

Munna Vs. State

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Court : Allahabad

Decided On : May-13-2011

Judge : The Honourable Chief Justice Mr. F.I. Rebello & Imtiyaz Murtaza

Appeal No. : CRIMINAL JAIL APPEAL NO 1980 OF 2007

Appellant : Munna

Respondent : State

Judgement :

IMTIYAZ MURTAZA, J.

Challenge in this appeal which has been preferred from Jail by the appellant is to the judgment and order dated 21.12.2006 rendered by Special Judge SC/ST Act Agra in ST No 636 of 1995 whereby the appellant has been convicted for offences under section 302/376 IPC and sentenced to undergo imprisonment for life on both counts and a fine of Rs 5000/- on each counts with default stipulation of six months RI for each count. The appellant was acquitted of charges under section 3 (2) (5) of the SC/ST Act.

The deceased is a tiny girl namely, Renu aged about 5 years who it was alleged by the complainant Bhagwan Das, was murdered after being ravished and her body was found in a field. The incident relates to village Jatav Garhi Jahan Singh PS Shamshabad District Agra. Initially, the report was lodged against unknown person in case crime No 165 of 1991. It would appear that a second report was

lodged at the police station the same day by Devendra son of Bhagwan Das in which it was imputed that her niece was ravished and murdered by accused Munna son of Mohan Singh Thakur in the field of Kapoor Singh. It was explained that the incident was seen by Kalicharan, Haridas Udai Singh and Kunwar Pal of the same village but his father Bhagwan Das gave the half baked report at the police station as he was unnerved due to incident.

The investigation of the crime was taken over by the Station officer Shamshabad namely Rajpal Singh. After completing investigation, the investigating officer submitted charge sheet in the Court. The case was committed to the court of Sessions by the CJM Agra on 25.8.1995.

The prosecution in order to prop up its case examined in all seven witnesses out of whom Bhagwan Das has been examined as PW 1, Devendra as PW 2, Kunwar Pal as PW 3, Haridas as PW4, Dr K.M.Goyal as PW 5, Rajpal Singh SO as PW6 and Ram Kumar Verma, Pharmacist as PW 7.

The case of the defence was one of denial attended with the version that on the day of occurrence, he was busy harvesting his Laha crop and while harvesting Laha crop, his neck and his male organ was hurt by the stump of Laha; that when he heard of body having been recovered, he had also gone to see the body like other village persons; that after two days of the occurrence, he was falsely nominated in the case on account of village factitious politics. However, he did not adduce any evidence in support of his version.

The Sessions Judge relying upon the prosecution evidence, recorded verdict of conviction against the appellants as aforesaid and hence this Appeal.

Since the appellant was unrepresented in this Court, Sri R.S. Maurya was appointed as Amicus Curiae. We have heard at length the learned counsel for the appellant and also Sri Vimlendu Tripathi, AGA.

Learned counsel for the appellant made onslaught on the prosecution case contending that the evidence produced in the case is not adequate and convincing to warrant the conviction. He also challenged the findings recorded by the trial

court submitting that the prosecution has miserably failed to prove its case attended with submission that in the initial report, the crime was said to have been committed by unknown assailant and it was in the second report that the appellant was nominated due to prevailing faction in the village. It was also contended that no one saw the incident and the testimonies of the witnesses are discrepant with each other and that the evidence of seeing the appellant fleeing from the field from where the body of deceased was recovered is not at all trustworthy as the police concocted the entire version in order to prop up its failing case. Lastly it was argued that the sentence awarded in the facts and circumstances of the case errs on the side of severity.

Per contra, learned AGA has canvassed for the correctness of the view taken by the trial judge attended with the submission that sufficient evidence was adduced by the prosecution and the Sessions Judge rightly recorded verdict of conviction against the appellant by relying on the prosecution evidence.

In order to appreciate the aforesaid rival contentions of learned counsel for the parties, we have to independently scrutinize the oral as well as documentary evidence brought on record by the prosecution.

PW 1 Bhagwan Singh deposed that his grand daughter had gone missing from the house sometime during the day. After search, her body was found in the field of Kapoora Thakur and to all appearance, she was found to have been raped before being murdered. He also deposed that the body of the deceased was recovered at about 2 pm and her body was brought home by his son. He explained that he had gone to the police station without any intimation to his sons Devendra and Satish. He also deposed that when he came back after lodging report at the police station he was informed by Devendra, Satish and the village people namely Kali Charan Haridas and Udai Singh that they had seen girl accompanying Munna accused. He also deposed that when Devendra and Satish were intimated that accused Munna had enticed away the girl, they rushed to the field where they saw accused Munna committing rape on the girl.

PW 2 Devendra deposed that the deceased had disappeared from the house during day time. He also deposed that a search was conducted by him and

Kalicharan but she was no where traceable. He also deposed that when he met Udai Singh who was on way from his field with heap of Laha on his head he informed that he had heard cries emanating from the field of Kapoora Thakur. He rushed towards the field where he saw Munna escaping with trouser (Payajama) hanging on his shoulder. He was chased but he gave a slip and succeeded in escaping. When he proceeded ahead he found Renu lying supine in the field. Thereafter, his brother Salish also arrived at the scene and they brought the dead body to the house. He also deposed that incident unmanned him and he was much distraught. He also deposed that the deceased was seen by Haridas and Kunwar Pal of the village being forcibly taken away by accused.

PW 3 Kunwarpal deposed that he had seen Munna pulling forcibly the deceased towards the field. He also deposed that field where he had seen Munna pulling the girl belonged to Maharaj Singh. He also deposed that accused Munna initially tried to catch hold of him but he escaped from his clutches. Thereafter, he saw accused forcibly pulling the girl towards mustard field. He also stated that it was about 9 am when he saw accused Munna with the deceased girl.

In cross examination, he stated that at that time he was aged about 4-5 years. He reiterated sequence of events as stated in examination in chief. He denied the suggestion that he had falsely introduced the incident of his being caught hold of by Munna in order to show his presence on the spot.

PW 4 Haridas deposed that he had seen Munna coming out of the field and thereafter, saw the body of the girl lying supine. He put weight to the version given by the other witnesses.

In cross examination, he denied that he was examined by the Investigating officer. He reiterated that after search girl was found dead in the mustard field. He denied that he had seen the accused coming out from the field. He denied to have knowledge of exact time when rape was committed on the deceased. He stated that Kunwar Pal was then aged about 10 or 12 years old. He denied the suggestion that he had falsely nominated accused Munna on account of his being poor.

PW 5 is Dr K.M Goel. He conducted post mortem o the dead body and found following ante mortem injuries on her body.

(1) Abraded contusion in bluish colour was present in front of neck in middle part 7 cm x 4 cm

(2)Sign of old injury on the back part of right hand 4 cm x 3 cm

(3) Vagina (Private part) was torn and blood was oozing.

In cross examination, he stated that vaginal slimmer was sent for pathological test in sealed cover but report was not produced for confirmation.

PW 6 is Raj Pal who was then posted at PS Shamshabad Distt Agra as Station officer. Initially, he stated that since he was not present at the police station on 17.2.1991, S.I Ajay Pal Singh completed initial proceeding of investigation and also prepared recovery memos and inquest report. On 18.2.1991, he took over investigation from Ajay Pal Singh. He deposed that SI Ajay Pal Singh recorded statements of Bhagwan Das, Rama Shanker, Devendra, Kalicharan, Uday Singh Bablu alias Kunwar Pal, Ram Prasad and Mahendra. He also deposed that after taking over invstigation he recorded the statements of Head Moharrir Girwar Singh, Heera Devi mother of the deceased, Smt Ram Kali, Smt Pinni and other witnbesses. Thereafter, search was made for accused but he was nowhere to be found. He also deposed that accused was arrested on 19.2.1991. He also deposed that on 24.2.1991, on the basis of statement of Haridas and other evidence charge sheet was filed against accused Munna.

In cross examination he stated that whereabouts of Ajay Pal Singh were not known. However, he stated that the aforesaid SI was settled somewhere in Agra. He also stated that inquest was done at 8.30 pm. when inquest was prepared blood was oozing from private part of the body and blood was also found on the cloths. He also stated that one underwear and one panties were found on the body of the deceased. the place of incident was about 1 or 2 furlong from residential area of the village. He stated that he recorded the statement of Haridas and not of Bhagwandas and Rama Shanker. He denied the suggestion that no spot

inspection was made and that entire proceeding was in fact done at the police station.

PW 7 is Ram Kumar Verma Pharmacist PHC shamshabad District Agra. He deposed that accused was examined at the centre and in this connection he produced the register which was for the period from 8.12.90 to 16.8.91 in which were contained the details of medical examination of the accused. He also stated that the original register was kept his charge. The accused he deposed was examined on 19.2.91 at 6.30 pm at the PHC. He also deposed that the accused was examined by Dr M.Lal.

In cross examination he stated that at the time of examination of the accused he was not posted at the PHC Shamshabad. To a query, he stated that he was stating on the basis of papers that the medical examination was conducted by Dr M.Lal. He also stated that the report was not legible and he was unable to read it. He also could not explain in which condition the medical examination was conducted. He also could not say anything whether the medical examination was done on the request of the Station officer.

Before adverting to the arguments, we would, at the very threshold, like to mention that there is no direct evidence to abridge the gap between the appellant and the crime and the entire prosecution hinges on circumstantial evidence. This being a case based on circumstantial evidence, we would like to quip here before proceeding further that the Apex Court in a series of decisions, has consistently held that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests.

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime

was committed by the accused and none else; and

(iv) the circumstantial evidence in order to sustain conviction must be complete and inescapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused, but should be inconsistent with his innocence.

The Sessions Judge has found the following incriminating circumstances proved against the appellant and recorded findings of conviction.

1. From the post mortem report of the deceased Renu, it is clear that rape has been committed with her before her death and with an intention to conceal the offence of rape, she has been murdered, which is fully corroborated from post mortem report, inquest and the evidence of the prosecution witnesses;

2. Prosecution witness Devendra has seen the accused coming out from the field of incident and running. The statement of this witness is under-rebutted. Another circumstance relied upon by the Sessions Judge is that the dead body of the deceased was found in the field from which from which field the accused was seen coming out and from that very field immediately after being seen, running out of the accused.

3. Accused Munna was arrested two days after the day of incident and he was medically examined on the very day on which he was arrested and on being medically examined, he was found to have suffered injury on his private part which was two days old. The explanation given by the accused of the injury on his private part was not relied upon. Injury on his private part is admitted by the accused.

4. Accused Munna was arrested by the police after two days of the incident. It implied that for two days the accused was not in the village. Another circumstance which was worthily noticed was that during trial after being set free on bail from the High Court, the accused absconded for very long time and his sureties brought him from Rajasthan and produced him before the Court and he had been languishing in jail ever since then.

5. There is no motive for the complainant and his sons to have falsely nominated the accused Munna and for others witnesses to have given false evidence against him vis--vis the fact that there was no hostility or enmity between them prior to the incident. There was no discernible reason for the complainant for falsely implicating any unknown person in such a horrendous and heinous offence without any valid reason.

The gist of first incriminating circumstance reckoned by the Sessions Judge is that the deceased Renu was ravished and thereafter she was done to death. The post mortem report clearly showed that injuries were found on the private part of the deceased and the cause of death was mentioned as asphyxia as a result of strangulation. The vagina was found torn and blood was found oozing. In our considered view, the above circumstances cannot be categorized as incriminating circumstances against the appellant and by this reckoning the Sessions Judge has wrongly assumed these circumstances as incriminating circumstances against the appellant.

The next circumstance relied upon by the Sessions Judge is that the accused was seen coming out from the field and running away and that the dead body was thereafter found lying in the said field. This circumstance has been amply substantiated by the evidence of PW 2 Devendra. This witness deposed that he heard the shrieks of Renu emanating from the field of Kapura Thankur whereupon he and Kali Charan rushed towards the field and saw the appellant running from the field keeping his trouser on his shoulder. The defence has assailed the aforesaid testimony on the ground that this witness had seen the appellant running away from the place of occurrence while the report lodged thereafter by the father of this witness Pw1 Bhagwan Das, did not find mention the fact to the above effect. The statement of the witness under section 161 Cr.PC was recorded next day but again this fact did not find mention therein. In our considered view, the Sessions Judge omitted to notice this infirmity in the testimony of the witness inasmuch as he was present and had witnessed the accused running away after committing rape and murder of his niece, it is not then possible that he would not unfold this significant fact to his father. In so far as this incriminating circumstance is concerned, this circumstance was not posed to the accused in his statement

under section 313 Cr.P.C. The relevant question is question no 7 which is to the effect: "you have heard the statement of witness PW 1 Bhagwan Das and PW 2 Devendra and PW 3 Kunwarpal. The answer to the aforesaid question reads "False statements were given due to enmity".

The well enunciated principle in law is that underlying object behind section 313 Cr.PC is to enable the accused to explain any circumstance appearing against him the evidence and this object is based on maxim audi-alteram partem which is one of the constituents of principles of natural justice. It has always been regarded unfair to rely upon any incriminating circumstance without affording the accused an opportunity of explaining the said incriminating circumstance. The provisions in section 313 Cr. P.C therefore make it obligatory on the court to question the accused on the evidence and the circumstances appearing against him so as to apprise him of the exact case which is required to be met by him.

In the case of Dharam Pal Singh v State of Punjab (2010 (9) SCC 608, the Apex Court observed as under:

"21. As part of fair trial, section 313 of the Code of Criminal Procedure requires giving opportunity to the accused to give his explanation regarding the circumstance appearing against him in the evidence adduced by the prosecution. The purpose behind it is to enable the accused to explain those circumstances. It is not necessary to put the entire prosecution evidence and elicit answer but only those circumstances which are adverse to the accused and his explanation would help the court in evaluating the evidence properly. The circumstances are to be put and not the conclusion. It is not an idle formality and questioning must be fair and couched in a form intelligible to the accused. But it does not follow that omission will necessarily vitiate the trial. The trial could be vitiated on this score only when on fact it is found that it had occasioned a failure of justice."

Bearing in mind the aforesaid principles, we have delved into the facts and circumstances of the present case and we are of the opinion that it was obligatory on the part of the trial court to have put specific question relating to the incriminating circumstances that accused was seen running away keeping his trouser on his shoulder from the place where the dead body of the deceased was

found. We are further of the opinion that it was a very significant incriminating circumstance question in respect of which must have been put to the accused under section 313 Cr. PC before drawing any adverse inference against him. Therefore, this incriminating circumstance cannot be read in evidence against the appellant.

The next incriminating circumstance is in respect of medical examination of the appellant. According to medical examination, two injuries were found on the private part of the appellant. The injuries on the private part of the appellant were opined to be two days' old. On the other hand the explanation offered by the appellant was found to be not reliable. It is worthy of notice here that the appellant was arrested after two days and he was medically examined on 19.2.2991 at 6.30 pm by the medical officer at P.H.C Shamsabad, Agra and he noted down following two injuries on the private part of the accused.

1. Crecentic abrasion in the area of 0.8 cm (linear) over left side neck 5 cm below and backward to lobe of left ear (scattered).
2. Scabbed abrasion 0.8 cm x 0.2 cm over left side penis in between middle of length.

The Sessions Judge relied upon this incriminating circumstance citing that this injury connected the accused with the fact that the deceased was raped prior to her death. A close scrutiny of this injury indicates that injury no 2 i. scabbed abrasion 0.8 cm x 0.2 cm was over left side penis in between middle of length. Normally, the injury should have been on the base of glans penis if the accused had indulged in forced penetration and the injury is not likely to be in the middle of length. There was no injury on the base of glans penis. We would not shrink from saying that if a person commits rape on a minor, normally he would sustain such injury on the base glans penis.

In connection with the above submission, we would like to drawn attention to the observation of the Apex Court in the case of Shanker Lal v State of Maharashtra (1981 (2) SCC 35. The quintessence of what the Apex Court observed in the said decision is abstracted as under:

"A small abrasion over the base of the glans penis and its bluish discolouration are also inconclusive circumstances. Nor indeed can the bruises on the appellant's thigh establish his involvement in the crime. If the girl was raped, she was raped without resistance. She was five years of age."

Even if we proceed on assumption that it was one of the circumstances against the appellant, the chain of circumstances, in our considered view, cannot be said to be complete inasmuch as the small abrasion on the penis in between middle of the length and one small abrasion on his neck does not bring home the point that the appellant committed rape and murder of the deceased.

The next circumstance taken into reckoning by the Sessions Judge is that the accused was arrested after two days of the occurrence and during this period, he was nowhere to be seen in the village. Again, the circumstance was taken into the reckoning that during trial after being set free on bail by the High Court, the accused absconded for a very long time and he was brought back from Rajasthan and was produced by his sureties in the court.

In connection with the above submissions, we would first take note of the fact that the accused was not nominated in the FIR. The plea of the accused was that he was falsely embroiled in the case on account of election rivalry. There is nothing on record to point to the fact that he was not present in the village and therefore, it cannot be said that he at all absconded from the villager after the incident. The next circumstance that he jumped the bail and absconded cannot be taken to be incriminating circumstance against the appellant. Moreover, the Sessions Judge while taking into account this incriminating circumstance, did not give any opportunity to explain this circumstance inasmuch as no question was put to the accused under section 313 Cr. P C to explain his arrest after two days and about his absconsion during trial. The Sessions Judge has erroneously reckoned this circumstance as incriminating circumstance and as a strong link to make the chain of circumstantial evidence complete.

The last circumstance which was taken to be incriminating circumstance against the appellant is that the complainant and his sons were imbued with no motive, not to speak of strong motive for falsely nominating the appellant in this case. The

settled principle of appreciating the circumstantial evidence is that the prosecution has to substantiate the incriminating circumstances and to prove its case beyond reasonable doubt. We have to bear in mind that the circumstance should be of conclusive nature and all the circumstances should be complete and there should be no gap left in the chain of circumstances. The circumstance may or may not be established but the facts so established should be consistent with the hypothesis of the guilt of the accused and the circumstances should be of a conclusive nature and tendency. The circumstances should exclude every hypothesis and there must be a chain of evidence so complete as not to leave any reasonable ground in the conclusion consistent with the innocence of the accused and must show that in all human probability that act has been done by the accused.

In the above conspectus, the question that stares us for answer is whether failure of the accused in explaining the reason for false implication could be treated as incriminating circumstance leaning against him as held by the Sessions Judge. Having considered the matter in all its ramifications, we are of the view that the Sessions Judge has misdirected himself in adjudging the failure of the accused to explain the reason for false implication by witnesses as an additional incriminating circumstance. It is not easy for any person accused of a charge to explain the reason for his false implication, regard being had to the fact that different motives operate on the minds of different persons in the making of unfounded accusations.

The Apex Court in the case of *Shankarlal v State of Maharashtra* (1981) 2 SCC 35, observed that "Our Judgment will raise a legitimate query: If the appellant was not present in his house at the material time, why then did so many people conspire to involve him falsely? The answer to such questions is not always easy to give in criminal cases. Different motives operate on the minds of different persons in the making of unfounded accusations. Besides, human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions. In the instant case, the dead body of a tender girl, raped and throttled, was found in the appellant's house and instinctively every one drew the inference that the appellant must have committed the crime..."

In the above perspective, we converge to the irresistible conclusions that there is, thus, no reliable or acceptable evidence that the offence has been committed by the appellant. Neither any direct nor circumstantial evidence had been brought on record to establish the guilt on the part of the appellant herein. The prosecution has miserably failed to prove complete links in the chain of circumstantial evidence.

We, therefore, are of the opinion that the impugned judgment cannot be sustained, which is set aside accordingly. The appeal is allowed. The appellant is in jail. He is directed to be set at liberty unless wanted in connection with any other case.

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