
(2013) 07 CHH CK 0027
In the Chhattisgarh High Court
Case No : Criminal Appeal No. 1237 of 1998

Ashok	Vs	APPELLANT
State of M.P. (Now C.G.)		RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

Citation : (2013) 3 CGLJ 500

Hon'ble Judges : Sunil Kumar Sinha, J; Rangnath Chandrakar, J

Bench : Division Bench

Advocate : Ashok Verma in Cr.A. No. 1237/1998 and Mrs. Renu Kochar in Cr.A. No. 1370/1998, for the Appellant; Vinod Tekam, Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Sinha, J.—These appeals are directed against the judgment dated 15th of May, 1998 passed in Sessions Trial No. 267/1997 by the IIIrd Additional Sessions Judge, Raipur. By the impugned judgment, the Appellants have been convicted under Sections 302/34 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs. 1,000/- with default sentence for R.I. for two months. The facts, briefly stated, are as under:--

1.1 In the intervening night of 5th - 6th of May, 1997, Deceased-Jeevrakhan was sleeping in his hutment, constructed in his field which was situated in the outskirts of Village-Narra. In the morning, his dead body was found in the hutment. He had sustained multiple serious injuries. Girdharilal (PW-3), son of the Deceased lodged Merg Intimation (Ex-P-6) and First Information Report (Ex-P-5). The Investigating Officer reached to the place of occurrence, gave notice (Ex-P-1) to the Panchas and prepared inquest (Ex-P-2) on the dead body of the Deceased. The dead body was sent for postmortem. The postmortem examination was conducted by Dr. Ulaas Gonnade (PW-14) who found multiple serious injuries on the dead body of the Deceased and opined that the cause of death was asphyxia as a result of strangulation and the death was homicidal in nature. The postmortem report is Ex-P-11.

1.2 Till 14/05/1997, it could not be detected by the police as to who were the culprits, however, on the said date, statement of Hemlal (PW-8) was recorded, who stated that he had seen the Appellants near the hutment in the fateful night. Thereafter, statement of other witnesses were also recorded.

1.3 In further investigation, Appellant-Sundar was taken into custody on 18/05/1997 and his memorandum statement (Ex-P-15) was recorded u/s 27 of the Evidence Act and a Lathi and Rs. 4,000/- cash was seized at his instance vide seizure memo (Ex-P-16).

1.4 The prosecution came with the case that the Deceased had illicit relation with the mother of Appellant-Ashok, therefore, Ashok and Appellant-Sunder (both accused) had committed murder of the Deceased in the intervening night of 5th - 6th of May, 1997, when he was sleeping in his hutment.

1.5 Admittedly, there was no eye-witness to the incident and the case of the prosecution was based on circumstantial evidence. Following are the circumstances on which the learned Sessions Judge has relied and convicted the Appellants as above:--

i. The Appellants were seen near the hutment of the Deceased in the fateful night;

ii. Appellant-Sunder had stated to Nandkumar (PW-10) and Bhola (PW-11) that they should help him because he wanted to commit murder of the Deceased on the instruction of co-accused Ashok Kumar;

iii. A Lathi and Rs. 4,000/- was seized at the instance of discovery statement given by Appellant-Sundar u/s 27 of the Evidence Act; and

iv. The Deceased had illicit relation with the mother of Appellant-Ashok, therefore, it was a motive for Appellant-Ashok who had hired Appellant-Sundar to commit murder of the Deceased.

2. Learned counsel for the Appellants, have argued that none of the circumstances were of conclusive nature and tendency; the circumstance of seeing the Appellants near the hutment of the Deceased was not proved; the solitary witness of this circumstance, Hemlal (PW-8), was not reliable; that apart all the prosecution witnesses made late disclosure after about 10-15 days of the incident, therefore, the conviction based on the above circumstances cannot be sustained.

3. On the other hand, Mr. Vinod Tekam, learned Panel Lawyer appearing on behalf of the State, has opposed these arguments and supported the judgment passed by the Sessions Court.

4. We have heard counsel for the parties.

5. The Supreme Court has said time and again that the circumstances on which the Prosecution relies must be of conclusive nature and tendency. Those

circumstances must be established by cogent and reliable evidence; and none of the circumstance should be capable of being explained; and the chain of circumstantial evidence should also be complete (vide: Dhananjay Chatterjee alias Dhana Vs. State of West Bengal, & Bodh Raj @ Bodha and Others Vs. State of Jammu and Kashmir, .

6. According to the prosecution, the most important circumstance was that the Appellants were seen near the hutment of the Deceased in the fateful night. Hemlal (PW-8) was the solitary witness of the said circumstance. Hemlal (PW-8) deposed that in the fateful night, he was present in his hutment, which was situated at some distance from the hutment of the Deceased. At about 10:00 p.m. when he came out from his hutment, he saw that the two Appellants namely Ashok and Sundar were coming out from the Badi of the Deceased. This is the only evidence given by him in his examination-in-chief. In cross examination, para. 4, he admitted that on the next day at about 10-11 a.m., the police party had reached to the village. They had gone to see the dead body of the Deceased and he had also accompanied them. He further added that the Police has interrogated him on the said date. The hutment of Hemlal (PW-8) was situated on one side of Nala and the hutment of Deceased was situated on the other side. Hemlal (PW-8) admitted in para. 6 of his cross-examination that width of Nala was about 100 yards and Badi of Jeevrakhan was situated at a distance of 18 feet from the bank of Nala. He claimed to see the Appellants from his hutment i.e. from the other side of Nala. He further admitted that it was a dark night and the whether was cloudy as there was rain fall and it was difficult for any body to see a person even at a distance of 5-10 feet. However, he claimed that he had seen the Appellants in the light of a torch, which was of two cells.

7. We find that the diary statement (Ex-D-2) of Hemlal (PW-6) was recorded on 14/05/1997. We further note that in his diary statement, he did not mention the fact that he was carrying a torch in the fateful night. When he was faced with the above omission in his diary statement (Ex-D-2), he replied that he had stated about the torch to the police while recording his diary statement, and he cannot tell the reason as to why the said fact was not mentioned therein.

8. The theory of holding a torch appears to be inserted in his Court evidence as the same does not find place in his case diary statement. In normal circumstances, in a dark night in absence of any light, a normal man would not be able to identify any person from a distance of 335-340 feet. That apart, I we also note that he did not disclose all these facts to the police prior to 14/05/1997. That means he kept quite for about 10 days. When he was throughout present with the police on the very next day of the incident, in normal circumstance, he would have stated the said facts on the said date. He claimed that he had stated all these facts to the police on the said date, but his version does not find support from the evidence of Investigating Officer-Jogindar Singh (PW-17), who deposed in paras. 13 & 17 that statement of this witness

was recorded on 14/05/1997 and no statement was recorded prior to it, and further that in his statement dated 14/05/1997 (Ex-D-2), he never stated about holding a torch in the night.

9. On due appreciation of entire evidence of Hemlal (PW-8) in the light of other evidence available on record, we find that his version was not reliable. We are of the view that the learned Sessions Judge fell into error on relying the testimony of Hemlal (PW-8) and holding that it was proved that the Appellants were seen near the hutment in the fateful night.

10. The two witnesses namely - Nand Kumar (PW-10) and Bhola (PW-11) have been examined to establish that Appellant Sundar had told them that he wanted to commit murder of the Deceased on the instructions of Appellant-Ashok. Nand Kumar (PW-10) has deposed that 1? months prior to the incident, Appellant Sundar had stated him that he wanted to commit murder of the Deceased. In fact, Appellant Sundar wanted some help from him. Sundar had stated him that the Deceased had illicit relation with the mother of Appellant-Ashok, therefore, he has to be killed. Ashok had asked for the said work, which Appellant Sundar had stated to him.

11. Bhola (PW-11) has deposed that Appellant Sundar had told him that he wanted to commit murder of the Deceased and had asked for help. He had also stated that huge money would be paid for that. He disclosed these facts to Nandkumar.

12. We find from the record that the diary statements of these witnesses were recorded on 14/05/1997 and 16/05/1997. These witnesses were local residents of Village - Nara. It is not their case that they were not present in the village at the relevant time. If they were throughout present in the village since 6th of May, 1997, why they did not disclose all these facts to the police prior to 14/05/1997 and 16/05/1997 when their diary statements were recorded. No explanation at all has been offered by these witnesses or by the Investigating Officer for recording their diary statements at such a deleted stage. We are of the view that the late disclosure by these witnesses creates doubt on their testimonies and their evidence becomes suspicious. Moreover, if, they were knowing that the Appellants wanted to commit murder of the Deceased, in normal human conduct, they would have disclosed these facts at least to the family members of the Deceased prior to the incident or immediately after the incident, which they did not do. This is another reason for disbelieving the testimonies of these witnesses.

13. The next circumstance is the discovery statement (Ex-P-19) made by Appellant Sundar. According to the said statement (Ex-P-15) recorded u/s 27 of the Evidence Act, a Lathi and Rs. 4,000/- was seized at his instance vide seizure memo Ex-P-16. According to the prosecution, the said Lathi was used for pressing the neck of the Deceased. Even, if we take that the said articles were seized from the possession of Appellant Sundar, in absence of any other

evidence, the above circumstance would not be incriminating. Though, a theory was developed that Lathi was used for pressing the neck of the Deceased, but there is no basis for that. Therefore, the circumstance of discovery and seizure made through Appellant Sundar was not incriminating and the same was capable of being explained.

14. Relying on two other judgments, Babu Lodhi and Others Vs. State of U.P., , Prem Kumar and Another Vs. State of Bihar, it was held in Dharnidhar Vs. State of U.P. and Others, that in cases which are entirely or mainly based upon circumstantial evidence, motive can have greater relevancy or significance. However, it was said that if positive evidence against the accused is clear in relation to the offence, motive is not of much importance and mere absence of motive, even if assumed, will not per-se entitle the accused to acquittal, if otherwise, the commission of the crime is proved by cogent and reliable evidence.

15. Thus, importance of motive and its relevancy would primarily depend upon the facts and circumstances of a given case. In a case based on circumstantial evidence, the motive has to be established like any other circumstance. The instant case was based on circumstantial evidence, therefore, the motive assumes importance. The motive suggested by the prosecution was that since there was illicit relation between the Deceased and the mother of Appellant - Ashok, therefore, Appellant - Ashok wanted to commit murder of the Deceased.

16. In this regard, the prosecution had relied on the testimonies of Girwar (PW-6), Nandkumar (PW-10) and Mannulal (PW-13). We have gone through the evidence of these witnesses. All these witnesses have deposed that they had heard that the Deceased had illicit relation with the mother of Appellant-Ashok. Girwar (PW-6) is son of the Deceased. He admitted in his cross-examination that he had no personal knowledge about the illicit relation and he heard all this in the village. So far as Nandkumar (PW-10) is concerned, we have already doubted his testimony. Mannulal (PW-13) has deposed that Appellant - Ashok had told him that the Deceased had illicit relation with his mother. It does not come in his evidence as to when the above facts were narrated to him by Appellant - Ashok. Therefore, the evidence regarding the circumstance of motive was not sufficient and conclusive. The evidence was hear-says and admission by the accused was not properly established.

17. We are unable to sustain the conviction of the Appellants on the above set of circumstantial evidence. None of the circumstances were fully established. The circumstances so established were not of conclusive nature and tendency. Almost all the circumstances were capable of being explained and the chain of circumstantial evidence was also not complete. For the foregoing reasons, the Appeals are allowed. The conviction and sentences awarded to the Appellants u/s 302/34 IPC are set-aside. The Appellants are acquitted of the charges framed against them. It is stated that the Appellants are on bail. Their bail bonds shall continue for a period of 6 months in view of Section 437-A Cr.P.C.