court is in consonance with the evidence led by the prosecution on this point. As per the prosecution, weapon of offence as well as blood stained clothes were got recovered by respondent Nos. 2 and 3 on 13th March, 2001 at about 5/6:00 PM. However, as per PW14 Inder Singh and PW21 Subhash, clothes and weapon of offence were available with the police on 12th March, 2001, as they had seen these articles in the police station on that day. I do not find any perversity in the view taken by the learned trial court in this regard.

19. With regard to fourth contention learned trial court observed that there was every possibility of knife and clothes being smeared with blood by the police in the police station as the dead body remained with them for more than three hours. As per the prosecution, the dead body was recovered at about 6:00/6:30 PM. However, as per the postmortem report, body was received at the mortuary at about 9:45 PM. As against this as per the public witnesses dead body was received in the forenoon. Meaning thereby dead body remained with the police for a long time. This delay cast serious doubt on the prosecution version and supports the statements of PW14 and PW21 that the dead body was first brought to the police station and then send to mortuary. PW 14 and PW 21 also deposed that they had seen the weapon of offence and blood soaked clothes in the police station on 12th March, 2001 itself. Thus, I do not find anything wrong in the view taken by the trial court that there was possibility of the weapon of offence being smeared with blood.

20. In my view, since prosecution miserably failed to complete the chain of circumstances so as to indicate the guilt of accused, learned trial court had no other option but to acquit the accused. View taken by the learned trial court is a possible view on the evidence led before it.

21. In Chandrappa and Ors. v. State of Karnataka reported in : JT 2007 (3) SC 316, Supreme Court held that in a case of acquittal there is double presumption in favour of accused. Firstly, presumption of innocence available to him under fundamental principle of criminal jurisprudence that every person should be presumed to be innocent unless proved to be guilty by competent court of law. Secondly, accused having secured acquittal, presumption of innocence certainly not weakened but reinforced, reaffirmed and strengthened by trial court. If two views are possible, the view benefitting the accused should be accepted.

22. In the facts of this case view taken by the trial court is a possible view and cannot be interfered with. Prosecution failed to prove the chain of circumstances propounded by it so as to indicate guilt of accused.

23. Accordingly, I do not find any illegality, manifest error or perversity in the impugned judgment. Consequently, this revision petition is dismissed.

