
(2009) 01 RAJ CK 0001
In the Rajasthan High Court

Punna Ram

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 22-01-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 394

Citation : (2009) 2 WLN 440

Hon'ble Judges : N.P. Gupta, J;Kishan Swaroop Chaudhari, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.P. Gupta, J.—The appellant had filed this appeal through jail, seeking to challenge the judgment of learned Addl. Sessions Judge, Phalodi dt. 18.04.2002, convicting him for the offences u/s 460, 394 and 302 IPC, and sentencing to various terms of imprisonment, and of fine, and also awarding various punishments in default of payment of fine; The highest being imprisonment for life, u/s 302 IPC.

2. The facts of the case are, that on 10.04.2000, one Umaram P.W. 11 lodged a report Ex. P/2, at 12 PM, at Police Station Phalodi, to the effect, that he lives along with his children in the old Dhani, while Dhani is erected in a field at Hanumanpura, where his father Surajan Ram and mother Paru lives. It is then alleged, that on that day at about 10 AM Heera Ram S/o Babu Ram Bishnoi came to him and told, that while going to Ramdevra, Heera Ram went into the Dhani of his father, and saw that the informant's father and mother are lying dead, who have been killed by somebody in the night. Thereupon, the informant along with Mangi Lal, Karna Ram and Bana Ram went in the tractor of Heera Ram, and saw the dead bodies lying in the pool of blood. Many people had collected there, and the people looked for the footprints, and noticed the footprints of a person wearing Chappal, which were got covered. Then after arrival of Karna Ram Sarpanch, the house was looked into, and it was noticed, that Cheeds of Timaniya were lying scattered, the key of the trunk was lying on the cot, which

trunk was lying under the cot. The trunk was opened, wherein Timaniya was not found, which was made of 5 Tola of gold. Similarly cash amount of Rs. 5000/- from the pension of the father was also not found, one golden Bhanwariya and golden Totia were also not found, which two ornaments, his mother always used to wear. It was suspected that some unknown person has killed the informant's parents, and had taken the aforesaid belongings. The bodies are bearing enumerable injuries and are lying on the floor of the house.

3. On this report, case for offence u/s 302 and 460 IPC was registered. After completing usual investigation, challan for the offences u/s 460, 302 and 394 IPC was filed. The case was then committed.

4. The learned trial Court framed charges for the aforesaid offences. During trial, the prosecution examined 34 witnesses, tendered in evidence various documents, and also proved material exhibits. The learned trial Court after completing the trial convicted and sentenced the accused as above.

5. Assailing the impugned judgment, the learned Counsel for the appellant contended, that present is a case, which though involves the double murder, but then the case rests solely on circumstantial evidence. It was contended that it is established law, that in a case resting on circumstantial evidence, each circumstance sought to be led by the prosecution should indicate towards guilt of the accused. Secondly, each such circumstance should be established by reliable and legal admissible evidence. Then thirdly each such circumstances so established should form a complete chain, and such chain should not only establish the guilt of the accused, but should also negative innocence of the accused on all reasonable hypothesis. With this preface, it was submitted, that in the present case, the circumstances relied upon by the prosecution have all not been believed by the learned trial Court, and whatever circumstances have been relied upon by the learned trial Court, they are not proved in accordance with law, and whatever circumstances this Court may ultimately find to be proved, do not form the complete chain, even establishing guilt of the accused, much less negating innocence on all reasonable hypothesis. With this submission learned Counsel took us through the entire record.

6. The circumstances relied upon by learned trial Court are, about the accused having been seen in the previous evening in the vicinity with a typical identity mark, about upper two incisors being protruding out. Then blood stained Lathi, Article 4, was recovered on the information of, and at the instance of the accused. Then the Timaniya, Totia, a sum of Rs. 2500/-, a pair of Chappal, so also a cash amount of Rs. 20,000/- was got recovered, on the information of, and at the instance of the accused. Out of which, Bhanwariya and Rs. 2500/- were got recovered near the hutment of the accused, concealed under the ground, while Timaniya and Totia were got recovered from Kanhaiya Lal goldsmith, and then Rs. 20,000/- were recovered from one Om Prakash. Then the accused was got identified in test identification parade.

7. It was contended by learned Counsel for the appellant that so far the recovery of foot moulds are concerned, learned trial Court itself has disbelieved them. Then the evidence about the appellant having been seen in the evening, in the vicinity, is thoroughly discrepant, and unreliable. Then regarding recovery of Rs. 20,000/-, Totia and Timaniya, it was submitted that those articles had already been recovered rather a week before the arrest of the accused, still with respect to them information u/s 27 Evidence Act has purportedly been recorded, and recovery has been shown, which is completely farce. Then recovery of Rs. 2500/- and Bhanwariya has also been assailed on various grounds.

8. Learned Public Prosecutor on the other hand, supported the impugned judgment.

9. We have heard the learned Counsel for either side, and have closely gone through the entire record.

10. We find from the record, that P.W.10 Gajra is the wife of the informant, who has come to depose, that the deceased mother-in-law had told her, that the accused had come two days earlier to borrow money. It has also come on record, that the accused is the son of the brother of the deceased Paru. P.W.11 Umaram, apart from being informant, and son of the two deceased, is also witness to various memos. Then P.Ws. 13, 16, 17 and 18 are material witnesses regarding recovery of various articles. These witnesses have been relied upon by the learned trial Court in convicting the appellant.

11. During course of hearing, while going through the statements of the prosecution witnesses, to our utter surprise, we came to learn, that there are two sets of statements of P.Ws. 10 to 17. The first set of statements have been recorded on 10.08.2000, while the second set of statements is recorded on 09.10.2001 and 30.10.2001, inasmuch as, statements of P.Ws. 14 and 17 are recorded on 30.10.2001, while the statement of P.Ws. 10, 11, 12, 13, 15 and 16 are again recorded on 09.10.2001.

12. From perusal of the two sets of statements, it transpired, that the first set of statement does not bear the signatures of the Presiding Officer. Though the statements bear the usual note, about the statement having been recorded on the dictation, and under the direction of the Presiding Officer on typewriter, but then, the very fact, that on one day, statements of 8 witnesses are recorded, and none of them bear the signatures of the Officer, by itself does clearly show, that the note put by the learned Officer is per-se false. The statements of P.Ws. 1, 2 and 3 are recorded on 08.08.2000, which were recorded in handwriting. Then statements of P.Ws. 4 to 9 are recorded on the next day being 09.08.2000, they are typed statements, and of course they bear signature of the Officer on every page. Then the statements of P.Ws. 10 to 17 are recorded on 10.08.2000, being the 3rd day, and they do not bear any signatures of the Officer. Then the statement of P.Ws. 18 are recorded on 17.10.2000, which appeared to have been recorded by other Presiding Officer, as the signatures appearing on the statement

of P.W.18 and 19 do not at all tally with the signatures available on the statements recorded earlier. In such circumstances we are left to reasonably conjecture, that assuming these witnesses to be witnesses of recovery, the matter of recording their statement must have been left to the typist of the Court, and in that process, unaware of the factum of statements having been recorded, the statement did not happen to be signed, though the order-sheet of that date does appear to be signed. Thus, it cannot be said, that the statements of 8 witnesses, recorded on 10.08.2000, were recorded in accordance with law, so as to be capable of being read in evidence.

13. Still the worst part of the things, that has come about is, that as appears from the order-sheets, that after recording of the statements of the aforesaid 8 witnesses on 10.08.2000, the case went on for remaining prosecution evidence, which were summoned, and in that process, on 17.10.2000 statements of P.Ws. 18, 19, 20, 21 and 22 were recorded, and the case was posted for remaining prosecution evidence. Then after one adjournment, on 23.10.2000, the evidence of P.Ws. 23, 24, 25, 26, 27, 28 and 29 was recorded. Then on next day, being 04.11.2000, statements of P.W. 30, 31 and 32 were recorded. Then the matter went on being adjourned, and vide order-sheet dt. 12.04.2001 the witnesses No. 33 and 34 (sic 35) were ordered to be summoned, and on 11.05.2001 the statements of P.W. 33 were recorded. Then again the matter was adjourned, and it was on 17.08.2001, that the statement of P.W. 34 was recorded, and the case was fixed for entire remaining prosecution evidence, including completion of the statement of P.W. 34, and the matter was fixed on 14.09.2001, however, on 14.09.2001 summon of Madho Singh was not served, bailable warrant was issued, and it was noticed, that on the statement of the witnesses P.W. 10 to 17 there are no signatures of the Presiding Officer, therefore, those witnesses were ordered to be summoned afresh for 09.10.2001. Accordingly summons were issued to the witnesses.

14. Then according to the order-sheet dt. 09.10.2001, the statements of P.Ws. 10, 11, 12, 13, 15, and 16 were again recorded, and for remaining evidence, the case was fixed for 10.10.2001, on which day again it was adjourned, and on 30.10.2001 the statements of P.W. 14 and 17 were recorded again, and the case was fixed for completion of statements of P.W. 34 on 31.10.2001, on which day it was completed. Thus, according to the order-sheets, vide order dt. 14.09.2001, these 8 witnesses were again summoned for giving their statements, and according to the order-sheet dt. 9.10.2001 and 30.10.2001, their statements were recorded on the respective dates.

15. If the things were at that only, it would have been alright, but what is startling to notice, from a reading of the statements of the 8 witnesses, recorded earlier, and purportedly recorded again, it shows, that as a matter of fact, their statements were not recorded at all, and simply earlier statements, which, as noticed above, are not believed to have been recorded under the directions of, and on the dictation of, the Presiding Officer, were got retyped, verbatim, and the

strict legal requirement of signatures was purportedly complied with. In other words, statements of these 8 witnesses were recorded, as recited in the order-sheets, are the earlier statements, which were got retyped and were got resigned.

16. This conduct of the trial by the Officers is thoroughly bad, inasmuch as, despite the statements having not been recorded on the dictation of and/or under the directions of the Presiding Officer, a wrong certificate has been appended, and the statements had not been signed by the Officer at all, and then significantly successor officer has made a wrong recital in the order-sheet that the statements of the 8 witnesses were again recorded, while they were not so recorded, and only the earlier statements were got retyped, and got resigned. The Officers in higher judicial services cadre are not expected to conduct the trial in such a wrong manner, and append wrong certificates, or write wrong order-sheets.

17. Then as the Hon"ble Supreme Court has time and again held, that in the matter of appreciation of evidence by the Appellate Court, the appreciation of evidence made by learned trial Court is entitled to a substantial weightage, for the reason, that the trial Court had the advantage of watching the witness giving his evidence, and observing his demeanor. This sacrosanct, recognized by the Hon"ble Supreme Court, to the recording of the evidence by the learned trial Court, has simply been blown to winds by the learned Officer, and thus, the trial has been rendered to be a blatant mockery.

18. What the net result, that comes is, that on the record it cannot be said, that any statement of 8 witnesses P.Ws. 10 to 17 have been recorded, as the statements, as recorded earlier, firstly in absence of signatures of the Officer, cannot be said to have been recorded in accordance with law, and secondly, as found above, they were not recorded under the directions of, and on the dictation of the Presiding Officer, and therefore, those statements could not constitute any evidence on record. And the successor officer has not recorded the evidence at all, as found above, and has simply copied the earlier purported statement, and has attempted to regularise the blatant illegality.

19. It is required to be grasped by the Presiding Officers, that in serious cases like the case in hand, involving double murder, the Officer holding the post in RHJS cadre, is not supposed to act in such a gross callous manner, rather is required to bear greater responsibility, and to behave like a more responsible Officer.

20. The seriousness of the consequences flowing from the above dereliction of duty is that if we were to come to the conclusion to acquit the accused, in view of the course of action which we are inclined to adopt, the accused will continue to languish in jail, till the matter is again decided by the learned trial Court, and if he is again convicted, till this Court feels inclined to suspend the sentences, and/or finally hears the appeal.

21. The Registry is directed to identify the Officers, who were posted in the trial Court on 10.08.2000, 09.10.2001, and 30.10.2001, and not only convey the above observation to the Officer concerned, rather it is also directed, that these observations be placed on the service record of the Officer concerned, and the matter be also brought to the notice of Hon"ble the Chief Justice, for appropriate consideration, as to whether the Hon"ble Chief Justice would like to take any disciplinary action against the Officer.

22. So far the present appeal is concerned, in view of the above conclusions, the inevitable conclusion is, that the whole trial stands vitiated. We are thus left with no alternative, but to remand the matter to the learned trial Court, for retrial.

23. Accordingly, the appeal is allowed. The impugned judgment is set aside, and the matter is sent back to the learned trial Court, to try the matter again, to the extent, that it should again summon the witnesses P.Ws. 10 to 17, and genuinely record their statements in the Court, keeping in view the observations made above, and then, to re-appreciate the entire evidence on record, after excluding the statements of P.W. 10 to 17, as earlier recorded twice, and then to decide the matter afresh, in accordance with law, without in any manner being obsessed by any of the conclusions arrived at in the impugned judgment by the learned trial Court.

24. Since the accused is already in custody since 2000, the learned trial Court is directed to decide the matter utmost expeditiously.