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Court : Rajasthan

Decided On : Apr-12-2012

Reported in : 2012CrLJ3326

Judge : Govind Mathur & R.S. Chauhan

Appeal No. : D.B. CRIMINAL APPEAL No. 30 & 413 of 2008 & 633 of 2010

Appellant : Kismat Singh and Others

Respondent : State

Judgement :

R.S. Chauhan J.

Kishmat Singh, Sattar Khan and Smt. Kamla, have filed three different appeals before this Court challenging the judgment dated 18.12.2007 passed by Special Judge, SC/ST (Prevention of Atrocities) Cases, Merta, whereby the learned Judge has convicted them for offence under Section 302 read with Section 34 IPC and for offence under Section 201 read with Section 34 IPC. For the former offence, they have been sentenced to life imprisonment, and have been imposed with a fine of Rs.5,000/-, and further directed to suffer six months if rigorous imprisonment in default thereof. For the latter offence, they have been sentenced to seven years of rigorous imprisonment, fined with Rs.2,000/- and further directed to undergo two of months of rigorous imprisonment in default thereof. Since all the three appeals arise out of the same impugned judgment, they are being decided

by this common judgment by this court.

Briefly the case of the prosecution is that on 09.02.2006, around 2:00 PM, Prakash Chandra Harijan (P.W.11) gave a written report (Ex.P/21) to the SHO, Police Station Dhawla, wherein he claimed that his father, Pukhraj, was working in CRPF, 6 Battalion and had recently returned to his village after taking a leave for forty days. On 02.02.2006, both his sisters were married. In order to settle the marriage bills, on 08.02.2006 around 4:00 PM, his father and mother, Pukhraj and Kamla, left for Dangawas. At night, his mother, Kamla, came back, although he could not tell as to what time she had come back. For, after having his dinner, he had gone to sleep.

In the morning, around 7:00 AM when he asked his mother as to the whereabouts of his father, she told him that his father had gone to Dangawas and would return back shortly. Around 12 o'clock, in the afternoon, he was informed that the body of his father is lying under a small bridge near his village. Immediately, he went to see the body. He suspects that his father has been killed by Kishmat Singh and by his mother, Kamla. This report was given to the SHO at the spot where the body was found. On 09.02.2006, at about 8:00 PM, a formal FIR, FIR No.11/2006, was registered at Police Station Dhawla. After a through investigation, the police submitted a chargesheet against Kishmat Singh and Sattar Khan for offences under Sections 302, 201 IPC and for offence under Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act, and against Kamla for offences under Sections 302 and 201 IPC.

In order to support its case, the prosecution produced sixteen witnesses, submitted forty-one documents, and produced seven articles. In turn, the defence examined nine witnesses, and submitted sixteen documents. After going through the oral and documentary evidence, vide judgment dated 18.12.2007, the learned Judge convicted and sentenced the appellants as aforementioned. Hence, theses three appeals before this Court.

Mr. Mridul Jain, the learned counsel for the Kishmat Singh, has raised the following contentions before this Court: firstly, the learned Judge has failed to appreciate the principle with regard to the appreciation of evidence in a case

based on circumstantial evidence. Secondly, the learned Judge has failed to appreciate the principle with regard to the burden of proof on the prosecution in a case of circumstantial evidence. Thirdly, the prosecution was required to prove each and every linking circumstance through cogent evidence. In the present case, the prosecution has failed to establish chain of events which unerringly points towards the guilt of the accused persons. Therefore, the prosecution has not succeeded in establishing its case. Fourthly, even if all the circumstances were strung together, even then it could not convince the court that the accused persons are guilty of heinous crime like murder. Lastly, in case there are any lurking doubts in the mind of the Court, then the benefit of doubt should be given to the accused persons.

The arguments raised by Mr. Jain have been echoed by Mr. Farzand Ali, the learned counsel for Sattar Khan and by Mr. Rajeet Joshi, the learned counsel for Kamla. Therefore, they need not be repeated.

On the other hand, Mr. K.R. Bishnoi, the learned Public Prosecutor, has contended that the prosecution had established a series of facts which unerringly point towards the guilt of the accused persons. Therefore, the learned Public Prosecutor has supported the impugned judgment.

Heard the learned counsel for the parties and perused the impugned judgment.

With regard to appreciation of evidence in cases based on circumstantial evidence, announcing the principle in the case of Sharad Birdhichand Sarda V/s. State of Maharashtra [(1984) 4 SCC 116], the Apex Court opined as under :-

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be' established;

(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) the circumstances should be of a conclusive nature and tendency;

(iv) they should exclude every possible hypothesis except the one to be proved; and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

In the case of Wakkar and Anr. V/s. State of Uttar Pradesh [(2011) 3 SCC 306], the Apex Court observed as under :-

“12. It is well settled and needs no restatement at our hands that the principle for basing a conviction on the basis of circumstantial evidence is that

“each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible”.

It is also well settled as held by this Court in more than one decision that the courts have to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof, for sometime, unconsciously it may happen to be a short step between moral certainty and legal proof. (Emphasis added)

“45... that there is a long mental distance between 'may be true' and 'must be true' and the same divides conjectures from sure conclusions.” (emphasis in original) (See Tanviben Pankajkumar Divetia V/s. State of Gujarat [(1997) 7 SCC 156].

Recently in the case of SK. Yusuf V/s. State of West Bengal [(2011) 11 SCC 754], the Apex Court has reiterated the same principles.

The prosecution has submitted four sets of evidence; firstly, the testimonies of Prakash Chandra (P.W.11), Pramod (P.W.5) and Sriram (P.W.13) and Nemichand Harijan (P.W.3) in order to establish the fact of last seen. Secondly, the medical evidence of Rajendra Kumar (P.W.10) and the post-mortem report (Ex.P20) in order to establish that Pukhraj had died a homicidal death. Thirdly, recovery of Khukhari (Article-6) and rope (Article- 7) from Kishmat Singh, and recovery of iron

rod (Article- 5) from Sattar Khan. Lastly, the FSL report (Ex.P.39), to prove the fact that these articles, mentioned above, had human blood on them. According to the prosecution, these four pieces of evidence are sufficient to clearly establish the guilt of the accused-appellants.

The star witnesses of the prosecution case are Prakash Chandra (P.W.11), Pramod (P.W.5) and Sriram (P.W.13) sons of the deceased and of Smt. Kamla, one of the accused-appellants. Prakash Chandra (P.W.11) claims that on 08.02.2006, Kamla, his mother, and Pukhraj, his father, left the house together. Till 10:00 to 11:00 o' clock at night, they kept on waiting for his parents. But they did not return. His mother came back around 11'0 clock at night. In the morning, he asked his mother about his father. She told him that he has gone to Dangawas. She also told him that she came back by a jeep. Subsequently, he heard that the dead body of his father was lying near a small bridge between village Bofali and Lenga Ki Dhani. When he went there, he saw that his father's body was lying face downwards. There was an injury on his head, an injury near the ear, and his teeth were broken. He also claimed that Kishmat Singh and his mother have illicit relationship. Both of them used to sleep in a room. They used to force the children to sleep outside the room. He further claimed that his mother, Kamla, and Kishmat Singh also used to drink together. Lastly, he had claimed that he heard that Kishmat Singh and his mother, Kamla, have killed his father.

Pramod Harijan (P.W.5) has given a similar statement as Prakash Chandra (P.W.11). According to him on 08.02.2006 at 5:00 PM, his parents had left the house for going to Dangawas. His brothers, Prakash, Sriram, his cousin brother, Shyamlal and his sister-in-law had stayed back at home. According to him, Kishmat Singh and Sattar Khan came to his house and asked them about his parents. They told Kishmat Singh and Sattar Khan that the parents had gone to Dangawas. Kishmat Singh and Sattar Khan went towards the village Lenga Ki Dhani. According to him, his mother came back at mid-night. When they asked her about his father, she told them that he stayed back at Dangawas. Moreover, according to him, his mother washed her sandals, her clothes and took a bath. When she came out, after taking the bath, she was shivering. He also noticed that his mother had a restless night and could not sleep properly the entire night. In the

morning, they had tea together. At that time, she told them that their father will come back around 4'o clock in the evening. Thereafter, rumors spread in the village that Kishmat Singh, Sattar and Kamla have killed Pukhraj and his body is lying near a small bridge. According to him, due to greed, his mother had killed his father for she had hoped to get Rs.7 to 8 lacs as pension. He also claimed that Kishmat Singh and Kamla have illicit relationship, and they used to drink liquor together and used to sleep in the same room.

Sriram (P.W.13) has given the same testimony as given by Pramod (P.W.5). Similarly, Shyamlal (P.W.12) has corroborated the testimonies of Prakash Chandra (P.W.11) and Pramod Harijan (P.W.5). Therefore, these testimonies need not be reproduced

Nemichand Harijan (P.W.3) has claimed that on 08.02.2006 while he was sitting at a STD booth, he saw Kishmat Singh and Sattar Khan going on a motorcycle towards village Lenga Ki Dhani. He further claimed that Kishmat Singh asked him about the whereabouts of Pukhraj and Kamla. He informed him that they have gone to Dangawas.

Through these witnesses, the prosecution has tried to establish the fact that Kamla and Pukhraj were seen together for the last time; Kamla and Kishmat Singh had an illicit relationship; Kishmat Singh and Sattar Khan had come to the house of Pukhraj and inquired from their sons about their whereabouts; lastly, Kishmat Singh and Sattar Khan had gone in the direction where eventually the body was discovered.

In order to establish that Pukhraj had died a homicidal death, the prosecution has examined Dr. Rajendra Kumar (P.W.10). Dr. Rajendra Kumar (P.W.10) had carried out Pukhraj's post-mortem. According to him the deceased had suffered two incised wounds on the occipital area, a fracture on the left side of occipital bone, the brain membrane had ruptured, there was a hemorrhage in the brain, and four teeth were loose. According to him, the deceased died due to the injuries suffered on the head.

Lastly the prosecution has tried to prove the recovery of Khukhari (Article-6), a rope (Article-7) and a Sariya (iron rod) (Article-5). In order to prove these recoveries, the prosecution examined Sahdev, the SHO, Police Station Dhawla. According to him, Kishmat Singh made a statement under Section 27 of the Evidence Act (Ex.P.36) wherein he had claimed that he could tell the police as to where he had hidden the Khukhari and not the rope. The said articles were recovered from the house possessed by Kishmat Singh. Khukhari had blood on it. Similarly, according to Satveer Singh (P.W.15) Sattar made a statement under Section 27 of the Evidence Act (Ex.P.37) about the recovery of a sariya. The said sariya (Article-5) was recovered on his statement.

Ramu Harijan (P.W.1) is the recovery witness of the clothes of the deceased: open shirt, sweater, pant, Tshirt and the pajama worn under the pant. He is also the witness of the recovery of blood-stained soil and of control soil. According to the prosecution, the clothes of the deceased, as well as the weapons of offence, were sent to the FSL. According to the FSL report (Ex.P.39), all these articles had human blood. In sum, this is the entire evidence produced by the prosecution.

The moot issue before this court is whether the evidence is sufficient to point unerringly towards the guilt of the accused persons or not? Basically, the prosecution has tried to prove the guilt of the appellants on the following facts : firstly, Kishmat Singh and Kamla had illicit relationship; secondly, Kamla and her husband, Pukhraj, had left together for Dangawas; thirdly, Kishmat Singh and Sattar Khan had inquired about the whereabouts of Kamla and Pukhraj; fourthly, Khukhari and rope were recovered at the instance of Kishmat Singh and Sariya was recovered at the instance of Sattar Khan; fifthly, these articles contained human blood; lastly, according to Dr. Rajendra Kumar, Pukhraj had died a homicidal death.

However, in the opinion of his Court, these fragments of circumstances do not paint a complete picture about the guilt of the appellants. Firstly, it is not unusual for a wife to accompany her husband, especially when the husband is going to settle the bills of the marriage of their daughters. Thus, from the fact that Kamla had accompanied Pukhraj, her husband, to Dangawas, it cannot possibly be

concluded that she had killed her husband. Secondly, the fact that she came back at night and after taking bath, she was shivering, there is nothing unusual. After all, she was shivering after a bath taken in February, when winter is at its peak. Merely because she had a restless night does not establish her involvement in the alleged offence. These circumstances do not unerringly or positively point towards her guilt. Although these facts arouse may suspicion, but conviction cannot be based on mere suspicion.

Similarly, merely because Kishmat Singh and Sattar Khan came and asked about the whereabouts of Kamla and Pukhraj, merely because they went in the direction where the body was eventually found, these facts cannot conclusively prove their involvement in the alleged offence.

Similarly, the appellants have been convicted with the aid of Section 34 IPC. Section 34 IPC requires the existence of common intention i.e., a prior meeting of the mind. However, considering the fact that Kishmat Singh and Sattar Khan had enquired about the whereabouts of Pukhraj and Kamla from their children, clearly there could not be a prior meeting of minds of Kamla, Kishmat Singh and Sattar Khan. If there had been a prior planning, obviously Kishmat Singh and Sattar Khan would have known that Kamla had taken/or gone of with her husband to Dangawas. Moreover, there is no evidence that Pukhraj was last seen with all the three appellants. Hence, the appellants could not be convicted with the help of Section 34 IPC.

Moreover, merely because the articles recovered from Kishmat Singh and Sattar Khan contained human blood does not prove that they had committed murder. In order to establish their guilt, the prosecution was further required to prove that the blood on the alleged weapons were that of the deceased. Merely presence of human blood would not mean that it is the blood of the deceased. Hence, the chain of circumstances do not unerringly point towards the guilt of the accused persons.

Lastly, these circumstances can also be compatible with the innocence of the accused. Hence, the principle for convicting an accused person in a case based on circumstantial evidence has not been adhered to by the prosecution.

For the reasons stated above, the appeals are allowed. The conviction and sentence of accused, Kishmat Singh, Sattar Khan and Smt. Kamla, vide judgment dated 18.12.2007, is set aside. The accused, Kishmat Singh and Smt. Kamla, shall be released from prison forthwith, if not required in any other case. The bail bonds and sureties furnished by accused Sattar Khan stand cancelled.

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