

(2024) 01 SC CK 0017

In the Supreme Court Of India

Case No : Criminal Appeal No. 1338 Of 2010

Pradeep Kumar

APPELLANT

Vs

State Of Haryana

RESPONDENT

Date of Decision : 05-01-2024

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302
Code of Criminal Procedure, 1973 — Section 313

Citation : (2024) 01 SC CK 0017

Hon'ble Judges : B.R. Gavai, J;Pamidighantam Sri Narasimha, J

Bench : Division Bench

Advocate : Pranab Kumar Mullick, Soma Mullick, Anil Rana, Banani Sikdar, Sebat Kumar Deuria, Sagar Kundu, Ajay Solanki, Yatin Grover, Harinder Mohan Singh, Shabana, Ajay Bansal, Gaurav Yadava, Veena Bansal, Saurav Jindal, Samar Vijay Singh, Sabarni Som, Nikilesh Ramachandran

Final Decision : Allowed

Judgement

Pamidighantam Sri Narasimha, J

1. The sole appellant herein was tried along with another accused for the murder of one Samsher Singh and convicted under Section 302 read with Section 34 of the Indian Penal Code, 1860 for murder and sentenced to rigorous imprisonment for life by the Trial Court [The Additional Sessions Judge Kaithal in Sessions Case No. 43 of 2004 dated 31.08.2007]. In appeal, the High Court of Punjab & Haryana [In Criminal Appeal No. 805-DB 2007 dated 05.09.2009] by the judgment impugned herein dismissed the appeal and confirmed the conviction and sentence. Thus, the present appeal.

2. The case of the prosecution is that while the Assistant SubInspector Balbir Singh, later examined as PW-21 was with other police officials on duty at Deyod Kheri Village, Jind-bypass road, Kaithal, on 11.04.2004, the complainant-Sunil Kumar Bhura (later examined as PW-20) met him and got his statement (EX.PY) recorded. The statement had that he is a resident of Nehru Garden Colony,

Kaithal and the deceased-Shamsher Singh is related to him, being son of his paternal aunt. PW-20 was in business of real estate and was living in Adarsh Nagar, Kaithal. The previous day, that is on 10.04.2004, when PW-20 was in the office of the deceased along with one Balwant Singh (PW-18), the deceased received a call on his mobile phone at about 9.15 PM. A little thereafter, that is about 9.30 PM, the deceased received another phone call. After conversing on the mobile phone, the deceased informed them that he has to go to Gole Market and left on his motorcycle. The complainant and Balwant Singh also left the shop of the deceased. In the morning, the deceased's wife informed PW-20 that the deceased had not returned the previous night. On receiving the said information, PW-20 and PW-18 reached the house of the deceased and thereafter went on a search for the deceased.

3. When PW-20 got the information that a dead body was found lying, he along with PW-18 and one Mr. Naresh (PW-13) reached the spot and saw that the deceased lying there, with his throat having knotted with some cloth, and the right eye being badly injured. They also noticed some injuries on the head of the deceased. The motorcycle of the deceased was parked by the side. While Naresh and PW-18 remained at the spot, PW-20 had come to inform the police about the incident and his statement was thus recorded and read over to him by the investigating officer (PW-21) with his endorsement at Ex. PW-21/1. After the FIR was registered, PW-24 took over the investigation and recorded the statements of witnesses.

4. During the investigation, the police recorded the statement of Rajesh, later examined as PW-11 and Jogi Ram later examined as PW-12. The statement and deposition of these two persons assumed importance as their evidence was relied on by the Trial Court as well as the Appellate Court.

5. The statement of Rajesh (PW-11) was that on 10.04.2004 while he was driving from Chandigarh to Hisar, about half a kilometre before Karnal bypass his vehicle got punctured. As he was changing the wheel, he saw four young people on motorcycle coming from eastern side and they had to slow down because of the Karnal bypass. At that time, he saw the accused were carrying dandas and one of the boy's clothes were stained with blood. Being suspicious he noted the registration number of the motorcycle being HR 08 E 4962. This witness also says that he read about the murder of the deceased in the newspaper two days later, i.e. on 12.04.2004 and while he was returning back to Chandigarh on 13.04.2004, he saw a police vehicle standing at the Karnal bypass Chowk with some police officials and the accused. He stopped his vehicle and informed the police about the occurrence on 10.04.2004. The prosecution thus relied on this person in support of the case as a witness to have last seen the deceased with the accused.

6. Similarly, PW-12 made a statement to the police. His version is that he is a resident of Sector 19/1 Huda, Kaithal and on 10.04.2004, he was taking an evening walk on Kaithal Road T-Point near Huda Road/Street. About 9.45-10 pm,

while urinating by the roadside, he saw a motorcycle ridden by 3 young boys of about 20-21 years of age holding dandas in their hands. He recognised the appellant and when he started coughing, that is while urinating, the 3 boys drove away towards Karnal Road. His statement was recorded by the police on 12.04.2004.

7. The police also recorded the statement of one Dilbag Singh, later examined as PW-16 who recorded his version of having seen the deceased in the company of the accused at the same spot.

8. It is the case of the prosecution that on 17.04.2004, the Appellant (A-1), Sumit Gupta (A-2), Anil & Jaswinder surrendered before the investigating officer through Ex-Sarpanch of village Geong, Balbir Singh (PW-10) to whom the accused made an extra-judicial confession. Pursuant to the surrender, the prosecution says that disclosure statements of A-1, A-2, Anil & Jaswinder were recorded, and certain recoveries were also made.

9. Upon completion of investigation, charge sheet was filed. It may be mentioned at this stage that prosecution of Anil and Jaswinder was separated from this case after they were declared to be juveniles. Thus, only the Appellant and Sumit Gupta (A-2) stood trial. Before the Trial Court, the prosecution examined 24 witnesses and marked certain exhibits. The defence on the other hand examined 3 witnesses as DW 1, 2 and 3.

10. The Trial Court having noticed that there are no eyewitnesses and that the case of the prosecution is based only on circumstantial evidence, copiously referred to the statements of each witness, but rested its decision only on the evidence of PW-10, 11 & 12 and certain recoveries and the FSL Report. The reasoning, which is in two paragraphs is extracted herein below for ready reference:

"In the present case, the chain of circumstances is interwoven which has been corroborative through the testimony of PW-11 Rajesh and PW-12 Jogi Ram who have last seen accused Sumit Gupta and accused Pradeep Kumar with Shamsher Singh deceased. Extra Judicial confession has been made before Ex. Sarpanch Balbir Singh. Motive is also proved through cheques which have been issued by accused Sumit Gupta in the name of Shamsher Singh (deceased) from which accused Sumit Gupta has taken a loan of Rs. 29,000/- and failed to return back that money in time. There is recovery of Mobile Phone of accused Sumit Gupta and Shamsher Singh vide recovery memo Ex. PV. In FSL report Ex. PRR/1 blood group of deceased Shamsher Singh is cited to be 'O' group. In the 'danda' recovered from accused vide recovery memo Ex. PQQ, blood group 'O' tallies. Similarly, on the pant worn by the accused Pardeep Kumar recovered later, blood 'O' group has been found on the stains of pant vide recovery memo Ex. PJ. Hence, the prosecution case is also proved through scientific investigation also. Hence, these are chain of evidence so far complete, so as not to leave any reasonable ground for conclusion consistent with the guilt of the accused. The

guilt of accused Sumit Gupta and accused Pardeep Kumar is proved to the fact that in all human probability act of murder has been committed by accused Sumit Gupta and Pardeep Kumar.

Hence, it is proved to the hilt that on 10.04.2004, at about 10 PM in the area of Dhand Road Deokheri turning accused Sumit Gupta and Pardeep Kumar in furtherance of their common intention caused death of deceased Shamsheer Singh intentionally and committed offence punishable under Section 302 read with Section 34 IPC."

11. In appeal by the Appellant herein and accused No.2, Sumit Gupta, the High Court also relied on the evidence of PW-11 and 12. In fact, the High Court seemed to have accepted the submission of the defence that the evidence of Ex. Sarpanch, PW-10 is unreliable. However, without discussing the evidence of PW-10, the High Court observed that the evidence of PW-11 and PW-12 are sufficient to confirm the conviction and sentence imposed by the Trial Court.

12. We heard Mr. Pranab Kumar Mullick, learned counsel for the appellant who took us through his meticulously prepared written submissions and statements of relevant witness and the reasoning of the High Court.

13. As the case of the prosecution, as accepted by the Trial Court and High Court, is based on circumstantial evidence said to have been established by PW-10, 11 and 12, we will examine them in detail.

14. PW-10 is an Ex. Sarpanch of the village Geong. His testimony is that on 17.04.2004, while he was in his house, the Appellant (A-1), Sumit (A-2), Anil and Jaswinder came to him and confessed about committing the murder of the deceased. He stated that Sumit Gupta (A-2) disclosed to him that he borrowed money from the deceased and as such there was pressure on him to return the money. When the deceased demanded the money on 10.04.2004, he was apprehensive of being insulted and therefore planned to kill the deceased with the help of other accused. For this purpose, he called the deceased to the T-Point at Kaithal, Dhand Road at 9.30 PM saying that he has arranged the repayment. By the time the deceased came there, other accused were already present at the spot, they all assaulted the deceased with dandas, killed him and threw the dead body in the field near Shergha Road. This witness also stated that all other accused disclosed similar version. Himself being an Ex. Sarpanch, he has thereafter produced the accused before the SHO Police Station Kaithal.

15. Having considered the submissions of the appellant about contradictions in the statement of this witness (PW-10), the High Court concluded, "even if we ignored the evidence of PW-10 before whom the appellants have made an extra judicial confession having committed the crime, there is more emphatic evidence led by the prosecution compelling this Court to believe that the appellants had committed the crime of murdering Shamsheer Singh." In other words, the High Court has not relied on the evidence of PW-10 as it found other sufficient evidence.

16. We have however independently examined the evidence of PW-10 and come to the conclusion that this witness is not trustworthy and this is evident from the following:

a. This witness denied having met the deceased earlier "I have never met Shamsher Singh earlier". However, the complainant (PW-20) in his statement on 11.04.2004 says "today we came to know that Malkhan, Prem Singh, Balbir Sarpanch met Shamsher on Dhand Road, Kaithal at about 10 PM." The said statement is also recorded in the FIR and charge sheet, though he leaves doubt about this version in his deposition.

b. Similarly, Balwant Singh (PW-18) in his deposition on 08.12.2006 states that, "since Shamsher Singh did not reach back to home and hence his family members started searching for him. Malkhan, Prem Singh and Balbir Singh r/o Geong informed that Shamsher Singh was seen at Dhand Road, Kaithal".

c. Further, Balbir Singh, ASI (PW-21) also deposed about the deceased having met the Sarpanch. He says "it is correct to state that Balbir Sarpanch, Malkhan and Prem Singh residents of Geong had met Shamsher Singh deceased on 10.04.2004 at 10 PM at Dhand Road, Kaithal, according to statements of PWs gathered at the spot that is Sunil and Balwant PWs."

17. Apart from the above referred contradiction, yet another fact about the extra-judicial confession on 17.04.2004 is noteworthy. The statement of the accused Sumit Gupta (A-2) in his Section 313 CrPC statement is that they were arrested on 11.04.2004 itself and not 17.04.2004. This statement gets corroborated by the deposition of Rajesh (PW-11), who stated that; "Thereafter I read news in newspaper regarding murder on 12.04.2004. On 12.04.2004 I read in the newspaper regarding murder at Kaithal in the surrounding area in which I was changing the stepney. On 13.04.2004 in the morning, I was going to Chandigarh through Kaithal and I saw a police vehicle standing on Karnal by pass Chowk in the area of Kaithal. I saw police inspector along with 4/5 police officials and saw the same accused along with police. Then I stopped and told the police regarding occurrence on 10.04.2004. Police recorded my statement on the spot." If the statement of PW-11 is to be accepted, which the prosecution wants us to believe, then the arrest had already taken place by 13.04.2004 and therefore the accused were seen in the presence of the police on that day. If this is true, then there is no doubt in our mind that the extra judicial confession on 17.04.2004 is false and unbelievable. The evidence of this witness that is PW-11 is strongly relied on by the prosecution. In fact, the Trial Court as well as the High Court proceeded on the basis of this witness's statement to convict and sentence the Appellant. This is perhaps the reason why the High Court did not consider it appropriate to rely on the evidence of PW-10 and proceeded to confirm conviction and sentence on the basis of other evidence. There are some other aspects which Mr. Mullick has relied on to cast a doubt about evidence of PW-10 but we are of the opinion that the above referred factors are sufficient to reject the version of PW-10.

18. PW-11 – His evidence is relied on by the Trial Court as well as the High Court. He is admittedly a chance witness. In fact, he chances the episode twice over, first on 10.04.2004 at about 10.30 PM when he was going from Chandigarh to Hisar. His version is that at about 1.5 kilometres near Karnal bypass, his car tyre got punctured and when he was putting the stepney, he saw four people on motorcycle armed with dandas. He noticed blood stain on the deceased's pant and also records the registration number of the motorcycle. Secondly, he again chances the police party standing with the accused on his way back to Chandigarh. He stops and gets the incidence of 10.04.2004 recorded by the Police.

19. This witness is completely unreliable. It is his own statement that he started from Chandigarh at 6 PM on 10.04.2004. The distance between Chandigarh and the place of occurrence is about 120 kilometres and takes about 2 hours to cover the distance even by car. There is no explanation as to how he took more than four hours to reach the scene of offence. This uncertainty is compounded when he admits his ignorance about the person in whose name the car is registered. Further, upon being questioned about where he stayed in Chandigarh the night of 09.04.2004, his answer is simply that he does not remember the name of the lodge. He could not even remember the shops near by the lodge. It is rather surprising that this witness while engrossed in changing the wheel of his car at 10.30 PM manages to note the blood stains on the pant and also recorded the registration number of the motorcycle. There is nothing to indicate that he had a pen or a paper to readily note the registration number. His statement is to be contrasted with the version of Ram Kumar IO (PW-24) who stated that "I did not see any arrangement of the light on the Karnal bypass road especially the alleged place where the car of Rajesh Kumar got punctured and he saw the accused while riding the motorcycle. It is correct that there is no light arrangement on the place of occurrence because it is an agriculture area." We are not at all impressed with the evidence of PW-11. There are too many coincidences in his version and his story is improbable in the context of the facts and circumstances of the case. He is certainly an unreliable witness.

20. PW-12 – He is again a chance witness, relied on by the prosecution to prove the last seen theory. This witness is said to have gone out for an evening walk on Kaithal Road between 9.45 to 10 PM. While urinating by the roadside, he sees a motorcycle with three accused on it. He states that the accused moved away towards Karnal bypass, the moment he started coughing while urinating. He reports this incident two days later, that is on 12.04.2004 by going to Sadar Police Station, Kaithal. We will analyse his statement.

21. As per the statement of PW-12, he went on an evening walk between 9.45 to 10 PM, two Kilometres away from his house, particularly in an area which does not have streetlights. The multi-tasking of urinating, coughing, seeing the motorcycle, noting the blood stains clothes and recording the registration number happens simultaneously. There is no evidence as to the manner in which

he had recorded the registration number. He is said to have studied only up to 6th class. How could he notice and also memorise the registration number having seen it from a long distance. He himself says the motorcycle was at a distance. His version is highly improbable.

22. This witness says that the blood stained trouser and dandas in the hands of the accused caused suspicion and therefore, he recorded the number. However, that did not compel him to go to the police station. Instead, he reports the incident only on the 12.04.2004, that is two days later. Strangely, instead of reporting the incident to the police chowki which is next to his residence, he goes all the way to Sadar Police Station, Kaithal. We are of the opinion that the evidence of PW-12 does not inspire confidence at all.

23. PW-16 – This is yet another witness relied on by the prosecution, however, the Trial and the High Court have not laid much emphasis. We will nevertheless examine the evidence of this witness. He is a witness who was on his way to Haridwar along with his Fufa (father's sister's husband). He is supposed to have seen the deceased sitting on a motorcycle along with A-2 at T-Point at Karnal bypass. After speaking to him for 2 to 3 minutes, he proceeded further. This witness reports this incident to the Police on 14.04.2004 when he comes back from Haridwar. His statement is similarly relied on by the prosecution in support of the last seen theory.

24. This witness is a relative of the deceased. The Fufa who was travelling with him is not examined. He does not even know the driver of the vehicle in which he travelled or its registration number, even though he went all the way to Haridwar and stayed there for two to three days. This witness describes the incidence of meeting the deceased and A-2 at a place where even PW-12 is supposed to have seen the deceased. Neither this witness spoke of PW-12, nor did PW-12 speak about this witness. Nothing much flows from the evidence of this witness, apart from his own version which is highly improbable and therefore unreliable.

25. Apart from the improbable and contradictory versions of the three witnesses, Mr. Mullick has also brought to our notice that the weapons recovered by the IO and the ones seen by the witnesses are only sticks. However, the deceased has suffered an incise wound which according to the doctor, PW-14 who conducted the post-mortem, is caused by a sharp-edged weapon. The prosecution has not recovered any sharp-edged weapon. In fact, there is no mention about a sharp-edged weapon at all.

26. The FSL report states that the "pant" sent to them for examination was one dirty blue "terikot pant". However, as per the recovery memo a "jeans pant" was recovered from the Appellant. Additionally, the FSL report states that the blood on the sticks, blood-stained pants and the blood group of the deceased is the same "O+". Mr. Mullick has rightly contended that this is not an indication of the guilt. Moreover, nothing of these recoveries took place in the presence of an independent witness. In fact, the IO (PW-24) has admitted that he did not try to

join any private person before carrying out the recoveries.

27. Mr. Mullick has also made detailed submission with respect to place and time of the recovery of the body of the deceased and the alleged motive behind the crime. We are of the opinion that it is not necessary to examine those aspects in detail. Admittedly, there are no eyewitnesses, and the entire case of the prosecution depends upon circumstantial evidence.

28. In a recent decision, *Pritinder Singh v. State of Punjab*, (2023) 7 SCC 727, one of us (Justice Gavai) has taken note of the judgment in *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116 and observed:

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

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

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 legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [*Shivaji Sahabrao Bobade v. State of Maharashtra*, (1973) 2 SCC 793: 1973 SCC (Cri) 1033] where the following observations were made: (SCC p. 807, para 19)

"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 divides vague conjectures from sure conclusions."

(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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

17. It can thus be seen that this Court has held that the circumstances from which the conclusion of guilt is to be drawn should be fully established. It has been held that the circumstances concerned "must or should" and not "may be"

established. It has been held that there is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved". It has been held that 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. It has been held that the circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the one sought to be proved, and that there must be a chain of evidence so complete so 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.

18. It is a settled principle of law that however strong a suspicion may be, it cannot take place of a proof beyond reasonable doubt. In the light of these guiding principles, we will have to consider the present case."

In the background, we have analysed the evidence and the testimonies of the witnesses.

29. There is a yawning gap between the charge against the Appellant and the evidence that the prosecution has adduced. The circumstances do not establish the guilt of the Appellant at all. While the principle applicable to circumstantial evidence requires that the facts must be consistent with the hypothesis of the guilt of the accused, in the present case the evidence adduced gives rise to doubts, improbabilities and inconsistencies.

30. Having considered the matter in detail and having noted the various discrepancies and improbabilities, we are of the firm view that the prosecution has not established its case beyond reasonable doubt. The Appellant is entitled to be acquitted.

31. We, therefore, allow Criminal Appeal No. 1338 of 2010 and set aside the judgment of the High Court of Punjab and Haryana at Chandigarh in Pradeep Kumar & Anr. v. State of Haryana in CrI. Appeal No. 805-DB of 2007 dated 05.09.2009 and the judgment of the Court of Additional Sessions Judge, Kaithal in Sessions Case No. 43 of 2004 dated 31.08.2007 convicting and sentencing the appellant under Section 302 read with Section 34 of the Indian Penal Code, 1860.

32. The Appellant is acquitted of all charges, and his bail bonds, if any, stand discharged.

33. Pending interlocutory applications, if any, stand disposed of in terms of the above order.

34. The parties shall bear their own costs.