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Court : Delhi

Decided On : May-11-2012

Judge : Pradeep Nandrajog & Siddharth Mridul

Appeal No. : CRL.A. 245 & 270 OF 1999

Appellant : Ganga Prasad and Another

Respondent : State

Judgement :

PRADEEP NANDRAJOG, J.

(Oral)

1. Bailable warrants to secure presence of the appellants have not been served, but counsel as above who filed the appeals appears today on behalf of the appellants.

2. Arguments heard.

3. We dispose of the above-captioned appeals laying a challenge to the judgment dated April 17, 1999 passed by the Learned Trial Judge convicting appellants for an offence punishable under Section 302/34 IPC and order on sentence dated April 20, 1999 sentencing appellants to undergo imprisonment for life and pay a fine in sum of Rs.2,000/- and in default, to undergo simple imprisonment for one

year.

4. The prosecution case emerging at the trial, shorn of unnecessary details, is that on June 20, 1991 at around 06:15 AM i.e. in the morning, the appellants Ganga Prasad and Shiv Kumar (brothers), along with the co-accused Asha W/o Ganga Prasad; who has been acquitted by the Learned Trial Judge, burnt Smt. Sumitra @ Suman W/o Arun Kumar by setting her on fire using kerosene oil within the precincts of their residential premises at D-1165 Gali No.5 Ashok Nagar, Delhi.

5. It may be highlighted that Suman was the sister-in-law of the appellants i.e. the wife of their brother Arun Kumar. The three brothers and their wives used to reside in the same house.

6. It is not in dispute that the appellants along with the co-accused Asha rushed Sumitra to E.S.I. Hospital in an autorickshaw and got her admitted but disclosed to the doctor, qua Sumitra: "Asha W/o Ganga Ram R/o 1165, D Block, Gali No. 5, Ashok Nagar, Delhi 93". The MLC Ex.PW-4/A records that the injured was admitted by her husband at 8:30 AM. Relevant would it be to note that the MLC further records the fact that the patient was conscious, co-operative, oriented in person and herself stated to have accidentally caught fire while working on stove. The patient further stated that it was pure accident as the kerosene was spilled by her child and she got burnt.

7. Now, Asha is the wife of Ganga Prasad. It is apparent that the MLC Ex.PW-4/A, instead of recording that the patient's name was Suman W/o Arun, records the name of the patient to be Asha W/o Ganga Ram. But the address is correct.

8. At around 9:30 AM vide endorsement Ex.PW-4/B Smt. Sumitra was referred to the Burns Ward of L.N.J.P Hospital.

9. Criminal Justice Machinery was set into motion vide DD No.7A (Ex.PW-3/A) recorded at P.S. Nand Nagri at 12:40 PM i.e. at noon time upon telephonic information by Duty Const. Rohtash from L.N.J.P Hospital that a lady named Asha who was resident of 1165 D-Block, Ashok Nagar had been referred from E.S.I Hospital and she was admitted by her husband-Ganga Prasad in a burnt condition.

The said DD was marked to ASI Udai Veer Singh PW-10 for further necessary action.

10. Evidence led by the prosecution reveals that ASI Udai Veer Singh PW-10 alongwith Ct.Nagraj proceeded to L.N.J.P Hospital. However, the patient unfortunately succumbed to the burn injuries at around 01:00 PM and was consequently declared dead. The said fact stands reflected in DD No.9A recorded at PS Nand Nagri at 3:00 PM in furtherance of the information to this effect transmitted by Duty Ct.Rohtash from L.N.J.P Hospital.

11. ASI Udai Veer Singh PW-10 collected the MLC of the deceased and informed the S.D.M Shahadra, Shri K.K.Siam PW- 8. It was revealed to ASI Udai Veer Singh PW-10 by Duty Ct.Rohtash that the deceased was in fact Sumitra Devi @ Suman and not Asha as noted on the MLC.

12. As deposed by ASI Udai Veer Singh PW-10, he left Ct.Nagraj at the hospital for guarding the dead body and visited the scene of occurrence. He hired a private photographer, namely, Om Prakash, to photograph the scene of the occurrence. It may be noted that Om Prakash was not allowed to be examined as a Prosecution Witness by the Learned Trial Judge as the stated photographs of the scene of the crime intended to be got proved through him were not mentioned in the list of documents appended with the final report/charge-sheet.

13. According to the prosecution, one iron stove and an empty plastic can emitting an odour of kerosene oil were found lying under a bed in a room. The said articles were seized vide seizure memos Ex.PW-10/B and Ex.PW-10/A respectively. It is further claimed that pieces of burnt clothes were found lying in the courtyard of the house and were duly seized vide seizure memo Ex.PW-10/C.

14. A careful scrutiny of the seizure memos evinces the fact that the said seizures are ostensibly witnessed by Ct.Nagraj; whose signatures are found appended on the memos as a witness. But this strikes a discordant note with the testimony of ASI Udai Veer Singh PW-10 who has categorically deposed that Ct.Nagraj had been left behind by him at the hospital for guarding the dead-body when he left for the spot where the incident took place. It is a settled proposition that the burden

lies upon the prosecution to establish its case beyond reasonable doubt and it must crease out the inconsistencies in its case by furnishing the necessary explanation before the court. However, we find no explanation and this disturbing feature reflects rather poorly upon the probity of the investigation conducted by the police officer. In cases where the conduct of the investigating officer is contaminated it impels the court to scrutinize the case of the prosecution carefully. We highlight that during cross-examination ASI Udai Veer Singh admitted neighbours being present when he lifted the exhibits from the place where Suman was burnt, but regretfully did not join any neighbour in the investigation. We find that the prosecution has led no evidence of the exhibits being deposited in the malkhana.

15. Evidence led at Trial reveals that the S.D.M. Shahadra, Shri K.K. Siam PW-8 visited L.N.J.P hospital in the evening of June 20, 1991 and recorded the statements of Ram Chand PW-2 and Naresh Chand PW-11, the father and brother respectively of the deceased.

16. On June 21, 1991, the S.D.M. completed necessary formalities and Post-Mortem was conducted by Dr.George Paul PW-7 at Maulana Azad Medical College mortuary. The Post- Mortem report Ex.PW-7/A reveals that epidermal burns were present all over the body except back of top sides, back of scalp and the sole region. The approximate area of burns was about 93-94%. The viscera was preserved and sealed for the purpose of subjecting it to chemical analysis to rule out the possibility of poisoning. Relevant would it be to note that the CFSL Report dated February 26, 1997 rules out the possibility of poisoning.

17. On June 22, 1991, the S.D.M. recorded the statement of mother of the deceased i.e. Smt.Rameshwari Devi PW-1 and directed the S.H.O. P.S.Nand Nagri to register F.I.R. in terms of the said statement implicating Asha, Ganga Prasad and Shiv Kumar for offences punishable under Section 498-A and 302 IPC. Thereafter, FIR No.184/1991 Ex.PW-3/C was registered.

18. Analysis of the impugned judgment penned by the Learned Trial Court reveals trinity of circumstances on the strength of which finding of guilt has been returned.

(i) Testimony of Mangal Sen PW-5 establishing the presence of the appellants at the spot of occurrence at the relevant time and having taken injured, Sumitra, to hospital, where she was admitted under a wrong name.

(ii) Factum of animosity between the appellants and the deceased evidenced from the depositions of Smt.Rameshwari Devi PW-1 and Ram Chand PW-2 which proves the maltreatment of the deceased at the hands of the appellants.

(iii) Recovery of a plastic can on which presence of kerosene was detected from the place where Sumitra suffered burns.

19. Adverting our attention to the above delineated circumstances and the evidence led in support thereof, we are unable to concur with the conclusion of guilt arrived at by the Learned Trial Judge.

20. The reasons recorded by the Learned Trial Judge lightly casting aside the exculpatory dying declaration of the deceased recorded upon the M.L.C. Ex.PW-4/A by Dr.Vijay Laxmi at E.S.I. Hospital are speculative, to say the least and unsound. The Learned Judge has speciously disbelieved the exculpatory dying declaration exonerating the accused persons and terming the incident as an accident in view of the fact that a wrong name of the deceased was recorded in the said M.L.C., which according to the Learned Judge unequivocally demonstrated that the patient was not conscious or else she would have supplied the correct particulars. If the reasoning is to be believed, then it is axiomatic that the Doctor who prepared the M.L.C. contemporaneously when Sumitra was admitted at the hospital was in league with the accused and he falsely recorded the patient to be conscious and consequently fabricated the said declaration to lend benefit to the accused persons. It seems highly improbable in the factual setting of the present case, that the Doctor would readily oblige to create false evidence in favour of the accused persons. There is no hiatus to draw such a conclusion. We have to bear in mind that the said Doctor was examined by the prosecution as its own witness and her creditworthiness was not questioned by it. Neither any questions/suggestions on this aspect were put to this witness by the Learned Trial Judge during her examination before the Court. The conclusions drawn by the Trial Judge on this aspect are conjectural as there exists no material

on record to warrant such findings and thus they cannot stand the test of judicial scrutiny.

21. The fact that the appellants admitted Sumitra in hospital demonstrates that they did make an attempt to save her life. The Post-Mortem report also records no external injuries other than burning. The incident took place at sometime after 06:00 AM in the morning in the month of June. We cannot be impervious that at such hours in summer months it is not uncommon for womenfolk to start preparing meals. Viewed conjunctively in this light, natural probabilities lean in favour of the statement made by Sumitra before Dr.Vijay Laxmi PW-4 terming the incident as an “accident”. As discussed by us in the preceding paragraph there exists no material on record that casts a shadow of suspicion on the said declaration.

22. Perusal of the record palpably evinces that neither the Investigating Officer nor the S.D.M. made any efforts to examine the women from the neighbourhood who told Rameshwari Devi PW-1 that the accused persons were quarrelling and giving beatings to the deceased on the day of incident. We also find it strange and are pained to note that even the husband of the deceased was not examined during investigation and he could have definitely shed light upon what transpired on the fateful day, the nature of relations between the accused persons and the deceased etc.

23. We are conscious that mere non-examination of additional witnesses that may be available is not fatal to the case of the prosecution as the court seeks quality of evidence and not its quantity. However, the default in the instant case has proved to the fatal detriment of the prosecution's case in view of the fact that Mangal Sen (PW-5); who was residing adjacent to the house of the accused turned turtle and did not toe the line of the prosecution case projected in the charge-sheet. As a result there is no evidence to prove that on the morning of the fateful day there was any quarrel between the deceased and the appellants.

24. The founding pillar of the prosecution's case around which the learned Trial Judge has held against the appellants is the factum of admission of Sumitra in E.S.I. Hospital with wrong particulars by the appellants. Careful analysis of the said M.L.C. evinces that the address of the patient furnished was correct. If

appellants had wittingly decided to furnish false particulars with a view to avoid detection at a later stage they would have at no rate furnish the correct address to the Hospital authorities. Record reveals that the patient was admitted in the name of Asha; who is in fact wife of the appellant Ganga Prasad. Rather it seems that there was some confusion while recording the factual particulars in the M.L.C. form owing to the distraught situation which can be expected to have been prevalent in the ward. Therefore, we are of the view that no sting of incrimination attaches therefrom.

25. With regard to the purported recovery of a plastic can from the scene of occurrence on which presence of kerosene was detected, suffice would it be to observe that its presence in the house is not a circumstance of such nature and quality which possesses the potency to incriminate the accused and from which guilt could be inferred. Even otherwise, the recoveries effected from the scene of crime are rendered suspect in view of our detailed discussions in the preceding paragraphs. It assumes importance that the said can was not even sent for forensic examination, seeking an opinion: Whether traces of kerosene or any other inflammable material were detected in the can?

26. Last circumstance upon which the case of the prosecution hinges is the fact that the parents of the deceased deposed about strained relations between the deceased and the appellants. In our considered view, such evidence would at most establish the factum of animosity of the appellants towards the deceased. Even assuming the depositions of witnesses on this aspect to be credible, finding of guilt of the accused cannot be fastened on this solitary premise of motive. Motive is a weak piece of evidence for the reason that inference of guilt from motive is based on presumptive logic i.e. that the accused had a motive lays the presumption that he committed the act. Indeed, every piece of presumptive logic is too weak by its innate nature to lay foundation of guilt on its own strength.

27. Before terminating our discussion we may note a submission that was advanced by the learned counsel appearing on behalf of the State. It was urged by the learned counsel that record reveals that the appellant Ganga Prasad absconded soon after the incident and surrendered before court only on August

06, 1991. According to the Learned Counsel this was a tell-tale mark of his guilt. In order to deal with this submission it would be apposite to extract the observations of the Supreme Court in this regard in the decision reported as AIR 1972 SC 1050 *Matru alias Girish Chandra v. State of Uttar Pradesh*:-

“11. Now, mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime; such is the instinct of self-preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused...”

Inasmuch as people flee from justice being guilty of an offence, many flee out of fear of false implication. Similarly, a crafty criminal may feel so confident of having left no trace of himself at the scene of the crime that he is found cocooned in the comforts of his house and merely because soon after the crime or the day next he is found relaxing in his house would be no circumstance of innocence.

28. There are no eye-witnesses. Apart from the accused, their wives and the husband of the deceased was residing in the house where the deceased caught fire. Assuming that she did not catch fire accidentally as told by her to the duty doctor at the ESI Hospital and that the death was homicidal, the question would still remain, begging an answer, Who did it? We cannot presume that the appellants did it.

29. In result of the aforesaid discussion, the appeal is accordingly allowed. Impugned judgment dated April 17, 1999 convicting the appellants is set aside. The appellants are acquitted of the charge framed against them of having murdered Smt. Sumitra @ Suman. Needless to state, the order on sentence dated April 20, 1999 is quashed. Since the appellants are on bail, the bail bond(s) and the surety bond(s) are discharged.

