

Gopal Vs. State

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Court : Rajasthan

Decided On : Jan-19-2010

Judge : A.M. Kapadia and; Gopal Krishan Vyas, JJ.

Appellant : Gopal

Respondent : State

Disposition : Appeal allowed

Judgement :

Gopal Krishan Vyas, J.

1. In this criminal appeal, the accused-appellant is challenging the judgment dated 6.6.94 passed by District & Sessions Judge, Rajsamand in Sessions Case No. 72/92 whereby the accused appellant was convicted for committing offence under Section 302 I.P.C. and passed sentence of life imprisonment to the accused-appellant and imposed fine of Rs. 6,000/- in default to further undergo two years RI.

2. As per the brief facts of the case, on 5.7.1992, PW-4 writing to the Assistant Engineer, Irrigation Department, Su- Division Nathdwara that on 'paal' of 'namana' dam, one dead body is lying and blood is coming from his head and face has become black, therefore, he cannot be identified. It appears that somebody has murdered him. Upon the said information given by PW-4 Banshilal to the Assistant

Engineer, the same was forwarded to the Police Station Nathwara where the police registered a case under Section 302 I.P.C. vide FIR No. 131/92 at about 2.15 pm which is Ex.P/5.

3. After registering the FIR under Section 302 I.P.C., the investigation commenced and during the investigation, it is found that said body is of one Ganesh Lal and body was sent to the Hospital for postmortem by SHO Nathdwara. Thereafter, postmortem was conducted in the Government Hospital, Nathdwara and according to postmortem, the Doctor gave opinion that death of Ganesh Lal caused due to coma which was due ante-mortem head injury. After investigation police filed challan on the basis of circumstantial evidence of last seen together against the accused-appellant. The said challan was filed by Police Station Nathdwara in the Court of Munsif & Judicial Magistrate, First Class, Nathdwara on 13.9.1992 and case was committed to the District & Sessions Judge, Rajsamand for trial.

4. The trial Court after framing charge proceeded for trial and in the trial statement of 15 prosecution witnesses were recorded, thereafter statement of accused under Section 313 Cr.P.C. was recorded by trial Court and after hearing final arguments, learned trial Court convicted the accused appellant vide impugned judgment dated 6.6.1994 for committing offence under Section 302 I.P.C. on the basis of circumstantial evidence whereby punishment of life imprisonment with fine of Rs. 6000/- was awarded and in default of fine to further undergo two years RI was passed. The said judgment is under challenge in this appeal.

5. Learned Counsel for the appellant vehemently argued that in this case, the police filed challan on the basis of circumstantial evidence of last seen because no eye witnesses found in the investigation to prove prosecution case and in the trial four witnesses were produced as witnesses of last seen namely PW-3 Banshi Lal - real brother of deceased Ganesh Lal, PW-6 Keshar Kanwar, PW-9 Prathvi Singh and PW-10 Anar Singh. While inviting attention towards the statement of these witnesses, it is argued by learned Counsel for the appellant that upon perusal of statement of these witnesses it will reveal that none of the witnesses can be termed as witnesses of last seen. All the witnesses are giving different story with regard to last seen of deceased with appellant, therefore, conviction which is

based upon the statement of these witnesses is not trustworthy so also no conviction can be based upon such contradictory statement. The trial Court has committed a grave error while convicting the accused-appellant on the basis of testimony of so called witnesses.

6. Further, it is argued that prosecution has to prove the case beyond reasonable doubt. But here in this case, admittedly, there is no eye witnesses and conviction is totally based upon circumstantial evidence which is evidence of last seen but upon perusal of statement of PW-3 Banshi Lal - real brother of deceased Ganesh Lal, PW-6 Keshar Kanwar, PW-9 Prathvi Singh and PW-10 Anar Singh, it will reveal that statement of none of the witnesses corroborates the version of each other. In this view of the matter, the conviction which is based upon the said evidence is totally erroneous. Learned trial Court convicted the accused-appellant on the basis of surmises and conjectures. The prosecution has not proved its case beyond reasonable doubt and only on the basis of suspicion and so called evidence of last seen, learned trial Court convicted the accused-appellant while treating the said evidence as circumstantial evidence. Learned trial Court has committed a grave error while relying upon the evidence of PW-3 Banshi Lal - real brother of deceased Ganesh Lal, PW-6 Keshar Kanwar, PW-9 Prathvi Singh and PW-10 Anar Singh. The name of accused- appellant was not even mentioned in the FIR nor any motive has been alleged in the statement of the witnesses of prosecution. Out of all the witnesses of last seen, PW-13 Kishan Lal and PW15 Gopi Lal turned hostile and did not support the prosecution story.

7. In this view of the matter, it is obvious that the accused appellant has been convicted without any evidence on record, more so, on the basis of presumption, surmises and conjectures, which is not permissible under the law, therefore, judgment under challenge deserves to be set aside.

8. Learned Counsel for the accused appellant has invited our attention towards the following judgments:

1. Cr.L.R. 1984 (Raj) 620 (Narain v. State)
2. Cr.L.R. 1985 (Raj) 324 (Om Prakash v. State)

3. 2008 AIR SCW 7837 (Smt. Mula Devi and Anr. v. State of Uttarakhand)

9. While submitting above judgments, it is submitted evidence but at the time of convicting any accused, it is the duty of the trial Court to see whether prosecution has proved its case beyond reasonable doubt. The close scrutiny of entire evidence of this case will reveal that the conviction is based upon four last seen witnesses but none of these witnesses are corroborating the statement of each other with regard to evidence of last seen, therefore, accused appellant has wrongly been convicted by trial Court.

10. Per contra, learned Public Prosecutor vehemently argued that in this case, there is sufficient evidence of last seen upon which learned trial Court has relied upon for the purpose of conviction. The finding of learned trial Court does not suffer from any illegality more so learned trial Court has rightly appreciated the prosecution story and rightly relied upon the story lead by prosecution for the purpose of proving the case on the basis of circumstantial evidence against the accused- appellant.

11. With regard to statement of PW-3 Banshi Lal - real brother of deceased Ganesh Lal, PW-6 Keshar Kanwar, PW-9 Prathvi Singh and PW-10 Anar Singh, it is submitted that all these witnesses loudly speaks before the Court that they saw deceased Ganesh Lal with accused appellant last time on 3.7.1992 and thereafter his body was found upon the 'paal' of 'namana' dam on 5.7.1992. Therefore, when prosecution has proved its case beyond reasonable doubt on the basis of circumstantial evidence then no interference is warranted in this case.

12. We have considered rival submission made by both the parties.

13. Admittedly two independent witnesses namely PW-13 Kishan Lal and PW-15 Gopi Lal, who were witnesses of last seen turned hostile and did not support the prosecution story. Now, question arose whether prosecution has proved its case beyond reasonable doubt while leading reliable circumstantial evidence, so also whether learned trial Court has rightly relied upon the statement of PW-3 Banshi Lal - real brother of deceased Ganesh Lal, PW-6 Keshar Kanwar, PW-9 Prathvi Singh and PW10 Anar Singh for the purpose of evidence of last seen. For this

purpose of assessing the evidencary value and credibility of witnesses, we have perused the statement of those prosecution witnesses upon whose testimony learned trial Court has convicted the accused-appellant.

14. In the statement of PW-3 Banshi Lal - real brother of deceased Ganesh Lal, it is stated by him that '03 tqykbZ dks 'kke rsyhiqjk esa eS o fd'kuyky Bsyk ykjh ij cSBs gq, Fks] rc x.ks'kyky o eqfYte xksiky nksuks eksgux] yksak ?kkVh dh rjQ tk jgs Fksa A'

15. Similarly, PW-6 Keshar Kanwar has given the following statement before the Court:

x;s vk'kk+ ekg dh ckr gS A 'kke ds pkj cts nks vkneh esjs ?kj vk;s Fks] vkSj mUgksus 'kjkC ekaxk Fkk A esjs ;gka 'kjkC ugha Fkk] blfy, eSus euk dj fn;k Fkk] fQj eSa rks vius [ksr ij pyh xbZ os nksuksa esjs l;kt yk, Fks] ftlds eSus mUgs iSlS fn;s A eSa mu vkneh;ksa ds uke ugha tkurh A eSus mUgs ml fnu ls igys dHkh ugh ns[kk Fkk A muesa ls ,d O;fDr eqfYte xksiky gkftj vnkyr gS A eq>s ekywe ugha fd fQj os nksuksa O;fDr fd/kj x;s A eq>s ekywe ugha fd muds ikl fd;k Fkk A eqfYte essjs ;gka dHkh igys etnwjh djus ds fy, ugha vk, A

iqfyl okykssa us eq>s eqfYte dks fn[kk;k Fkk A eq>ls eftLVsV ds lkeus ;k tsy esa eqfYte dh 'kuk[rhx ugha djokbZ A

16. PW-9 Prathvi Singh has given following statement before the Court:

^eSa eqfYte xksiky o /ku';ke uke ds O;fDr dks tkurk gwa A x;s lky xehZ ds fnuksa dh ckr gS A vlkZ ;kn ugha A 'kke ds ikap cts uhpyh vksM.k xkao esa eSa vius dq, ls ?kj vk jgk Fkk A eqfYte xksiky dtksM ds yM+ds dks /kDds nsrs gq, yst tk jgk Fkk A ml oDr vkSukj flag Hkh esjs lkFk Fkk A ml fnu Hkh HkhyokMk ?kkl ysus ds fy, pyk x;k A nwljs fnu irk pyk fd dtksM ds yMds dks ekj Mkyk A xksiky gkftj vnkyr gS A

iqfyl c;ku ,Xth Mh & 2 esa ml fnu eqfYte xksiky o ?ku';ke dks 'kjkC ds u'ks esa tkrs gq, ns[kuk fy[kk;k Fkk A iqfyl c;ku ,Xth Mh & 2 esa eqfYte xksiky dk dtksM ds yM+ds dks ?klhVrs gq, ;k /kDds nsrs gq, ys tkuk fy[kk;k Fkk] ysfdu bles fy[kk gqvk ugh gS

17. PW-10 Anar Singh has given following statement before the Court:

x;s lky dh xehZ dh ckr gS A 'kke dks N% cts eSa vius [ksr ls ?kj vk jgk FkkA ml jkst eqfYte xksiky o e`rd x.ks'k Vkvksy cka/k ds ikl eq>s feys Fks A xksiky ds gkFk esa cksry Fkh A xokg lk`Fohflag Hkh esjs lkFk Fkk A eq>s ekywe ugha fd x.ks'k dks /ku';ke Hkh dgrs gksa A rhljs jkst irk pyk fd x.ks'k dk eMZj gks x;k A

?ku';ke o eqfYte nksusk gh 'kjc ds u'ks esa Fks A eSa nksusk dks igys ls tkurk Fkk A iqfyl okys rhljs fnu tc xkao vk,] rc mUgSa ;g ckr crkbZ Fkh A ?kVuk ns[kh ml fnu dh rkjh[k febr ugh crk ldrk A

18. Upon perusal of above four statements, it clearly reveals that none of the witnesses is corroborating evidence of each other so also completely different story has been narrated by all these witnesses. Meaning thereby, the basic principle of proving the case in the Court by the prosecution is lacking. In this case when evidence of eye witness is not in existence then prosecution was to produce reliable last seen evidence or other credible circumstantial evidence for proving the case against the accused appellant but learned trial Court while relying upon the statement of above prosecution witnesses of last seen gave finding that prosecution has proved its case beyond reasonable doubt. In our opinion, from bare perusal of statement of all witnesses of last seen namely PW-3 Banshi Lal, PW-6 Keshar Kanwar, PW-9 Prathvi Singh and PW-10 Anar Singh,, it is abundantly clear that prosecution has not proved the case of last seen because all the evidence are giving different story of last seen. Therefore, it is not safe to rely upon the statement of these witnesses. Learned trial Court was under obligation to appreciate such type of evidence in right prospects for the purpose of holding guilty the accused appellant for committing offence under Section 302 I.P.C. It appears that merely on the basis of suspicion, surmises and conjectures, the accused appellant was arrested and prosecuted. The prosecution has not adduced any cogent evidence to prove its case beyond reasonable doubt. Other independent witnesses PW-13 Kishan Lal and PW-15 Gopi Lal who were alleged to be the witnesses of last seen turned hostile. In this view of the matter, the finding of conviction given by learned trial Court is not based upon trustworthy evidence, so also ignoring the fact that none of the prosecution witnesses gave

clear version of last seen.

19. As per the evidence on record, the prosecution has not produced any other trustworthy and credible evidence to prove its case beyond reasonable doubt, therefore, the finding of learned trial Court, which is tested by us as per criminal jurisprudence is not based upon proper assessment of evidence.

20. In case of Smt. Mula Devi and Anr. v. State of Uttarakhand (supra), the Hon'ble Apex Court has held that conviction can be passed solely on the circumstantial evidence but it should be tested by touch stone of law regarding circumstantial evidence laid down by Hon'ble Apex Court in various decisions.

21. Here in this case, the conviction is based upon the circumstantial evidence of last seen but upon perusal of entire evidence adduced by prosecution it is revealed that prosecution has failed to establish that there was any motive nor the statement of all the prosecution witnesses who were relied upon by the trial Court is corroborating the fact of last seen. Therefore, in our opinion, the conviction and sentence awarded to the accused-appellant is not justified.

22. Hon'ble Division Bench of this Court in case of Narain v. State (supra) has held that if statement of witnesses are contrary to each other then merely on the basis of suspicion the appellant cannot be found guilty of the offence for which he has been charged.

23. In case of Om Prakash v. State (supra), Hon'ble Division Bench of this Court has held that circumstantial evidence must be conclusive and without missing any link. Circumstance of last seen together dependent on evidence of interested witnesses. Here in this case, there is no evidence of motive, so also PW-3 - Banshi Lal is real brother of deceased Ganesh Lal and two important eye witnesses PW-13 Kishan Lal and PW-15 Gopi Lal of last seen turned hostile before the Court, therefore, in our opinion, the prosecution has failed to prove its case beyond reasonable doubt. Therefore, benefit of doubt goes in favor of accused appellant and finding of conviction given by trial Court cannot be upheld on the basis of such type of evidence.

24. In this view of the matter, we find that impugned judgment dated 6.6.1994 delivered by trial Court does not stand in the eye of law for the purpose of conviction and sentence against the accused appellant.

25. On the basis of above discussions, this appeal is allowed and the impugned judgment dated 6.6.1994 passed by District & Sessions Judge, Rajsamand is hereby quashed and set aside and accused-appellant is hereby acquitted from the charges levelled against him. He shall be released forthwith if not required in any other case.

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