
(2015) 05 AHC CK 0012

In the Allahabad High Court

Case No : Criminal Misc. Application U/S 372 Cr.P.C. (Leave to Appeal) No. 219 of 2014

Rajmani

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2016) 1 ACR 116 : (2015) 6 ALJ 235 : (2015) 90 ALLCC 538

Hon'ble Judges : Ravindra Singh, J;Raghvendra Kumar, J

Bench : Division Bench

Advocate : Nikhil Kumar, for the Appellant; S. Lal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Raghvendra Kumar, J.—This application for leave to appeal has been filed against the judgment and order dated 27.2.2014 passed by Additional Sessions Judge, Court No. 14 Allahabad in Sessions Trial No. 1195 of 2009, whereby the accused persons, Pothil Lal and Ranvijay @ Bheem were acquitted for the offence under section 302/34 IPC in Case Crime No. 25 of 2006, PS Sarai Mamrej, district Allahabad.

2. Heard learned counsel for the appellant and learned Additional Government Advocate for the State of U.P. and learned counsel for the accused-respondents and perused the lower court record.

3. From the perusal of the record, it reveals that the FIR of the case has been lodged by Rajmani, father of the deceased, who has mentioned in report exhibit-Ka-1 that his son Suresh Yadav @ Gappu was slept in his room after taking dinner. In morning when the ladies of the house came out of the house for the purpose of easing themselves they saw the dead body of Suresh. From the First Information Report, it reveals that some unknown persons committed the murder in the night of 15th March, 2006 and after seeing the dead body, FIR was

lodged with police on 16.03.2006.

4. PW-1, Rajmani has proved written report exhibit- Ka-1 and the recovery of the photograph from the deceased. PW-1 Rajmani, PW-2 Heerawati, PW-3 Smt. Phool Kali stated that deceased was seen accompanying daughter of accused No. 1 Manju to her house in connection with some domestic affair. Pothi Lal suspected the role of deceased in connection with the pregnancy of her daughter Manju.

5. Accused, Ran Vijay was seen in the village on the day of occurrence.

6. PW-4 has stated that he heard in the village about the illicit relationship between Suresh, (deceased) and Manju.

7. PW-5, Shri Mangru Ram and PW-6, Dharamraj have disclosed ignorance about the fact, who committed the murder of the deceased.

8. PW-7, Shri Suresh Chandra Yadav has specifically stated that when he received information about the murder of deceased he directly reached the spot where dead body was lying. Accused, Pothi Lal made confessional statement before him and requested for materialize the issue in compromise.

9. PW-8, Subhash Yadav stated that he heard the nephew of accused No. 1 deliberating with two friends that in case my uncle, accused No. 1 is involved in murder, then police personnels would also be involved. PW-3 and PW, 14 are allegedly seen deceased in the company of Manju, daughter of accused No. 1 on the day of incident.

10. PW-10, Dr. A.K. Gupta has proved the post-mortem report in which he has mentioned the ante mortem injuries; as No. (i) contused swelling 7" X 2" on front and middle of neck. (ii) lacerated wound of 3/4" X 3/4" muscle deep on right eye. (iii) lacerated wound of 3/4" X 3/4" muscle deep on left eye. (iv) lacerated wound 2-1/2" X 2-1/2" bone deep on back of head on occipital area. (v) lacerated wound of 1" X 1" Bone deep on left side of face under left eye.

11. PWs-9, 10 and 11 are formal witnesses. They have respectively proved chick FIR Exhibit Ka-9, GD entry Exhibit-Ka-10, Exhibit Ka-12, Exhibit Ka-13. Samples of soil Exhibit Ka-14 and 15. Inquest report Exhibit Ka-5 and other documents Exhibit Ka-16 to 21. PW-13 proved the execution of charge sheet, Exhibit Ka-23.

12. None of the witnesses have deposed about the manner, place and time of murder of deceased-Suresh. None of the witnesses have disclosed who committed the murder with what weapon. The only evidence is of PW-3 and 14, who have lastly seen the deceased in the company of Manju going towards her house.

13. Presuming for the sake of argument that deceased, Suresh was lastly seen in the company of Manju, to be true even then since Manju is not the accused. The ingredient of last seen is not of much avail.

14. This case is based on circumstantial evidence. It is a settled proposition when a case rests on circumstantial evidence, such evidence must satisfy following tests:

"(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.

It has been held by the Apex Court in following cases:

S.D. Soni Vs. State of Gujarat, AIR 1991 SC 917 : (1991) CriLJ 330 : (1991) 2 Crimes 4 : (1991) 1 DMC 212 : (1991) 1 JT 1 : (1990) 2 SCALE 1342 : (1992) 1 SCC 567 Supp : (1990) 3 SCR 668 Supp , Padala Veera Reddy Vs. State of Andhra Pradesh and others, AIR 1990 SC 79 : (1989) 4 JT 223 : (1989) 2 SCALE 906 : (1989) 2 SCC 706 Supp : (1990) 1 UJ 137 , Chandmal and Another Vs. State of Rajasthan, AIR 1976 SC 917 : (1976) CriLJ 679 : (1976) 1 SCC 621 : (1976) SCC(Cri) 120 . The same has been reiterated in the case of Brijlala Pd. Sinha Vs. State of Bihar, (1998) 5 AD 276 : AIR 1998 SC 2443 : (1998) CriLJ 3611 : (1998) 3 Crimes 4 : (1998) 4 JT 534 : (1998) 4 SCALE 25 : (1998) 5 SCC 699 : (1998) 3 SCR 529 : (1998) AIRSCW 2440 : (1998) 9 Supreme 35 : (1998) 5 Supreme 379 .

10. The law regarding circumstantial evidence is more or less well settled. The Apex Court laid down the following principles:

"(a) 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 logical distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, AIR 1973 SC 2622 : (1973) CriLJ 1783 : (1973) 2 SCC 793 : (1973) SCC(Cri) 1033 : (1974) 1 SCR 489 where the following observations were made:

"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 divided vague conjectures from sure conclusions."

(b) 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.

(c) the circumstances should be of conclusive nature and tendency.

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

(e) there must be a chain of evidence 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.

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

In the present case none of the above mentioned principles is applicable. It is a case in which in any manner conclusion of guilt may not be drawn."

15. It has been stated that the witnesses in this case are inter-se related with each other. They are interested witnesses and their testimony is not fair, therefore cannot be relied upon. The legal position in this regard has been settled by now through a catena of decisions by Supreme Court "Relationship is not a factor to affect the credibility of a witness". There is no bar in considering the evidence of relatives. Merely on the ground of witnesses being interested, his testimony cannot be discarded outrightly Nagappan Vs. State by Inspector of Police, Tamil Nadu, AIR 2013 SC 3298 : (2013) CriLJ 3878 : (2013) 4 JCC 2555 : (2014) 1 JT 331 : (2013) 9 SCALE 363 .

16. PW-7 has stated about the extra-judicial confession made before him. In Baskaran and Another Vs. State of Tamil Nadu, (2014) AIRSCW 2628 : (2014) CriLJ 2705 : (2014) 2 RCR(Criminal) 961 : (2014) 5 SCALE 713 : (2014) 5 SCC 765 , it has been prepounded by Hon"ble the Apex Court that extra-judicial confession can be relied only if the same is voluntary, true and trustworthy. PW-7 has not categorically stated the phraseology or the circumstances in which alleged confessional statement by accused No. 1 was made.

17. The extra-judicial confession can be relied upon and inference alone can be drawn on the basis of extra-judicial confession provided if it is definite, clear, voluntary, made in fit state of mind and it is reliable and inspires confidence.

18. The extra-judicial confession should have been made bonafidely and it should inspire confidence. The learned trial court has rightly not relied upon the extra-judicial confession.

19. The learned court below considered the evidence available on record appreciated the same in right perspective and reasoned findings have been recorded. The learned court below has not committed any mistake in appreciating the evidence available before it. The finding recorded by the court below about lack of coherence inter-se the statement of prosecution witnesses.

20. The circumstances individually connected with each other do not form a chain and do not indicate conclusively towards the guilt of the accused-persons. Well reasoned order has been passed, whereby the finding of acquittal has been

recorded by the learned court below after due appreciation of evidence available on record. There appears no justification for reconsideration of findings of acquittal recorded by learned court below, therefore the prayer to grant the leave to appeal is refused.

21. Accordingly, this application for leave to appeal is dismissed.

Heard learned counsel for the appellant and learned Additional Government Advocate for the State of U.P. and learned counsel for the accused-respondents and perused the lower court record.

Since, the application for granting leave to appeal has already been dismissed today, this appeal is also dismissed.

Let the lower court record be sent back to the court concerned forthwith.