
(2015) 05 AHC CK 0229
In the Allahabad High Court
Case No : Criminal Appeal No. 524 of 2011

Awdhesh Kushwaha

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 20-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 372
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2015) 2 ACR 2335 : (2015) 6 ADJ 576 : (2015) 6 ALJ 616

Hon'ble Judges : Ravindra Singh, J;Raghvendra Kumar, J

Bench : Division Bench

Advocate : Rakesh Prasad and Sanjay Kumar Singh, for the Appellant

Final Decision : Dismissed

Judgement

Raghvendra Kumar, J—Heard learned counsel for the appellant and learned Additional Government Advocate for the State of U.P. and perused the lower Court record. This Criminal Appeal under Section 372 Cr.P.C. has been instituted against the judgment and order dated 2.12.2010 passed by learned Additional Sessions Judge, Court No. 7 Deoria in Sessions Trial No. 175 of 2007 arising out of case crime No. 186 of 2006 under Section 302/34 IPC, PS Khampar, district Deoria, whereby the accused-respondents, Brigurashan, Sachchidannad, Munni Lal and Raghuvar have been acquitted.

2. From the perusal of the record and judgment, it is revealed that there was enmity between the complainant, Awdhesh Kushwaha and accused-persons, namely, Brigurashan, Sachchidannad, Munni Lal and Raghuvar with respect to the Abadi land. The accused-persons used to pressurize the complainant-informant to leave the land and not to give effect to the Panchnama. Panchnama materialized with the intervention of the village Pradhan and Panch. On 1.6.2006 at about 6.30 hours in the evening, the son of the complainant-informant, Chandrika was abducted by the accused-persons. On 4.6.2006 at 9.00 hours in the morning complainant received the information that the body of his missing

son is hanging on a tree in Kukurghati. The complainant identified his son and suspected that the accused-persons have murdered his son and thereafter hung the dead body.

3. The FIR of the case was lodged on 4.6.2006 at about 11.45 P.M. with respect to the incident allegedly committed on 1.6.2006 at about 6.30 P.M. The prosecution has examined PW-1, Awdhesh Kushwaha, PW-2 Parmanand Kushwaha, PW-3 constable Khichdi Prasad, PW-4 Dr Nagendra Prasad, PW-5 Vanshidhar Singh-Sub Inspector and PW-6 Udai Pratap Yadav.

4. From the perusal of testimony of PW-1, Awdhesh Kushwaha, it is evident that he has not seen the incident himself. PW-2, is said to be the eye-witness. His testimony is confined only to the extent of deceased being lastly seen in the company of accused, Sacchidanand on his bicycle." When PW 2 moved forward then he saw the accused-persons Brigurashan, Sachchidanand, Munni Lal and Raghuvar at a distance of 10 to 15 paces, who were following the accused, Sacchidanand. PW-3, PW-4, PW-5 and PW-6 are the formal witnesses, they are not the witnesses of fact.

5. From the testimony of PW-2, it is revealed that he has conveyed the fact of seeing the deceased with accused-Sacchidanand to the complainant, Awdhesh Kushwaha.

6. The learned Court below has considered that the deceased, Chandrika Kushwaha was lastly seen going on the bicycle of the accused- Sacchidanand, by PW-2-Parmanand Kushwaha. Parmanand Kushwaha has narrated this fact to the complainant-informant-Awdhesh Kushwaha. The learned Court below has also considered the conduct of the complainant-informant that instead of immediately reporting the matter to the police, he preferred to search himself the deceased. Admittedly, there is an enmity between the complainant and accused persons with respect to the Abadi land. The learned Court below has also considered that there is a time gap between the last seen and the factum of death. This is a case of circumstantial evidence. Perusal of the FIR discloses the suspicion which the complainant had in his mind. The Court has mentioned that there might be motive for committing the offence on the basis of enmity, but the fact that there was altercation between the complainant-informant and the accused-persons before 15 days of the occurrence and also on 3rd June, 2006 has not been disclosed in the FIR. It is a strong circumstance that accused was having an enmity with the accused persons. There has been incident of altercation prior to the incident and in spite of this, the fact of having come to know about his son lastly going along with the accused, Sacchidanand, he did not prefer to inform the police. In a case based on circumstantial evidence, it has been held that following facts must be established :

"(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 a definite tendency unerringly pointing

towards the 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."

7. It has been held by the Apex Court in following cases:

" S.D. Soni Vs. State of Gujarat, AIR 1991 SC 917 : (1991) CriLJ 330 : (1991) 2 Crimes 4 : (1991) 1 DMC 212 : (1991) 1 JT 1 : (1990) 2 SCALE 1342 : (1992) 1 SCC 567 Supp : (1990) 3 SCR 668 Supp ; Padala Veera Reddy Vs. State of Andhra Pradesh and others, AIR 1990 SC 79 : (1989) 4 JT 223 : (1989) 2 SCALE 906 : (1989) 2 SCC 706 Supp : (1990) 1 UJ 137 ; Chandmal v. S., AIR 1976 SC. The same has been reiterated in the case of Brijlala Pd. Sinha Vs. State of Bihar, (1998) 5 AD 276 : AIR 1998 SC 2443 : (1998) CriLJ 3611 : (1998) 3 Crimes 4 : (1998) 4 JT 534 : (1998) 4 SCALE 25 : (1998) 5 SCC 699 : (1998) 3 SCR 529 : (1998) AIRSCW 2440 : (1998) 9 Supreme 35 : (1998) 5 Supreme 379 .

10. The law regarding circumstantial evidence is more or less well-settled. The Apex Court laid down the following principles :

"(a) the circumstances from which the conclusion of guilt is to be drawn should be fully established."

8. It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a logical distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, AIR 1973 SC 2622 : (1973) CriLJ 1783 : (1973) 2 SCC 793 : (1973) SCC(Cri) 1033 : (1974) 1 SCR 489 , where the following observations were made :

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between "may be" and "must be" is long and divided vague conjectures from sure conclusions."

(b) 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. (c) the circumstances should be of conclusive nature and tendency. (d) they should exclude every possible hypothesis except the one to be proved and (e) there must be a chain of evidence 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."

9. These five golden principles, if we may say so constitute the Panchasheel of the proof of a case bases on circumstantial evidence."

10. It is also established under law through catena of decisions by this Court as well as Hon"ble the Apex Court that there should be proximity of deceased being

lastly seen and the death of the deceased so as to exclude the deceased of being coming in contact with any other person. The only evidence of fact is the testimony of PW-2 on record. He is the sole witness and related to the complainant. There is no corroboration by any other evidence on record. Even presuming the testimony of PW-2 for argument sake to be true he had seen the deceased in the company of accused, Sacchidanand on 1.6.2006, whereas the dead body of the deceased was recovered on 4.6.2006. There is sufficient time gap. The possibility of deceased being coming in contact with any one else cannot be ruled out.

11. The learned Court below has recorded reasoned finding considering the fact, circumstances and nature of evidence of proving the guilt against he accused persons.

12. The learned Court below has rightly appreciated the evidence. It has committed no error of misreading of evidence. The view taken by the learned Court below is a possible and probable view based on reasoning.

13. The finding of acquittal has been recorded by the Court on merits. The possible view has been taken by the learned Court below. The finding of the acquittal recorded by the learned Court below does not require reconsideration. The appeal is bereft of merit and is dismissed. Let the lower Court record be sent back to the Court concerned forthwith.