
(2006) 06 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Criminal Appeal No. 07 Of 2003 and Confirmation No.05 Of 2003

Mohd.Yaqoob

APPELLANT

Vs

State of J & K

RESPONDENT

Date of Decision : 09-06-2006

Acts Referred:

Jammu and Kashmir Criminal Procedure Code, 1989 — Section 367, 510
Ranbir Penal Code, 1989 — Section 302

Citation : (2006) 3 JKJ 32 : (2007) SriLJ 280

Hon'ble Judges : J.P.Singh, J and Y.P.Nargotra, J

Bench : Division Bench

Advocate : Surinder Kour, B.S.Salathia, Advocates appearing for the Parties

Judgement

J.P. Singh, J.—First Additional Sessions Judge, Jammu, the trial Court, convicted appellant, Mohd. Yaqoob, under Section 302 of the

Ranbir Penal Code on 1052003 and sentenced him to suffer imprisonment for life and a fine of Rs.25,000/ (Rupees twenty five thousand) on

17.05.2003. He, accordingly, submitted his proceedings to this Court for confirmation under Section 374 of the Code of Criminal Procedure, Svt.

1989.

Appellant has filed Criminal Appeal No. 07/2003 against his conviction and sentence awarded by learned trial Court.

2. Facts, necessary for decision of the reference and the appellant's appeal, may be summarized thus:

A reliable information was received by SHO, Police Station, Bishnah, on 27011999 at 10.45 a.m. that an unidentified male dead body was found

lying at the Poultry Farm of one Vijay Kumar. This information was recorded as report No. 6 in the Daily Diary Register of 27011999 deputing

Mr. Shiv Dev Singh, SubInspector of Police, along with constables to the spot for appropriate proceedings. Mr. Shiv Dev Singh, on reaching the spot, found that the dead body was of Suram Singh, Chowkidar, working at the Poultry Farm, with injuries on his head and penis, wherefrom it was apparent that person/persons, with criminal intention, had attacked him during the preceding night with intention to kill him. He, accordingly, requested for registration of the case. A case, FIR No.09/1999, was, accordingly, registered in Police Station, Bishnah, on 2701199 at 11.30 a.m. Final Police Report under Section 173 of the Code of Criminal Procedure was filed before Judicial Magistrate First Class, Bishnah, who committed the case to learned Sessions Judge, Jammu, who, in turn, transferred it for disposal to the learned First Additional Sessions Judge, Jammu.

3. A charge under Section 302 RPC was framed by the trial Court on 08051999 against the appellant, who denied the charge and claimed to be tried.

4. Prosecution examined Shiv Dev Singh, Romesh Chander, Vijay Kumar, Nikka Ram, Ram Rattan, Dinesh Kumar, Tarlok Singh, Dar Singh, Bodh Raj, Dr. Basant Kumar Sharma, Raghubir Singh, Patwari, and Tarseem Chand, as its witnesses. The appellant, however, did not lead any evidence in defence.

5. Brief resume of the statements of the prosecution witnesses may be summarized as follows:

1. PW Shiv Dev Singh, SubInspector of Police, states that after receiving information that a dead body was lying at Chak Jaralan, he went on spot, whereafter he sent a docket for registration of case to the concerned SHO, who investigated the occurrence. The docket was marked as EXPWSS.

2. PW Romesh Chander states that he knew the accused, who used to work at the Halwai Shop of his brother. He would work at the Poultry Farm of his brother as well, He did not know the name of the accused. His brother had gone to Kathua and when he came back, he informed him on Telephone that a boy had died at the Poultry Farm. He went to the Poultry Farm. The accused was not there. He had seen the accused at the Halwai Shop of his brother during the night. He went on spot and found that the

dead body of the boy, who used to work at the Poultry Farm, was lying there. Police had reached on spot.

3. PW Vijay Kumar says that he knew the accused. He had been working as a Halwai in a shop situated near Jewal Cinema. Accused was working with him at the Halwai Shop. The accused would work at his Poultry Farm as well, which was located at Bishnah Road. Suram Singh was also working in the Poultry Farm. He knew tailoring as well. He says that about 11/4 years ago, he had gone to his farm where he found the dead body of Suram Singh. Accused was not there because he, at that time, was at his Halwai Shop at Jewal Chowk. Police reached on spot. This witness was declared hostile. In cross examination, he denied as incorrect the suggestion that the accused was at the Poultry Farm at the night when the occurrence had taken place. He admitted the seizure of blood stained earth from the spot. The seizure memo was marked as EXPWVK. The other sample of earth taken from the spot was marked as EXPWVK1. He stated that he would not keep the accused in his employment even if he was acquitted, because he would not need his services. Accused was resident of Rajouri. His father would come to him and take the pay of his son. He showed his ignorance as to who had killed Suram Singh.

4. PW Nikka Ram says that he did not know the accused. Police had called him and the Lumberdar. They went to the Police Station, when the dead body was taken possession of and seizure memo was prepared. The seizure memo was marked as EXPWNR. The accused made disclosure statement regarding one pipe and one shirt, which were thereafter recovered at the instance of the accused. The disclosure statement was marked as EXPWNK and the seizure memo was marked as EXPWVK1. The pipe marked as EXPW1 was identified by the witness. The witness identified the shirt too. The seizure memo of the shirt was marked as EXPW2.

In cross examination, he stated that two more persons from the Poultry Farm were there. He had seen the dead body on spot, which had been covered by Polythene sheet. He had gone to the Police Station 45 days after the seizure of the dead body. SHO had not taken out pipe and shirt on his own, but the accused had taken these things out. The accused was in handcuffs. His statement was not recorded at the time of seizure.

5. PW Ram Rattan states that he had been called by the Police, when the accused was being interrogated. The accused had made disclosure

about pipe, which was, accordingly, recovered on his disclosure. He admitted his signatures on the disclosure statement, which was marked as

EXPWRR. He admitted his signatures on the recovery memo marked as EXPWRR1.

6. PW Dinesh Kumar states that the deceased Suram Singh was his father. His father and the accused had been working together at the Poultry

Farm. Lumberdar of the village had informed him on Telephone and on this information, his uncles, namely Dar Singh, Tarlok Singh, Kuldeep

Singh along with Hukam Singh, had come to Jammu to see the owner of the Poultry Farm at Jewal Chowk, whereafter they went to Medical

College. He and others had identified the dead body of Suram Singh. Postmortem was conducted. Police had interrogated the accused, who had

made a disclosure statement regarding pipe, which was stated to have been kept in a gunny bag. He identified his signatures on EXPWRR and

EXPW RR1 on the recovery memo.

7. PWs Tarlok Singh and Dar Singh reiterated the version projected by Dinesh Kumar son of the deceased.

8. PW Bodh Raj, Constable, states that the SHO had taken the hair strands of the accused in his presence as also in presence of the Tehsildar. He

identified his signatures on the seizure memo of the hair strands. The seizure memo was marked as EXPWBR.

9. PW Dr. Basant Ram stated that he had conducted the autopsy on the dead body of Suram Singh S/o Mangat Ram R/o Khuritti, Udhampur,

and found following injuries on his person;

1. Lacerated wound about 4 cm x 1 cm bone deep on right occipital region/oblige to midline, scalp bone beneath the bone fractured.

2. Lacerated wound about 4 cm x 1 cm x bone ""deep on left occipito partial region.

3. Bruises about 3 in number on medial size of left femoral region, transversely placed and about 2 cm x 1/2 cm each.

4. Abrasion about 3 cm x 1 cm on lateral aspect of left knee joint.

5. Abrasion about 2 cm x 1/2 cm just above left knee joint on interior aspect on leg.

6. Lacerated wound about 3 cm x 1 cm on base of penis on left side with tag of skin intact in midline.

7. Circular bruised area over neck on just below left side of chin about 2 cm x 2 cm in diameter.

8. Two linear bruises over thyroid region on front of neck about 1 cm each.

Internal injuries, Membranes and brain substance lacerated beneath first wound.

The postmortem report was marked as EXPWBK.

10. PW Raghbir Singh, Patwari is a formal witness of the preparation of the site plan.

11. PW Tarseem Chand, Constable, states that he was posted as Constable in Police Station, Bishnah, on 01.01.1999. Hair strands of the

accused were taken and later sent to Forensic Science Laboratory. He identified his signatures on EXPWPR, the seizure memo of the hair strands

of the accused.

In cross-examination, he stated that he did not know as to when were the hair strands sent to Forensic Science Laboratory. He did not know as to

who had gone to give the samples of the hair strands to the Forensic Science Laboratory.

6. This is the whole evidence, which the prosecution had produced in support of its charge against the appellant.

7. Smt, Surinder Kour, learned counsel for the appellant/accused, submits that there was not even an iota of evidence against the appellant and the

learned trial Court, argues the learned counsel, had erred in holding the appellant guilty. Learned counsel was critical of the omission of learned trial

Court to discuss the prosecution evidence before coming to the conclusion regarding the guilt or otherwise of the appellant. The course adopted by

the learned Judge, according to the learned counsel, was wholly unwarranted.

8. Shri B.S. Salathia, learned Additional Advocate General for the respondent State, on the other hand, supported the judgment saying that the

disclosure statement made by the accused, and the recovery of incriminating articles pursuant to the recovery, was sufficient to prove the guilt of

the accused.

We have considered the submissions of learned counsel for the parties and gone through the records of the case.

10. It is true that learned trial Court had not discussed the evidence of the prosecution witnesses, which he ought to have done, before arriving at his conclusion. Omission of the learned trial Court to discuss the prosecution evidence deprived us of the reasons, which had been operating in the mind of the learned trial Court. Learned trial Court has convicted the appellant on the basis of his findings, which we deem necessary to quote.

These findings are

It. has been narrated by the brother of the deceased that both accused and deceased were employed in the poultry farm. They have been putting up together and are supposed to be lastly seen therein. Of course the disclosure of the accused on the basis of which the weapon of offence as

well as his blood stained were recovered is a circumstance which leads to irresistible conclusion that it is only the accused who has committed the

offence. The blood stained clothes of the accused were subjected to chemical and microscopical examination which has found the presence of

human blood. The report of the expert is admissible u/s 510 Cr. P.C in the evidence. The chemical examination has been conducted by Sh. K.K.

Raina, F.S.L. Expert who had examined K614 to K626 of 99. All of them have found the presence of human blood on it. The essential and the

most important aspect of the case is that the autopsy surgeon found some hairs of the accused in the hands of the deceased meaning thereby that

there was some kind of scuffle between the deceased and the accused. The hairs of the accused remained in the hands of the deceased. The

autopsy surgeon while tendering his statement and while exhibiting his document EXPW BKS has categorically stated that there was some hairs

found in the right palm and thumb of the deceased. These hairs were also subjected to chemical and microscopical examination which has

established that the hair samples taken of the accused and recovered from the palm of the deceased were similar meaning thereby the accused was

lastly seen in the company of the deceased at the time the offence has been committed.

Another circumstance has been explained by the prosecution witness Ram Rattan who has categorically stated that the accused made the

disclosure EXPW RR and on the basis of the disclosure the recovery of Pipe EXPW RR2 came to be recovered.

Emphasis was laid as a circumstance on recovery of weapon on assault, on the basis of information given by the accused while in custody.

The injuries caused on the penis of the deceased has taken me a long way. Presumed that the accused while inflicting the injuries on the head of

the deceased has gone so frenzy that he scratched the penis of the deceased to a skin level meaning thereby that he scratched to the extent of

amputating it that is, a circumstance speaking against the accused. I am satisfied that the accused and the deceased were together employed in a

poultry farm. Vijay Kumar being the owner of the same has categorically stated that both deceased and the accused were his employees and were

posted in poultry farm. The accused came to be arrested u/s 54 Cr. P.C. then he made a disclosure and on the basis of disclosure the weapon of

offence came to be recovered including the blood stained clothes which were in exclusive knowledge of the accused. The hair sample of the

accused did match with the hairs in the palm of the deceased. Putting all these circumstances together, I am satisfied it is only the accused who has

committed the offence inflicted the injuries on the head of the deceased and finally the injuries on the penis of the deceased. There is no

circumstance which speaks in favour of the accused and consistent with his innocence.

11. Learned trial Court has relied on the statement of the brother of the deceased, wherein he had reportedly stated that the deceased and the

appellant had been employed in the Poultry Farm and were putting up together. This statement of the brother of the deceased has been relied upon

by the learned trial Court to be the evidence of last seen. He has relied upon this alleged evidence of last seen only on the basis of supposition, as it

would so appear from the concluded findings of the learned trial Court.

12. There appears to be a typographical mistake in the judgment of the learned trial Court, because the brother of the deceased had not stated

anything, as has been attributed to him by the learned trial Court. It, however, appears that the learned Judge was referring to the son of the

deceased, who had deposed that the deceased and the accused were employed at the Poultry Farm. The son of the deceased too had not

deposed any such thing, on the basis whereof it could have been said that the accused and the deceased had been putting up together. There being

nothing in the statement of son of the deceased as to putting up together of the deceased and the accused, the finding of learned trial Court

becomes unjustified.

That apart, the evidence of the accused and deceased putting up together, would not create any incriminating circumstance against the accused,

for, what was required to be proved by the prosecution was that the accused had been last seen with the deceased before his death.

The prosecution, as it would so appear from the extracted statements of the prosecution witnesses, has miserably failed to let in any such evidence

on the basis whereof it could be said that the accused had been seen in the company of the deceased before he was found dead with injuries on his

person. Not only this, the prosecution had not produced any evidence, which would prove that the deceased and the accused had been found

working together in the Poultry Farm any time before his death. We, therefore, are left with no option except to upset the finding of the trial Court

that the accused had been last seen with the deceased.

13. The next circumstance, which has been relied upon by the learned trial Court is the recovery of blood stained weapon of offence and shirt

pursuant to the disclosure statement of the accused. According to the learned trial Court, this disclosure statement and recovery pursuant there to,

would lead to irresistible conclusion that it was the accused alone, who had committed the offence. We are not satisfied with this finding of the

learned trial Court too.

This is so, firstly, because no inference of culpability can be drawn against the appellant only on the basis of recovery of blood stained pipe and

blood stained shirt, when it had not been proved as to whose shirt it was. Secondly, the prosecution had not led any evidence to prove that the

weapon of alleged offence was blood stained. All the prosecution witnesses, which had been examined by the prosecution, had omitted to say on

oath that the shirt and the pipe were blood stained.

14. Learned trial Court appears to have relied upon the report of Mr. K.K. Raina with the aid of Section 510 of the Code of Criminal Procedure

to hold it admissible in evidence.

We are not inclined to agree with this finding of learned trial Court on this aspect of the matter too. This is so, because the report of Mr. Raina,

who has been shown to be a Scientific Officer, was not admissible in evidence under Section 510 of the Code of Criminal Procedure because

Section 510 does not make the report of a Scientific Officer admissible in evidence.

This apart, even if one were to accept this report and to take it as an evidence in the case, it could not have been so done unless the prosecution

had proved that the articles/material, on which the expert report had been sought for, had been duly submitted to him for examination or analysis.

Expression 'duly submitted to him for examination' appearing in Section 510 of the Code of Criminal Procedure, is not merely surplusage, which

could be ignored. It is only when a matter was duly submitted to an expert and proved to be so submitted, that the evidence of the expert as

mentioned in Section 510 of the Code of Criminal Procedure, would become admissible in evidence, (emphasis supplied)

15. We are further not satisfied with the finding of the learned trial Court that the hair strands of the accused and those in the hands of deceased

had matched, because the report of the Scientific Officer was neither admissible in evidence and nor the hair strands too had been proved to have

been sent to the expert for examination. The investigating Police Officer having not been produced as the prosecution witness in the case, there

was no occasion for the trial Court to have relied upon the report of the Scientific Officer, so as to treat it as evidence in the case. The sending of

the material/articles alleged to be blood stained and the hair strands, was required to be proved by the Investigating Officer, who had been alleged

by the prosecution to have sent these things to the Forensic Science Laboratory.

Learned trial Court has, thus, erred in relying upon the report of the Scientific Officer, which report was not admissible in evidence. This having not

been proved, because of the omission of the prosecution to produce the Investigating Police Officer, the report of the Scientific Officer could not

have been admitted in evidence, unless, of course, he had been produced as prosecution witness in the case.

16. Finding of the learned trial Court that the injury on the penis of the deceased would connect the appellant with the commission of the crime too

is unsustainable. Learned trial Court has erred in recording that the accused had gone so frenzy that he scratched the penis of the deceased to the

extent of skin level, meaning thereby that he had scratched to the extent of amputating it, which, according to the learned trial Court, was the circumstance speaking against the accused.

The finding of the trial Court is unjustified, because presence of the injuries on the body of the deceased would not connect the appellant with any

liability of causing such injuries unless some evidence had been adduced by the prosecution to prove that appellant was the author of these injuries

or that such circumstance had existed, which would lead to the conclusion that it was the appellant and appellant alone, who could have been the

author of these injuries.

17. All the findings recorded by the learned trial Court, though without discussing the evidence or giving reasons in support thereof on the basis of

recorded evidence, are not sustainable on the basis of evidence produced by the prosecution, which, in our opinion, proved the existence of only

following facts:

1. Suram Singh son of Mangat Ram had been working along with Mohd. Yaqoob, appellant, at Poultry Farm situated at Chak Jaralan which

belonged to one Vijay Kumar;

2. Dead body of Suram Singh was found in the premises of Poultry Farm on 27011999;

3. Injuries were found on the person of the deceased;

4. Pursuant to the disclosure statement, one pipe measuring 2' x 1 1/2" and black striped terricot shirt had been recovered at the instance of the

appellant.

5. The hair strands of the accused were seized when he was under arrest.

18. For a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances, be proved by

direct ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial

evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that

is, the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts

which are so closely associated with the fact in issue which taken together form a

chain of circumstances from which the existence of the principal fact can be legally inferred or presumed.

19. Conviction can be based solely on circumstantial evidence but it should be tested on the touchstone of law relating to circumstantial evidence.

Where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances

are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances from which an inference as to

the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact

sought to be inferred from those circumstances. The cumulative effect of the circumstances must be such as to negative the innocence of the

accused and bring home the offences beyond any reasonable doubt. The circumstances should be of a conclusive nature and tendency and they

should be such as to exclude every hypothesis but the one proposed to be proved.

20. Legal position in dealing with cases based on circumstantial evidence is settled since long. It is trite that circumstances relied upon by the

prosecution against the accused must be proved beyond reasonable doubt. These circumstances must, in addition, be shown to be closely

connected with the fact. The chain of incriminating circumstances must be consistent only with the hypothesis of the guilt of the accused.

21. The facts, which have been found to be proved by the prosecution in the present case, do not, in our opinion, complete the chain of

circumstances, which would be incompatible with the innocence of the accused and lead to the irresistible conclusion that it was the appellant and

appellant alone, who was responsible for causing injuries and death of the deceased.

22. We are further of the view that recovery made pursuant to the disclosure statement of the appellant, would not by itself lead to the irresistible

conclusion that the appellant was guilty of causing injuries to the accused sic (deceased), which had resulted in his death.

23. For all what has been stated above, we do not find any material on records to find the appellant guilty of the offence, for which he was

convicted and sentenced by the trial Court.

24. While allowing the appeal, rejecting the reference and quashing the impugned judgment and order, we dismiss the police challan and give the benefit of doubt to the appellant, who shall stand acquitted.

25. Before parting, we cannot help observing that the trial Courts must comply, in letter and spirit, the provisions of Section 367 of the Code of Criminal Procedure, Svt. 1989, while writing judgment in a criminal case. For facility of reference Section 367 of the Code of Criminal Procedure is reproduced hereunder:

367. Language of judgment, Contents of judgment.

(1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court or from the

dictation of such presiding officer in the language of the Court, or in English; and shall contain the point or points for determination, the decision

thereon and the reasons for the decision; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it and

where it is not written by the presiding officer with his own hand, every page of such judgment shall be signed by him.

(2) It shall specify the offence (if any) of which, and the section of the Ranbir Penal Code or other law under which the accused is convicted, and

the punishment to which he is sentenced.

(3) Judgment in alternative. When the conviction is under the Ranbir Penal Code and it is doubtful under which of two sections, or under which of

two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(4) If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(5) Omitted by Act XXXVII of 1978.

(6) For the purposes of this section, an order under section 118 or section 123, subsection (3), shall be deemed to be a judgment.

27. The trial Courts are, thus, required to follow the following guidelines before recording their verdict in every case. These guidelines are only

illustrative and by no means exhaustive. These guidelines are:

(1) Brief resume of the prosecution case;

(2) Description of charge/s framed against the accused;

- (3) Resume of the prosecution witnesses;
- (4) Documentary evidence produced by the prosecution;
- (5) Expert evidence, if any, produced or relied upon;
- (6) Incriminating circumstances/evidence put to the accused and his explanation/reply thereto;
- (7) Defence evidence, documentary or oral, if any;
- (8) Submissions of the prosecutor including case law, if any, cited;
- (9) Submissions of the accused amicus curiae or his counsel as the case may be along with cited case law;
- (10) Point or/points for determination;
- (11) Discussion of prosecution evidence;
- (12) Discussion of defence evidence;
- (13) Reasons for relying on prosecution or defence evidence/version;
- (14) Facts found proved from such appreciation of prosecution and defence evidence;
- (15) Reasons for reliance on one or the other facts;
- (16) Decision on point/points formulated for determination;
- (17) Finding of conviction/acquittal;
- (18) Offence/offences found to have been committed by the accused;
- (19) Findings as to whether or not the accused was entitled to benefit of Section 562 Cr. P.C or Probation of Offenders Act. If and whether these provisions were applicable to the offence/offences for which the accused was convicted;
- (20) Reasons for awarding quantum of punishment and compensatory fine.

28. Following these guidelines based on Section 367 of the Code of Criminal Procedure, becomes necessary because it, besides, complying with the requirements of the Code of Criminal Procedure, would help the appellate Court in appreciating the reasons given by the trial Courts on the basis of evidence recorded before them.

29. In the present case, learned First Additional Sessions Judge, Jammu, has not observed the provisions of Section 367 of the Code of Criminal Procedure, in letter and spirit.

30. It is hoped that all trial Courts shall ensure due compliance of the provisions of Section 367 of the Code of Criminal Procedure, while recording judgments.