
(2001) 08 RAJ CK 0091
In the Rajasthan High Court
Case No : Criminal Appeal No. 25 of 1996

Bablu @ Bulbul

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 31-08-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 313

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 201, 302, 379

Citation : (2002) 2 RLW 1062 : (2002) 1 WLC 248

Hon'ble Judges : Shiv Kumar Sharma, J;Khem Chand Sharma, J

Bench : Division Bench

Advocate : N.C. Choudhary, Rakesh Kumar and Vijay Choudhary, for the Appellant; R.P. Meena, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Sharma, J.—Accused appellant Bablu @ Bulbul has come up in appeal before this court challenging the judgment and order dated 15.11.1995 passed by the learned Additional Sessions Judge No. 1, Jaipur City, Jaipur, thereby convicting appellant Bablu u/s 302 and sentencing him to imprisonment for life with a fine of Rs. 250/-, in default thereof, to further undergo imprisonment for one month. The appellant has also been convicted u/s 379 IPC and sentenced to 3 months imprisonment with a fine of Rs. 100/-, in default thereof, to further undergo imprisonment for 15 days.

2. Briefly stated the facts of the case are that on 3.2.1995, PW1 Mohand Lal submitted a written report Ex.P. 1 at Police Station Brahmpuri, Jaipur, thereby informing the Station House Officer that the residents of the locality have informed at about 5.30 PM about a dead body lying in the forest behind Mahadev Temple and the dogs were eating the dead body. Upon this report, police registered a case vide report ExP.2 and initiated proceedings u/s 174 Cr.P.C. The Police rushed to the place where dead body was lying and prepared site plan

Ex.p.3 and seized a match box, two bodies, one photograph of unknown deceased, two packets of medicine, one packet of Natraj tobacco (Jarda), Rs. 100 cash, eight lottery tickets, one hook of silver of "S" shape from the place of occurrence, vide memo Ex.P.4. The police also seized two stones smeared with blood and blood stained hairs from the place of occurrence vide Ex.P5 and P.6 respectively. The Police prepared inquest memo Ex.P.7 and seized blood smeared cloths viz., one shirt, baniyan, belt, pent (trouser) a pair of shoes of deceased vide seizure memo Ex.P.8.

3. On the basis of the above proceedings, PW 4 Akhilesh Kumar, Sub Inspector prepared a report Ex.P.9 on 4.2.1995 and submitted it to the Station House Officer, upon which a regular case vide No. 32/95 was registered vide FIR Ex.P.10 and investigation commenced.

4. During investigation, Police got conducted post-mortem on the dead body of deceased and collected the post mortem report Ex.P. 11. The accused was arrested on 8.2.1995 vide memo Ex.P.16. Police seized plain soil and blood smeared soil vide memo Ex.P.18 and recovered a silver chain vide memo Ex.P.19. The police also recovered a trouser and shirt of accused vide memo Ex.P.20. The accused pointed out the place of incident vide Ex.P.21 and gave information u/s 27 of the Evidence that he can show the place where he has murdered Ashok Sharma. The memo of information is Ex.P.24-A. The Police sent the recovered articles for chemical examination to the Forensic Science Laboratory, the receipts of which are Ex.P. 22 and 23. The Police collected the FSL report Ex.P.28, which shows that the articles viz., stones, hairs, pent with belt, bushirt, baniyan, underwear, pair of shoes and blood smeared soil were contained with blood of "B" group. The trouser and bushirt of the accused were also contained with blood of "B" group.

5. On completion of investigation, the police submitted a charge sheet against the accused appellant u/s 302, 379 and 201 IPC in the court of Additional Civil Judge & Judicial Magistrate No.9, Jaipur City, who in turn committed the case to the court of Sessions.

6. The learned trial Court framed charges against the accused appellant under Sections 302, 379 and 201 IPC. The appellant denied the charges and claimed to be tried. The prosecution, in support of its case, examined as many as 22 witnesses and exhibited some documents. Thereafter, the accused was examined u/s 313 Cr.P.C. and he examined DW 1 Natwar Lal in his defence.

7. On conclusion of trial, hearing arguments and on the basis of material and evidence on record, the trial court found the charges under Sections 302 and 379 IPC established beyond doubt and accordingly convicted and sentenced the accused appellant as stated above. Hence this appeal against the impugned judgment of conviction and sentence.

8. We have heard the learned counsel for the accused appellant and the learned Public Prosecutor and perused the judgment impugned in the appeal and the

evidence on record.

9. Admittedly, there is no witness to the occurrence and the entire edifice of the prosecution is rested solely on circumstantial pieces of evidence. It is a settled position of law that in a case which is based purely on circumstantial evidence, it has to be examined minutely that the circumstances relied upon should be of conclusive nature and they should exclude every possible hypothesis except the one to be proved and that the chain of evidence must show that in all human probability the act must have been done by the accused. The circumstantial evidence should unmistakably point to the only conclusion that the accused and none other perpetrated the alleged crime. The question as to the obligation to be discharged by the prosecution and what should be the conditions required to be fulfilled before a case against an accused in a case hinges only on circumstantial evidence must be fulfilled, has been the subject matter of consideration before various High Courts and the Apex Court in series of cases. Reference may be made to one of the judgments of the Apex Court in *Sharad vs. State of Maharashtra* (1), wherein their Lordships have held that following conditions must be fulfilled before a case against an accused based on circumstantial evidence can be said to be fully established:

(1) 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;

(2) 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.

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

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence to 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.

10. The trial Judge has recorded a finding of guilt against the accused appellant under Sections 302 and 379 IPC while relying upon and found proved four circumstances, which are enumerated as below:

(i) the accused was last seen in the company of deceased;

(ii) recovery of Cycle;

(iii) recovery of blood stained paint (trouser) and such- shirt of accused having "B" group blood and

(iv) recovery of silver chain on the information and at the instance of accused appellant.

11. Now, in the light of the law laid down by the Apex Court, we have to examine whether the trial court has rightly recorded the finding of guilt against the accused appellant, and that the circumstantial evidence relied upon by the prosecution unmistakably point to the only conclusion that accused appellant Bablu @ Bulbul and none other is the perpetrator of the alleged murder of deceased Ashok Kumar Sharma.

12. We shall first deal the circumstances as to the accused appellant having been last seen in the company of deceased on 2.2.1995 between 5 and 6 p.m. To prove this circumstance, the prosecution has examined PW.2 Shyam Lal, P.W.3 Bhagwan Das, PW.9 Manoj Kumar Sharma, PW. 11 Sushil Kumar and PW. 12 Ram Pal. According to the prosecution case, deceased Ashok was missing since 2.2.1995 and his dead body was found lying in the forest behind Hunuman Temple on 3.2.1995. PW.2 Shyam Lal has stated in his statement recorded before the court on 12.6.1995 that he had seen the accused appellant and deceased Ashok together near Jorawar Singh fate on 2.2.1995 at 4.30 P.M. PW 3 Bhagwan Das has stated in his statement that he had seen Ashok Sharma and Bulbul (appellant) on 2.2.95 near a cinema hall, Jorawar Singh gate and at 6.00 PM both left on a cycle towards Aamer. PW9 Manoj Kumar Sharma is the brother of deceased Ashok was examined to prove that he had seen the appellant and his brother deceased Ashok on 2.2.95. Though this witness (sic) hostile as he diverted from his police statement Ex.P.1 7, yet it is necessary to (sic) a mention about the relevant portion of his statement marked A to B, wherein has stated that on 2.2.1995 at 12 noon his brother had gone to the shop of Bablu @ Bulbul and thereafter Bablu took his brother towards Jorawar Singh gate and both had their own cycles. At that time, his brother was wearing a silver chain in his neck and had Rs. 2000/-, the amount of salary with him. When cross examined, this witnesses denied to have given the statement before the police from portion A to B in Ex.P.17. PW 11 Sushil Kumar, another brother of deceased has stated that his elder brother deceased Ashok went to the shop of Bablu @ Bulbul at about 12 noon on 2.2,95 and both went on talking for long time. When his brother left the house, he was having Rs. 2-3 thousand rupees with him and had left the house on a cycle. He was wearing yellow coloured printed shirt and blue coloured trouser. He was also wearing a silver chain in his neck. The witness further deposed that his brother Ashok and appellant Bulbul left towards Jorawar Singh gate on different cycles. In cross examination, the witness had deposed that the weight of the chain of his brother was 1 & 1/2 tolas. The last witness to this first circumstance relied upon by the prosecution is PW 12 Rampal, who has categorically deposed that both appellant and deceased used to play lottery with him. According to this witness, he had seen Ashok and Bulbul together on 2.2.1995 at 5.30 - 6.00 PM and thereafter both of them left towards Aamer.

13. On carefully scanning the evidence discussed above, we find that the evidence of PW 2 Shyam Lal, PW 3 Bhagwan Das, PW 11 Sushil Kumar and PW 12 Rampal is reliable and worthy of credence and leave to room of doubt. In our considered view, the prosecution has been able to prove beyond reasonable

doubt the first circumstance that accused appellant Bablu @ Bulbul and deceased Ashok Kumar Sharma were seen together on 2:2.1995 between 5 and 6 PM.

14. The second circumstance relied upon by the prosecution is the recovery of a silver chain belonging to the deceased from the possession of accused appellant. The incident happened on 2.2.1995 and the recovery of chain has been made after 8 days of the incident i.e. on 10.2.95 vide memo Ex.P.19 in the presence of PW13 Lallu Ram and PW14 Shambhu Dayal. PW13 Lallu Ram has deposed that accused got a chain recovered which was tying concealed in his house. The length of the chain was 2 feet and 4 inches and chain had a locket (kunda). Similar is the statement of PW14 Shambhu Dayal, who has deposed that appellant Bulbul got the chain recovered lying concealed in his house. According to this witness, the length of the chain was 2 feet 4 inches and a new hook was affixed with the chain. The recovery memo Ex.P.19 also shows that the length of chain was 2 feet 4 inches. The prosecution has examined PW19 Om Prakash Goldsmith to prove the recovered chain as belonging to the deceased. The witness has deposed that he had manufactured the chain for deceased Ashok Kumar. He further deposed that accused Bablu had come to his shop at 7.30 PM on 2.2.1995 for the purposes of affixing lock (kunda) with the chain and he affixed the lock. The witness has then stated that he has manufactured number of chains of the same design as that of the chain of deceased and that he does not put any identification mark on the chains.

15. On a close look at the evidence discussed above, we find it highly unsafe to rely on the recovery of chain and to believe that the recovered chain belonged to deceased Ashok for the reasons, (i) that Om Prakash PW19 who claims himself to have manufactured the chain has categorically deposed that he has manufactured number of chains of the same design and that he does not put any mark of identification. In view of this statement, how can he say with certainty that this was the same chain which he had manufactured for deceased Ashok nor he has stated as to when he manufactured the recovered chain. Even no record to this effect has been produced, (ii) it cannot at all be believed that accused appellant went to PW 19 Om Prakash, Goldsmith at about 7.30 PM on 2.2.95 for the purposes of getting kunda (lock) affixed with the chain where (sic) according to the prosecution evidence, the incident happened after 6.00 PM on 2.2.(sic) if it is taken to be true that accused got kunda affixed with the chain immediately after the incident, they why he kept it concealed in his house instead wearing the same in his neck, and (iii) the police has recovered currency note of Rs. 100/- lying near the dead body and therefore it cannot be believed that the accused took away the silver chain weighting hardly two tolas and left the cash lying there. The chain was made of silver and was not costly one. Thus in our opinion, the prosecution has not been able to prove that the chain recovered from the accused appellant belonged to deceased Ashok Kumar Sharma.

16. The third circumstances is the recovery of blood stained trouser and bush shirt of accused. The prosecution has come forward with the case that the

bushshirt and trouser recovered from the accused were sent for chemical examination and on chemical examination the bushshirt and trouser contained blood of the same group as of the deceased. Undisputedly, the blood group as of the deceased. Undisputedly, the blood group of deceased was "B" and the alleged cloths of the deceased also contained the blood of "B" group. But on scanning the entire evidence, particularly the evidence as to the last seen, we do not find anything to suggest that the accused appellant was wearing the same cloths at the time of incident, which were recovered from his possession and were sent for chemical examination. Not a single witness has deposed about the cloths worn by the accused at the time of alleged incident. The trial court has believed this circumstances to be proved only on the basis that the cloths recovered from the possession of the accused contained same blood group as that of deceased. But the prosecution has utterly failed to prove that the cloths recovered from the possession of accused actually belonged to the accused. In the aforesaid premises, it is highly difficult for us to rely upon this most vital circumstance. Unless it is believed that the cloths belonged to the accused, the presence of blood of the same group as that of deceased is of no consequence and cannot be a circumstance against the accused. We find support from a decision of the Apex Court in K. Sukumaran v. State of Kerala (2), wherein their Lordships while dealing with a case of circumstantial evidence, in the similar circumstances where the alleged cloths of the accused though found to be stained with same blood group as that of deceased were not found to be belonging to the accused, observed as under:

"In the aforesaid circumstances, it is difficult for us to rely upon the testimony of PW1 to come to the conclusion that MOs 5 and 6 belonged to the accused and the accused had worn the same on 16.2.1991 when PW1 met with him in the house of deceased at 6.15 p.m. If it is not established that MOs 5 and 6 belonged to the accused then the presence of blood of the same group as that of the deceased is of no consequence and cannot be a circumstance against the accused. In our view, therefore, circumstance 10 enumerated in para 7 of the judgment of the High Court cannot be said to have been established by the prosecution."

17. We, thus conclude that circumstances 3 i.e. the alleged recovery of cloths containing same blood group as that of deceased cannot be said to have been established by the prosecution.

18. The last circumstances relied upon by the prosecution is the recovery of cycle. We have seen the relevant evidence and we find that the prosecution has not able to establish that the recovered cycle was taken use of and was at all connected with the commission of crime, nor the prosecution could establish as to whom the cycle belonged. In our opinion, therefore, the recovery of cycle cannot be said to be an incriminating circumstance.

19. From the discussion made above, it cannot be inferred that the circumstances relied upon by the prosecution unerringly point towards the guilt

of the accused. The prosecution has proved the only circumstance against the accused appellant that he was last seen in the company of deceased Ashok on 2.2.1995 between 5 and 6 p.m. In our considered opinion, this circumstance alone cannot lead to the conclusion that it is the accused appellant who is the perpetrator of the crime in question. In the case of K. Sukumaran v. State of Kerala (supra) in similar circumstances, having found that the vital circumstances that though the cloths recovered from the possession of accused were found to have contained with the same blood group as that of deceased, but it was not established that the cloths belonged to the accused, their Lordships of the Supreme Court have held as under:

"If it is not established that MOs 5 and 6 belonged to the accused then the presence of blood of the same group as that of the deceased is of no consequence and cannot be a circumstance against the accused. In our view, therefore, Circumstance 10 enumerated in para 7 of the judgment of the High Court cannot be said to have been established by the prosecution, If that is excluded from the purview of the consideration then the other circumstances proved by the prosecution evidence can only go to the extent that the accused and deceased were seen together on 16.2.1991 at 6.15 p.m. That circumstance alone cannot lead to the conclusion that it is the accused who is the perpetrator of the crime in question. In the aforesaid premises, we have no hesitation to come to the conclusion that on the circumstances established it cannot be said that the charge of murder against the accused appellant has been proved beyond reasonable doubt."

20. In the case in hand, the prosecution has been able to prove only one circumstance that the accused and the deceased were last seen together on 2.2.95. Thus in the aforesaid premises, we have no hesitation to come to the conclusion that on the only circumstance of accused and deceased last seen together established, it cannot be said that the charge of murder against the accused appellant has been proved beyond any shadow of doubt. The prosecution has utterly failed to establish beyond reasonable doubt the most vital circumstance that the cloths recovered from the possession of accused, which were found to have contained the same blood group as that of deceased, actually belonged to the accused appellant. The appellant, in our opinion, therefore, deserve to be acquitted.

21. In the result, we allow the appeal, set aside the conviction and sentence awarded by the trial Judge and acquit him of the charges levelled against him. The accused appellant be set at liberty forthwith, unless required in any other case.