

State Vs. Aslam

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Court : Delhi

Decided On : May-20-2011

Judge : S. Ravindra Bhat; G.P.Mittal, Jj.

Acts : Indian Penal Code (IPC) - Sections 302, 34; Code of Criminal Procedure (CrPC) - Section 378(3)

Appeal No. : CRL.L.P. No.141/2011

Appellant : State

Respondent : Aslam

Advocate for Pet/Ap. : Mr. Jaideep Malik, Adv.

Judgement :

1. The State seeks leave to file an Appeal against the judgment and order dated 12.08.2010 passed by the learned Addl. Sessions Judge whereby Respondent Aslam was acquitted of the offence punishable under Section 302/ 34 IPC.

2. Briefly stated the prosecution case is that on receipt of information regarding presence of a dead body in Shop No.D-11/401, Sector-7, Rohini, Inspector Satya Prakash PW-16 (IO) reached the spot. He noticed several public persons gathered there. On entering the shop, dead body of Mohan Lal was found lying on the ground. There was an injury mark on the person of the deceased and blood was scattered in the shop. The IO recorded the statement Ex. PW-3/A of complainant

Surjit @ Sagar and sent rukka Ex. PW-16/A to the Police Station on the basis of which this case was registered. The IO lifted blood stained earth, earth control and completed the formalities of sealing the recovered material. Statement of Joginder Singh (PW-6) was recorded. It came to light that Joginder Singh noticed Respondent Aslam and one Chikka @ Chikva closing the shutter of the shop on 05.01.2007 at about 10:30 a.m.; SI Balbir Singh was sent to the native place of the Respondent as there was a needle of suspicion on the Respondent. The Respondent was arrested from Jamira Railway Station. He made a disclosure statement Ex. PW-7/C to SI Balbir Singh.

3. The Respondent was brought to Delhi. On the basis of the disclosure statement the Respondent led the IO to his rented room and got recovered a key from his shirt's pocket lying in the room. The Respondent further got recovered his blood stained pant and blood stained full sleeves sweater, which were taken into possession vide memo Ex. PW-11/D. On completion of the investigation a challan was filed in the Court.

4. During evidence the prosecution examined 16 witnesses.

5. During the trial the prosecution relied on the following circumstances to be established to draw an inference of guilt against the Respondent: -

"1. One Joginder Singh (PW-6) had last seen accused Aslam along with his associate bending towards the shutter of the Shop No.D-11/401, Sector-7, Rohini between 9:30 - 10:00 a.m. which was approximate time of death of deceased/ Mohan Lal, who was found dead inside the said shop.

2. Accused/ Aslam and his wife Saira absconded soon after the incident.

3. Accused/ Aslam disclosed his involvement along with his associate and about keeping concealed the blood stained clothes which he was wearing at the time of incident and the key of the shop of deceased at his rented house at Delhi and then

got the same recovered."

6. By the impugned judgment the Trial Court held that the prosecution had failed to prove the circumstances relied upon by it, so as to draw the inference of guilt on the Respondent. It was also held that the investigation in the case was not fair and proper as the IO failed to collect important pieces of evidence. The Trial Court came to the conclusion that the case against the Respondent was not proved. The Respondent was accordingly acquitted.

7. We have heard Mr. Jaideep Malik, APP for the State and have perused the record.

8. We shall be dealing with the circumstances one by one.

Circumstance No.1

9. This is the most important circumstance relied upon by the Respondent and sought to be proved through PW-6 Joginder Singh. He testified that on 05.01.2007 at about 9:30/ 10:00 a.m., he noticed the Respondent closing down the shutter of the shop. The witness asked the Respondent about the whereabouts of the deceased. The Respondent informed PW-6 that he (the deceased) had not yet come and that they (the deceased and his associate) were going to purchase whitewash material. There is more than one reason to reject the testimony of PW-6.

10. If we go by what PW-6 says then the murder of the deceased took place sometime before 9:30/ 10:00 a.m. PW-6 was cross-examined on the factum of his acquaintance with the Respondent. He deposed that he knew the Respondent for about last 2 months. This is contrary to the testimony of PW-3 Surjit @ Sagar, who deposed that the Respondent was employed just 10/ 15 days prior to the date of incident. Thus, there was no question of PW-6 having seen the Respondent working at the deceased's shop for the last 2 months. It is thus apparent that PW-6 lied on the aspect, as to since when he knew the Respondent.

11. There is discrepancy in the testimony of PW-3 as to when the Respondent came to PW-3's house and took his wife Saira along. In his examination- in-chief

PW-3 stated that the Respondent came to his house at about 10:30 a.m. when his father had already left for the shop at about 9:00/ 9:30 a.m.

It has come in evidence that the deceased's shop was at a distance of about 400 yards from his house. It must have taken the deceased some time to reach the shop, open it, Respondent reaching there along with so-called associate Chikva, committing murder of the deceased and then reaching house of the deceased to take his (Respondent's) wife Saira along. Thus, it is not believable that after doing all these things the Respondent would return within an hour. This is not the end of the matter. In the cross- examination this witness stated that the Respondent took his wife away (from deceased's house) at about 9:00/ 9:30 a.m., that is the time at which the deceased left the house for the shop. This completely rules out the possibility of the Respondent causing injury to the deceased.

12. It was stated by PW-3 in his cross-examination that his father's shop was situated in a thickly populated area and there were other shops nearby. It is very interesting that the IO preferred to not interrogate any of the neighbouring shopkeepers as to when the shop was opened (by the deceased) and when the same was closed and by whom. PW-6 was only a chance witness. Much reliance cannot be placed on his testimony in the absence of non-examination of natural witnesses as were available near the place of the incident at least to collect the evidence as to the opening and closing of the shop.

13. As per PW-3 the lunch used to be served to the deceased by his (PW-3's) mother or sister at the shop. The prosecution is completely silent as to who and at what time served the lunch to the deceased on 05.01.2007. PW-3 deposed that it was only after 4:00 p.m. that he received a call from his sister, who had gone to serve tea to his father that she noticed the shop to be closed. Non-collection of any evidence on this aspect is a serious lacuna in the prosecution case. Thus, we are of the opinion that the prosecution has failed to produce any reliable evidence to show that the deceased was last seen alive in company of the Appellant.

Circumstance No.2

14. We have already noticed earlier that there is a discrepancy as to the time at which the Respondent allegedly came to PW-3's house to take his wife along. PW-3 deposed that the Respondent came to their house for taking his wife along on the pretext that their (Appellant's and Saira's) son had sustained a head injury. Thus, even if the prosecution case is accepted as it is, it cannot be said that the Respondent had suddenly absconded, raising an inference of guilt against him.

15. The Trial Court disbelieved the prosecution version on other grounds, which are extracted hereunder: -

"43. There is absolutely nothing on record to show as to who told the police about local and permanent address of accused or how police came to know about it. There is no evidence on record to show as to who visited rented house of accused at Rajapur (Delhi) to find out that accused/ Aslam had left the same for his native village. PW-11/HC Baljeet disclosed that name of landlord of accused Aslam was Prithvi and PW-16/ Insp. Satya Prakash also told the name of landlord as Prithvi Raj, whereas prosecution has cited and examined PW-14/ Mahabir s/o Kanwar Singh as landlord of accused Aslam at village Rajapur (Delhi).

44. Although, accused Aslam is shown arrested at his native place in District Katiyar (Bihar) but there is no documentary evidence on record to show that police ever visited Katiyar (Bihar) for arresting accused Aslam from there. Neither signature of any local witness, police official or village head was obtained on arrest memo nor his transit remand was obtained from local Magistrate. When PW-15/ SI-Balbir Singh, who arrested accused/ Aslam in Bihar, was cross-examined, he stated that he gave the information to local police station but he could not even tell the name of police station. It is also stated by him that a secret informer had met him in native village of accused Aslam who had identified him at Railway station. This is absurd to accept such an evidence that a secret informer was

available to Delhi Police in a village in Bihar. It is not clear as to why Delhi Police did not even bother to take along a family member of deceased, who could identify accused/ Aslam in Bihar. It is not the case that police had any photograph of accused Aslam to identify him in his native village. Under such circumstances, I am of the opinion that prosecution has failed to establish the allegation that accused Aslam and his wife absconded soon after the incident or arrested in Bihar."

16. The reasons given by the Trial Court are quite plausible and logical. It is not believable that the IO of the case will have a secret informant in a village in Bihar. It is highly improbable that the said secret informer will identify the Respondent at the railway station of the Respondent's native village leading to his arrest. No record pertaining to the Respondent's transit remand has been produced, which belies the story of abscondence and Respondent's arrest from his native village in Bihar. Thus, this circumstance was also not established.

Circumstance No.3

17. The Trial Court disbelieved the disclosure statement Ex. PW-7/C alleged to have been made by the Respondent and recovery in pursuance thereof on the ground that there was no public witness to the making of the disclosure statement and to the recovery of blood stained clothes and the key of the shutter. The Trial Court held that no attempt was made to join any public witness, neither the landlord nor any of the tenants nor any other neighbour was joined. What is interesting to note is that PW-11 HC Baljeet Singh, who was a witness to the recovery of the blood stained clothes and the key, deposed that the rented room was bolted from inside. The prosecution is silent as to who was the person staying in the room allegedly under the Respondent's tenancy at the time of recovery of blood stained clothes and the key. The evidence led by the prosecution was contradictory as to who was the landlord. PW-11 HC Baljeet Singh deposed that one Prithvi Singh was the landlord whereas PW-16 Inspector Satya Parkash testified that Prithvi Raj was the landlord. We may not attach any significance to the variation in landlord's name. But the prosecution instead of examining Prithivi

Singh or Prithvi Raj examined one Mahavir as PW-14, who claimed himself to be the landlord of the premises.

18. In the circumstances narrated above, it is highly unsafe to rely upon the recovery of the blood stained clothes and the key in pursuance of the disclosure statement alleged to be made by the Respondent.

19. The Trial Court noticed that the investigation was not conducted fairly as the Police failed to carry out the investigation as to whether the injuries could be sustained by the deceased by a fall from the stairs inside the shop. It was noticed that the Chabiwala, who was called to open the shop was an important witness yet not interrogated by the IO during the investigation.

20. There was no direct evidence in this case. The prosecution relied only on circumstantial evidence. The prosecution failed to prove any motive for commission of the murder of the deceased by the Respondent, who was allegedly employed by him just 10/ 15 days before the incident. In Tarseem Kumar v. Delhi Admn., 1994 Supp. (3) SCC 367, the Supreme Court dealt with the necessity and value of motive in determining the guilt of accused. The Supreme Court held that: -

"Normally, there is a motive behind every criminal act and that is why investigating agency as well as the court while examining the complicity of an accused try to ascertain as to what was the motive on the part of the accused to commit the crime in question. Where the case of the prosecution has been proved beyond all reasonable doubt on basis of the materials produced before the court, the motive loses its importance. But in a case which is based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. Of course, if each of the circumstances proved on behalf of the prosecution is accepted by the court for purpose of recording a finding that it was the accused who committed the crime in question, even in absence of proof of a motive for commission of such a crime, the accused can be

convicted. But the investigating agency as well as the court should ascertain as far as possible as to what was the immediate impelling motive on the part of the accused which led him to commit the crime in question."

In the absence of motive and the circumstances pointing to the guilt of the Respondent, it is difficult to fasten him with the liability of committing the deceased's murder.

21. The law does not allow the State to file an Appeal against an order of acquittal. Under Section 378 (3) Cr.P.C., the State has to seek leave to file an Appeal. The powers of an Appellate Court are not limited, while hearing an Appeal against the acquittal and it has the same powers as it has while hearing the Appeal against an order of conviction. Yet, the fact remains that the presumption of innocence which is attached to every accused, unless proven guilty, is strengthened and reinforced by an order of acquittal. Thus, the Courts interfere in an order of acquittal where the finding of the Trial Court is perverse or there is gross mis-application of law. The Appellate Court can interfere with the order of acquittal where there are compelling and substantial reasons.

22. The Supreme Court in *Syed Peda Aowlia v. The Public Prosecutor, High Court of A.P., Hyderabad*, (2008) 11 SCC 394, summed up the law after referring to various earlier decisions as under:-

"5. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is

to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. See Bhagwan Singh and Ors. v. State of Madhya Pradesh, (2002) 4 SCC 85. The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference."

23. In view of the above discussion, we are not inclined to interfere with the order of acquittal passed by the Trial Court. The leave petition, therefore, fails and it is accordingly dismissed.

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