

Deepak Chadha Vs. State

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Court : Delhi

Decided On : Jan-20-2012

Appellant : Deepak Chadha

Respondent : State

Advocate for Def. : Mr. Harsh Prabhakar

Advocate for Pet/Ap. : Mr. Sumeet Verma

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: January 20, 2012 + CRL.A. No.138/1999 DEEPAK CHADHA Appellant Through : Mr. Sumeet Verma, Adv. versus STATE Respondent Through : Mr. Harsh Prabhakar, Adv. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE PRATIBHA RANI PRADEEP NANDRAJOG, J. (Oral) %.

1. On the strength of last-seen evidence spoken through the mouth of PW-5 as also the evidence of motive for the crime emerging through the mouth of PW-5 and the recovery of a blood stained shirt statedly of the appellant which he was allegedly wearing when the crime was committed on which human blood of the same group as that of the deceased was detected, as also the recovery of a blood stained knife on which human blood of the same group as of the deceased was detected; the two recoveries being at the instance of the appellant, vide impugned judgment dated 26.02.1999, the appellant has been convicted for the offence of

- having murdered Om Prakash. Co-accused Bablu and Devender have been acquitted holding that no incriminating evidence has surfaced qua them..
2. Vide order on sentence dated 27.02.1999, the appellant has been sentenced to undergo imprisonment for life. CrI. A. No.138/1999 Page 1 of 9.
 3. D.D.No.17-A, recording information at PS Kotla Mubarakpur notes the time 10.15 PM and the date 07.11.1996 when the information was received at the Police Station. The information noted is that a person, smeared with blood, was lying behind Jawala Prasad Timber Market..
 4. As deposed to by SI Om Prakash, PW-17, he was the one to whom D.D No.17-A, exhibited as Ex.PW17/A was entrusted for investigation. He states that when he reached the spot, he found a person, lying in an injured condition having injuries on the eyes and the face. He took the person to the Casualty of AIIMS, where the doctor on duty proclaimed the person brought dead..
 5. From the aforesaid evidence, it is apparent that the deceased was injured at around 10.15 PM. The place where he was injured was a public street behind Jawala Prasad Timber Market..
 6. Prosecution had cited four witnesses to establish that the deceased was last seen alive in the company of the three accused person..
 7. Unfortunately for the prosecution, at the trial, Ram Khilari PW-1, and Santosh Kumar PW-4, turned hostile and resiled from their statements recorded under Section 161 Cr.P.C, wherein they had ostensibly told the Investigating Officer that the deceased was seen by them in company of all the accused at around 8.45-9.00 PM near the place where the deceased was found injured by SI Om Prakash i.e. the public street behind Jawala Prasad Timber Market..
 8. Neelam Kumari,PW-5, the witness who stood by her statement made before the Investigating Officer, deposed that at around 7.30 PM on the day of the incident, the appellant had CrI. A. No.138/1999 *Page 2 of 9* left the house of her uncle i.e. the deceased Om Prakash and the purpose of the two leaving together was to see a picture. She further deposed that for the last two months the deceased and the

appellant were not on speaking terms..

9. A perusal of the impugned decision would reveal that the learned Trial Judge has rightly discarded the testimonies of PW-1 and PW-4. But, relying upon the testimony of PW-5 has held that her testimony has proved that the deceased and the appellant were last seen together at 7.30 PM, when the two left the house of the deceased and that her testimony establishes a motive for the crime i.e. a quarrel between the two..

10. Linking the aforesaid evidence of last-seen and motive, the learned Trial Judge has believed the prosecution, that the appellant got recovered a knife on which human blood of the same group as that of the deceased was detected and as per the doctor who conducted the post-mortem on the dead body of the deceased, the knife was the possible weapon of offence. Further, the learned Trial Judge has linked the recovery of the shirt, statedly worn by the appellant when the crime was committed, on which shirt, human blood of the same group as that of the deceased was detected to the crime on the reasoning that if on the shirt worn by the appellant when the crime was committed, human blood of the same group as that of the deceased was detected, it would support the inference that the appellant was the assailant..

11. From the four pieces of incriminating evidence i.e. a motive for the crime, last seen evidence, recovery of the knife and the shirt at the instance of the appellant, verdict of guilt has been returned against the appellant and there being no incriminating evidence against the other two co-accused, they CrI. A. No.138/1999 *Page 3 of 9* have been acquitted..

12. The last-seen theory relates to evidence, which is not direct evidence i.e. is circumstantial evidence. The foundation of last-seen theory is based on principles of probability and cause and connection. Where a fact has occurred with a series of acts, preceding or accompanying it, it can safely be presumed that the fact was possible as a direct cause of the preceding or accompanying acts, unless there exists a fact which breaks the chain upon which the inference depends..

13. A Division Bench of this Court, of which one of us; Pradeep Nandrajog J. was a member of, had an occasion to discuss various decisions of the Supreme Court on the theory of last-seen. The decision is dated August 10, 2009; deciding a batch of four Criminal Appeals, lead matter being CA No.362/2001, Arvind @ Chhotu vs. State. It was highlighted in the said decision that the last-seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased was found dead is of a nature and of a kind that the possibility of the accused being the author of the crime is of the highest degree and there is no possibility of a third party being the author of the crime. The decision highlighted that the circumstances enwombing the last-seen circumstance are of importance and need to be factored while considering the testimony of a witness who deposes on the subject of last- seen. In para 77 of the decision, the importance of the back- drop circumstance with reference to the time and place of last- seen and the time and place of the death, assuming importance, was highlighted..

14. In the instant case, the place where the deceased was CrI. A. No.138/1999 *Page 4 of 9* found grievously injured happens to be a public street. There is no evidence throwing light at the distance between the house of the deceased and the place where the deceased was found injured. The testimony of Neelam Kumari PW-5 would show that the deceased left his house in the company of the appellant at 7.30 PM. She states that the two left to see a movie. Unfortunately for the prosecution, notwithstanding Neelam Kumari having told the Investigating Officer the next day of the crime that her uncle i.e. the deceased and the appellant had left the house of her uncle at 7.30 PM to see a movie, no attempt has been made by the Investigating Officer to find out whether the appellant and the deceased were together at a movie hall. Had this evidence surfaced, the gap between the appellant and the deceased being together and parting company would have narrowed. This not being the evidence, the Court is left only with the evidence that the deceased and the appellant were last seen together leaving the house of the deceased at 7.30 PM..

15. If the appellants and the deceased left the house of the deceased at 7.30 PM and there being no further evidence of the two being together thereafter, the

deceased being injured at a public street at around 10.15 PM does not rule out the possibility of somebody else being the assailant..

16. In the decision reported as 2007 (3) SCALE 740 State of Goa vs. Sanjay Thakran and Anr., the Supreme Court had categorically held that where the place of last-seen and the place where the dead body is found are at a distance or if the place was the same but there was a considerable time lag between when the accused and the deceased were last seen at the place and when the deceased was found dead, the CrI. A. No.138/1999 *Page 5 of 9* evidence of last seen in both circumstances would lose its incriminating character if the place was a public place for the reason in both circumstances the possibility of somebody else being the assailant could not be ruled out..

17. Under the circumstances, in the instant case it has to be held that the learned Trial Judge has acted mechanically and has not correctly reflected upon the incriminating worth of the last-seen evidence with respect to the circumstances enwombing the last-seen evidence..

18. We do not propose to deal with the purity of the evidence relating to the two recoveries i.e. the recovery of the shirt and the knife at the instance of the appellant, for the reason, in the decisions reported as *Kaloo Passi vs. State*, 2009 (2) JCC 1206; *Narsinbhai Haribhai Prajapati vs. Chhatrasinh and Ors.*, AIR 1977 SC 1753; *Surjit Singh vs. State of Punjab*, AIR 1994 SC 110; *Deva Singh vs. State of Rajasthan*, 1999 Cri LJ 265, and *Prabhoo vs. State of UP*, AIR 1963 SC 1113 the Supreme Court held that in the absence of other incriminating evidence, the circumstances of seizure of blood stained clothes at the instance of the accused as also the recovery of a possible weapon of offence at the instance of the accused are wholly insufficient to sustain the charge of murder against the accused..

19. As regards the motive, we disagree with the reasoning of the learned Trial Judge that the testimony of PW-5 establishes a motive. She has simply stated that since last two months her uncle, i.e. the deceased and the appellant were not on visiting terms. This would mean that something had happened two months ago. The very fact that she deposed that her uncle left with the deceased to see a

movie is proof enough that the Crl. A. No.138/1999 *Page 6 of 9* relationship was no longer strained. In any case, if somebody has a quarrel with somebody two months back, it would be too weak an evidence to establish motive to murder..

20. Learned counsel for the State urges that when examined under Section 313 of Cr.P.C, the appellant denied that he was in the company of the deceased and that the two left the house of the deceased at 7.30 PM, a fact which was proved through the testimony of PW-5. Counsel urges that a false answer given would also supply the missing link and this would be a piece of circumstantial evidence against the accused. Learned counsel for the State has relied upon the decision reported as *Joseph s/o Kooveli Poulo vs. State of Kerala; (2000) 5 SCC*.

197. 21. In *Sanjay Thakrans case (supra)*, explaining when non- explanation furnished or a false answer given by the accused in a case of last-seen evidence, the Supreme Court dealt with the subject in the following words:- "32. It is urged by Mr.Mahendra Anand, the learned senior counsel for the appellant(s), that the accused have not explained as to in what circumstances the victims suffered the death in their statements under Section 313 Cr.P.C. and thus would be held to be liable for homicide. The learned senior counsel for the appellant(s) placed reliance on the following observation of this Court made in *Amit alias Ammu vs. State of Maharashtra (2003) 8 SCC 93*: "9. The learned counsel for the appellant has placed reliance on the decision of this Court by a Bench of which one of us (Justice Brijesh Kumar) was a member in *Mohibur Rahman vs. State of Assam, (2002) 6 SCC 715* for the proposition that the circumstance of last seen does not by itself necessarily lead to the inference that it was the accused who committed the crime. It depends upon the Crl. A. No.138/1999 *Page 7 of 9* facts of each case. In the decision relied upon it has been observed that there may be case where, on account of close proximity of place and time the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstance the victim suffered the death or should own the liability for the homicide. The present is a case to which the observation as aforesaid and the principle laid surely applies and the circumstance of the case cast a heavy responsibility on the appellant to explain and in absence thereof suffer the conviction. Those circumstances have already been noticed, in

which case such an irresistible conclusion can be reached will depend not he (sic) facts of each case. Here it has been established that the death took place on 28th March between 3 and 4 p.m. It is just about that much time that the appellant and the deceased were last seen by PW1 and PW11. No explanation has been offered in the statement by the appellant recorded under Section 313 Cr.P.C. His defence is of complete denial. In our view, the conviction for offence under Section 302 and 376 has been rightly recorded by the Court of Session and affirmed by the High Court."

33. We have noticed the decision. However, the circumstances in the present case are not similar to the case where the event of the last seen together has very close proximity with the time and place of the commission of the crime and other circumstances also favour the hypothesis of guilt and consequently the fact that no explanation or false explanation offered by the accused was taken as a link in the chain of circumstances. [See also: *Birbal vs. State of M.P.*, (2000) 10 SCC 212 *Raju vs. State of Haryana*, (2001) 9 SCC 50; and *Babu S/o Raveendran vs. Babu S/o Bhuleyan and Anr.* (2003) 7 SCC 37]. Thus, in the circumstance of the case the accused persons not giving any explanation in their examination under Section 313 Cr.P.C. could not be CrI. A. No.138/1999 *Page 8 of 9* taken to be a circumstance pointing towards irresistible conclusion that they are involved in the commission of the crime."

22. Though not so expressly said in so many words, while upholding the acquittal of the accused, it is apparent that what has weighted with the Lordships of the Supreme Court is the fact if two friends go to a beach there is no presumption that both of them would stay together at the beach. There is every possibility of a third party being the assailant. Similarly, where two friends are seen walking on a street, there is every possibility of the two parting company, and somebody else being the assailant. In this context the issue of time gap becomes relevant. The issue of the place where the two were last seen alive become relevant..

23. The appeal is accordingly allowed. Impugned judgment dated 26.02.1999 convicting the appellant is set aside. The appellant is acquitted of the charge framed against him of having murdered Om Prakash. Needless to state, the order

on sentence dated 27.2.1999 is quashed..

24. Since the appellant is on bail, the bail bond and the surety bond are discharged. (PRADEEP NANDRAJOG) JUDGE (PRATIBHA RANI) JUDGE
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