

(2016) 03 AHC CK 0084

In the Allahabad High Court

Case No : Criminal Appeal Nos. 278 and 594 of 2008

Neelam Rani and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 18-03-2016

Acts Referred:

Arms Act, 1959 — Section 25
Criminal Procedure Code, 1973 (CrPC) — Section 313, Section 374, Section 386,
Section 437-A
Penal Code, 1860 (IPC) — Section 201, Section 302

Citation : (2016) 03 AHC CK 0084

Hon'ble Judges : Surendra Vikram Singh Rathore and Pratyush Kumar, JJ.

Bench : Division Bench

Advocate : Party-in-Person, Amicus Curaie, Brijesh Kumar Srivastava and
Indrajeet Shukla, for the Appellant;

Final Decision : Allowed

Judgement

Pratyush Kumar, J.—1. Both the appeals arise out of the same judgment and order dated 09.10.2007 passed in Sessions Trial No. 141 of 2006 [State v. Ram Das and another] and S.T. No. 142 of 2006 [State v. Baba Ram Das], they have been heard together and decided by a common order.

2. In the aforesaid appeals the appellants Neelam Rani and Ram Das have been convicted and sentenced as under:

U/s. 302/ IPC

Life Imprisonment with fine of Rs. 2,000/- each In default of payment of fine two years" RI.

U/s. 201 IPC

Five years" rigorous imprisonment each.

Section 25 Arms Act

One year's RI to appellant Ram Das only.

3. In these appeals facts of the prosecution case may be summarized as under:

"That on 02.03.2006 Tilak Ram @ Ram Tilak gave an information at police station Raunahi, District Faizabad stating therein that his son Rinku @ Dhakelu aged 6 years had gone to his grand-father Nagesar and from 28.02.2006 he had disappeared. He had searched for his son among his relations but whose whereabouts could not be traced. The said information was entered into report of the general diary, thereafter on 05.03.2006 in continuation of earlier information he gave another written report/information mentioning therein that on 28.02.2006 at about 6.30 PM his son was seen in the company of Ram Das Pujari of temple of Lord Hanuman, situated nearby the road. Dead body of his son was found lying on Shahi Marg, its head, two hands and one leg were missing. He had identified the dead body to be of his son, he apprehended that he was killed by Ram Das."

4. At this report Case Crime No. 79 of 2006 under Sections 302/201 IPC was registered at the police station. Investigation was entrusted to Suresh Babu Tripathi, who after recording the statements of the witnesses present there, went to the spot, found the headless dead body, made search for missing organs, right hand and two pieces were found nearby the dead body, inquest proceedings were held. On the next day one Ram Sajiwan informed about the discovery of head, its inquest proceedings were separately held, separate autopsies were performed. The investigation of the case was taken over by Manoj Kumar Tiwari, the then Station House Officer of the police station, who on the same day arrested the accused Ram Das and Neelam Rani, they confessed the killing of child by way of human sacrifice before him and on the pointing out of Ram Das and initiated by Neelam Rani weapons of murder i.e. knife and Banka were searched, one knife was recovered, Banka was not found immediately, but it was recovered subsequently. Samples of blood stained and simple earth were taken. After investigation charge-sheet was submitted against the present appellants.

5. Both the accused persons were tried by the court of Session. The case of the defence was of total denial. The learned trial Judge after hearing the arguments found the prosecution case trustworthy and convicted the present appellants and sentenced them as above.

6. Feeling aggrieved both the appellants have preferred separate appeals.

7. Heard Sri B.K. Srivastava, Advocate and Sri Indrajeet Shukla, Amicus Curiae, for the appellants, Ms. Madhulika Yadav, learned Additional Government Advocate for the State-Respondent and perused the record.

8. Very briefly on behalf of the appellants, learned counsel for the appellants have submitted that the impugned judgment is illegal and perverse. There is no evidence against the present appellants and on the basis of alleged confession recorded by a police officer, the appellants were erroneously convicted, hence the

impugned judgment deserves to be set aside.

9. Before we propose to deal with the arguments submitted by the respective parties, we would like to recollect the manner in which appeal against conviction is required to be considered by this Court and scope of jurisdiction conferred on the Court by Sections 374 and 386 Cr.P.C. Further we would like to refresh the observation made by the Apex Court in the case of *Ishvarbhai Fuljibhai Patni v. State of Gujarat* [, 1995 Supreme Court Cases (Cri) 222]. Para-4 of the judgment reads as under:

"4. Since, the High Court was dealing with the appeal in exercise of its appellate jurisdiction, against conviction and sentence of life imprisonment, it was required to consider and discuss the evidence and deal with the arguments raised at the bar. Let alone, any discussion of the evidence, we do not find that the High Court even cared to notice the evidence led in the case. None of the arguments of the learned counsel for the appellant have been noticed, much less considered and discussed. The judgment is cryptic and we are at loss to understand as to what prevailed with the High Court to uphold the conviction and sentence of the appellant. On a plain requirement of justice, the High Court while dealing with a first appeal against conviction and sentence is expected to, howsoever briefly depending upon the facts of the case, consider and discuss the evidence and deal with the submissions raised at the bar. If it fails to do so, it apparently fails in the discharge of one of its essential jurisdiction under its appellate powers. In view of the infirmities pointed out by us, the judgment under appeal cannot be sustained."

10. In the case of *Lal Mandi, Appellant v. State of West Bengal, Respondent* [, 1995 CRI.L.J. 2659 (Supreme Court), 2659], the Apex Court in para-5 of the report has given the caution to the High Court reminding its duty in the matter of hearing of appeal against conviction. It would be gainful to reproduce the observation made in para-5 of the report, extracted below:

"5. To say the least, the approach of the High Court is totally fallacious. In an appeal against conviction, the Appellate Court has the duty to itself appreciate the evidence on the record and if two views are possible on the appraisal of the evidence, the benefit of reasonable doubt has to be given to an accused. It is not correct to suggest that the "Appellate Court cannot legally interfere with" the order of conviction where the trial court has found the evidence as reliable and that it cannot substitute the findings of the Sessions Judge by its own, if it arrives at a different conclusion on reassessment of the evidence. The observation made in *Tota Singh's* case, which was an appeal against acquittal, have been misunderstood and mechanically applied. Though, the powers of an appellate court, while dealing with an appeal against acquittal and an appeal against conviction are equally wide but the considerations which weigh with it while dealing with an appeal against an order of acquittal and in an appeal against conviction are distinct and separate. The presumption of innocence of accused which gets strengthened on his acquittal is not available on his

conviction. An appellate court may give every reasonable weight to the conclusions arrived at by the trial court but it must be remembered that an appellate court is duty bound, in the same way as the trial court, to test the evidence extrinsically as well as intrinsically and to consider as thoroughly as the trial court, all the circumstances available on the record so as to arrive at an independent finding regarding guilt or innocence of the convict. An Appellate Court fails in the discharge of one of its essential duties, if it fails to itself appreciate the evidence on the record and arrive at an independent finding based on the appraisal of such evidence."

11. In the present case two autopsies were performed. Dr. R.P. Singh P.W. 5 conducted the postmortem examination on 07.03.2006 at 3.00 PM of the head of the deceased. He proved the postmortem report Ext. Ka-2 and deposed that most parts of the head were missing, age of the deceased could not be determined on the basis of teeth. Dr. Ghanshyam Singh P.W. 6 on 05.03.2006 at 3.00 PM conducted the postmortem examination on the headless body of the deceased. According to him, time since death was four days, left arm and foot were missing, most of the flesh was eaten by the animals, he has proved postmortem report Ext. Ka-3 and expressed his inability to determine the gender of the skeleton.

12. Though in their statements recorded under Section 313 Cr.P.C. the death of the deceased was not admitted by the appellants but during cross-examination the witnesses were not suggested that Rinku @ Dhakelu was alive.

13. In view of above, we hold that from the medical evidence death of the child aged six years stands proved. From the evidence of Tilak Ram P.W. 1 it is also proved that the dead body belonged to Rinku @ Dhakelu. In this way, homicidal death of the deceased stands proved.

14. Before we proceed further we would like to have a glance on the testimonies of prosecution witnesses.

15. In the present case there is no eye witness account. The case of the prosecution rests on circumstantial evidence. In such cases what circumstances have to be proved by the prosecution has been very lucidly laid down by the Apex Court in the case of Sharad Birdhichand Sarda v. State of Maharashtra [, AIR 1984, SC 1622]. Relevant observation reads as under:--

"(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 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."

16. In the present case homicidal death of the deceased stands proved. Motive is said to be human sacrifice made with a view that Smt. Neelam Rani might give birth to a male child. Since it is not disputed that she was issue-less the motive also stands proved.

17. In the present case, there is no evidence of last seen. Tilak Ram P.W. 1 had not seen his son alive for the last time in the company of the appellants. Raj Kumar P.W. 2 himself says that at that day he was in district Barabanki. Nagesar P.W. 3 states that at the relevant time he was irrigating his field. Ramu P.W. 4 is only witness of recovery, he claims that on that day he was in district Barabanki. Merely the child used to play nearby the temple bears no significance on this score, therefore, first link in the chain of circumstantial evidence is missing.

18. The only evidence adduced by the prosecution is evidence of recovery. Raj Kumar P.W. 2, who is the witness of the recovery, denied that the recovery was made in his presence. According to him, his thumb impressions were taken by the Investigating Officer on a blank paper. The other witness of recovery is Ramu P.W. 4 but he says that he had seen the weapons of murder in the police station, his thumb impressions were taken by the Investigating Officer on a blank paper. Only Sub Inspector Manoj Kumar Tiwari P.W. 8 supports the facts constituting the recovery, but public witnesses of recovery have turned hostile. For this reason, evidence of recovery cannot be accepted only on the basis of the statement of the Investigating Officer. Even if, we accept his evidence but even then it is not sufficient to prove the charge of murder against the present appellants.

19. In view of above, the prosecution, for the reasons mentioned above, has failed to prove beyond doubt that the appellants murdered Rinku @ Dhakelu. The chain of circumstantial evidence is incomplete, one link is definitely missing. The learned trial Judge merely on account of nature of crime has recorded the finding of guilt against the present appellants. Reasons given by the learned trial Judge are not substantiated from the record. Such findings recorded by the trial court cannot be sustained by us. The appeals have substance, they deserve to be allowed.

20. Accordingly, both the appeals are allowed and the conviction and sentence awarded by the learned trial Judge vide judgment and orders dated 09.10.2007 passed in Sessions Trial No. 141 of 2006 [State v. Ram Das and another] and S.T. No. 142 of 2006 [State v. Baba Ram Das] are set a side. The appellants, namely, Neelam Rani and Ram Das are acquitted from the charges levelled against them. The appellants are in jail. They be released forthwith, in case, they

are not wanted in some other case, provided they file their personal bond and two sureties each in the like amount to the satisfaction of the Court concerned in compliance of Section 437-A Cr.P.C.

21. Office is directed to certify this order to the court concerned forthwith for compliance and to send back the lower court record.