
(2010) 02 RAJ CK 0090
In the Rajasthan High Court

Raju @ Rajkumar

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 302, 390, 397

Citation : (2010) 02 RAJ CK 0090

Hon'ble Judges : Gopal Krishan Vyas, J;A.M. Kapadia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J.—In this criminal appeal, accused-appellant Raju @ Rajkumar has challenged the judgment dated 29.07.2004, passed by the learned Sessions Judge, Sriganganagar in Sessions Case No. 10/2004, whereby, the learned trial Judge has held the accused-appellant guilty for committing offence u/s 302, I.P.C. and sentenced him to suffer imprisonment for life with a fine of Rs. 1,000/-, in default of payment of fine, to further undergo one year's simple imprisonment.

2. According to prosecution case, on 02.12.2003 at about 12.45 A.M., complainant P.W.-1 Shribhagwan made a telephonic call to Police Station Sadar Sriganganagar, in which, it was informed by him that one tempo driver has thrown a person nearby his field, situated near Coca Cola factory at Mohanpura Road from his tempo. Upon receiving such information, a report in roznamacha was entered and S.H.O., Police Station Sadar Sriganganagar, Kesari Chand Jandu, P.W.-15 went on the spot along with police party where the complainant was present and submitted a written report, upon which, FIR Ex.-P/40 was registered by the Police Station Sadar against unknown person for offence u/s 302, I.P.C.

3. After registration of the case, the police proceeded to investigate into the matter and, as per the first information report given by complainant

Shribhagwan, P.W.-1, at about 12.30 A.M. on 02.12.2003, complainant saw that one tempo came nearby his field at Vivek Ashram, Mohanpura Road and, upon hearing the noise of the tempo, in the light of torch, complainant saw that one person was throwing another person upon road from the tempo and the person who was thrown upon the road was having blood upon whole of his body and when the complainant rushed to the spot the tempo driver fled away from the place; but, at that time, complainant saw that there was no number-plate upon the tempo and word "KULDEEP" was written on the back-side of the tempo. It is stated by the complainant in the complaint that he can identify the said tempo.

4. The investigating officer of the case made investigation and, first of all, prepared the site-plan and took mold from the place of occurrence of the person who threw the body on the road. The body of deceased was sent to the hospital for postmortem and after postmortem dead body of deceased was handed over to the family members for cremation. Thereafter, on 02.12.2003, at about 5.30 P.M., accused-appellant was arrested near Z-minor canal when he was sitting in the said tempo and blood was found in the tempo.

5. As per investigation, the said tempo was not having any number-plate and blood was found upon the raxin of the seat of the said tempo. Thereafter, upon information given by the accused-appellant, recovery of blood stained knife was made and blood stained clothes which were being worn by the accused-appellant while committing the offence were recovered and the accused was also got medically examined because there were injuries upon his body and, after usual investigation, on the basis of evidence collected in the investigation the police filed challan against accused-appellant for commission of offences under Sections 302, 397 and 390, I.P.C. Said challan was filed in the Court of Addl. Chief Judl. Magistrate, Sriganaganagar from where, the case was committed to the Court of Sessions for trial.

6. Learned Sessions Judge, after framing charges against the accused-appellant, examined 16 witnesses on behalf of the prosecution and prosecution exhibited 63 documents and 8 articles were produced, in support of its case. After recording evidence, further statements of the accused-appellant u/s 313, Cr.P.C. were recorded but, in defence, though opportunity was granted to the accused but he did not lead oral evidence but filed two documents in his defence. After hearing arguments from both the sides, learned trial Court finally decided the matter and found the accused-appellant guilty for committing offence u/s 302, I.P.C. but acquitted him from the charge u/s 397, I.P.C. and awarded life imprisonment to the accused-appellant, which is under challenge in this appeal.

7. Learned Counsel for the appellant vehemently argued that in this case, judgment rendered by the trial Court deserves to be quashed on the ground that the learned trial Court has not appreciated the prosecution evidence in right perspective. As per argument of the counsel, there is no reliable witness or evidence on record to prove the allegation of murder levelled against the appellant. The prosecution has failed to prove the motive for committing offence,

therefore, testimony of the prosecution witnesses has wrongly been relied upon by the trial Judge that the prosecution has proved its case beyond reasonable doubt. Argument of learned Counsel for the appellant is that gross error has been committed by the trial Court while convicting the accused-appellant on the basis of circumstantial evidence. As per learned Counsel for the appellant, chain of circumstantial evidence is missing in this case on so many turns, therefore, the trial Court has committed error while convicting the accused-appellant.

8. Learned Counsel for the accused-appellant argued that so called arrest of the appellant, coupled with seizure of the tempo, in which, blood was found, is totally manipulated story of the prosecution. Likewise, prosecution has failed to prove the recovery of bloodstained clothes and knife. In this view of the matter, when recovery of clothes and knife has not been proved by leading cogent evidence, then, it can be said that the prosecution has failed to prove its case.

9. Further, as per learned Counsel for the appellant, the learned trial Court has discredited the testimony of "last seen", more specifically, statement of P.W.-6 Yashpal, so also, testimony of P.W.-1 Sribhagwan is not accepted to the extent of his statement that he saw the incident of inflicting injury by knief upon deceased; but, relied upon the testimony of P.W.-1 Sribhagwan, to the extent that this witness is evidence of fact that he saw the tempo in which the body of the deceased was brought in un-numbered tempo on the spot and thrown by one person, so also, on the back-side of the tempo the word "KULDEEP" was written. In para 18 of the judgment under challenge, the learned trial Court gave finding that the fact of identification also does not arise in this case because improved version of P.W.-1 Sribhagwan before the Court, in which, he has stated that he saw the incident that accused appellant was inflicting injuries with knife upon the body of deceased; meaning thereby, the learned trial Court has relied upon the testimony of P.W.-1 Sribhagwan only in part and, later on, a finding has been given by the trial Court that accused-appellant was arrested on 02.12.2003 vide Ex.-P/6 at 5.30 P.M. when he was sitting in the tempo. It is argued that admittedly the said tempo was seized when it was lying near the Z-Minor Canal and, upon inspection, it was found that on the seat cover in the tempo there were blood stains and blood was also found upon the mud stuck upon the hood; meaning thereby, as per prosecution case, till arrest the accused has not washed the tempo, in which, blood was found, but, this testimony of the prosecution creates suspicion because there was no reason for the accusedappellant for not removing the blood stains when tempo was lying near the water canal, therefore, the said seizure memo Ex.-P/7, so also, arrest of the accused appellant near the Z-Minor Canal is totally concocted story.

10. While inviting our attention towards statement of P.W.-2 Sukhvinder Singh, it is submitted that statement of, out of 2 witnesses Sukhvinder Singh and Jeevraj Singh, only one witness of the seizure memo of tempo was recorded; and, 2 witnesses P.W.-2 Sukhvinder Singh and P.W.-13 Hansraj were produced to prove the arrest of the accused-appellant; meaning thereby, for the recovery purpose,

two witnesses - Sukhvinder Singh and Hansraj, Head Constable No. 15 of Police Station Sriganganagar were produced as evidence of arrest before whom the accused appellant was arrested at 5.30 P.M. on 02.12.2003; and, just after 10 minutes, at 5.40 P.M. seizure memo of tempo was prepared, in which two witnesses - Sukhvinder Singh and Jeevraj Singh were shown motbir witnesses; meaning thereby, both these witnesses cannot be treated as independent witnesses because Sukhvinder Singh is owner of the tempo and other witness Hansraj is police employee, therefore, his testimony cannot be accepted for the purpose of showing arrest of the accused and seizure of the tempo in question. Further, it is argued that on the same footing, Ex.-P/9 is also concocted document, because, the prosecution has failed to prove the arrest of the accused-appellant near the canal, so also, has not proved seizure of the tempo in which blood stains were found upon the seat cover and upon the mud stuck to the hood of the tempo by leading cogent evidence.

11. With regard to finding of accepting testimony of recovery of pant, shirt and sweater tied with lace of shoes, it is argued by learned Counsel for the appellant that recovery is not proved by the prosecution. The said recovery of pant, shirt and sweater was made at 11.50 A.M. on 07.12.2003, after five days of the incident, vide recovery memo Ex.-P/12 and those articles were found in the stagnant water of a nala. If these articles were found floating on the surface of dirty nala water, then, it is obvious that so called recovery of these articles is totally false because how it is possible that blood strains remained upon these clothes after five days, that too, when these articles were thrown in the nala where dirty stagnant water was pooled and these articles were recovered when they were floating on the surface of the water, therefore, the recovery of clothes vide Ex.-P/12 is a concocted story of the prosecution but, unfortunately, the learned trial Court has relied upon the said testimony and conviction is based upon recovery of clothes which is not in accordance with law.

12. Learned Counsel for the appellant argued that recovery of knife is also concocted because the blood strains knife was recovered on 08.12.2003 at about 11.25 A.M. as per information given by the accusedappellant u/s 27 of the Evidence Act, that too, after recovery of clothes and after six days from the date of occurrence. Further, the blood stained knife was recovered at open place inside a deep pit, such type of concocted prosecution story cannot be accepted because after six days of the incident the recovery of knife has been made and blood-stains were found upon knife, therefore, learned trial Court has wrongly convicted the accused-appellant upon false, fabricated and concocted prosecution story only to connect the accused-appellant with the crime. In this view of the matter, the accused-appellant is entitled for acquittal in this case.

13. Learned Counsel for the appellant vehemently argued that as per the finding of the learned trial Court, the trial Court has discredited the evidence of last seen, so also, evidence of P.W.-1 Sribhagwan who was claiming to be eye-witness; but, while ignoring testimony upon both these points, convicted the

accused-appellant on the basis of so called recovery of pant, shirt, sweater and knife and, so also, on the basis of the fact that in the tempo which was seized from the possession of the accused-appellant there were blood stains. In this view of the matter, conviction and sentence awarded to the accused-appellant deserves to be quashed on the ground that the prosecution has failed to prove the recovery. Learned Counsel for the appellant invited our attention towards certain judgments of the Hon"ble Supreme Court, in which, the apex Court has held that no person can be convicted merely on probabilities. Learned Counsel for the appellant cited following judgments:

(1) Palvinder Kaur Vs. The State of Punjab (Rup Singh-Caveator),

(2) Sharad Birdhichand Sarda Vs. State of Maharashtra,

(3) Akhilesh Hajam Vs. State of Bihar,

14. While citing the above judgments, it is vehemently argued that the accused-appellant has wrongly been convicted for the alleged offence u/s 302, I.P.C. The finding of learned trial Court is obvious that though the appellant was charged for offence u/s 397, I.P.C., but he has been acquitted by the trial Court for the said offence, therefore, there is no evidence of motive on record to connect the accusedappellant with the crime. Hence, the judgment impugned deserves to be quashed and set aside.

15. Per contra, learned Public Prosecutor has supported the conviction and sentence awarded by the trial Court and argued that the finding of the learned trial Court is based upon sound reasons and evidence on record. The trial Court has considered all aspects of the matter and gave finding that evidence of "last seen" is not trustworthy and, further, the trial Court has not accepted the testimony of P.W.-1 Sribhagwan as eyewitness and, if it is so, then, obviously the learned trial Court has applied its mind to entire evidence in the case; and, ultimately, on the basis of the recovery of blood-stained clothes and knife and seizure of the tempo from the accused-appellant has rightly convicted the appellant because, as per the FSL report the blood found upon the articles and from the clothes of the deceased was found to be of ground "A", therefore, there is material and trustworthy evidence on record upon which the learned trial Court has based the conviction in which there is no error.

16. Learned Public Prosecutor has invited our attention towards further statement of the accusedappellant recorded u/s 313, Cr.P.C., in which, the accused-appellant himself admitted that there were injuries upon his body but those injuries were sustained because he fell down; meaning thereby, accusedappellant himself is supporting prosecution case that at the time of arrest, there were injuries upon his body which were examined by the doctor and that injury report of the accused is on record as Ex.-P/24. Therefore, the accused-appellant himself has proved that injuries were found upon his body but those injuries were sustained because he fell down. The existence of the injuries upon the body of the appellant just after one day of the occurrence clearly speak that

accused-appellant was involved in the crime and committed the offence of murder. In this view of the matter, when prosecution has proved the case beyond reasonable doubt, then, finding of the trial Court does not require any interference by this Court and the appeal deserves to be dismissed.

17. We have considered the rival submissions made by both the parties.

18. Learned trial Court has convicted the accusedappellant for commission of offence u/s 302, I.P.C. and sentenced him to undergo life imprisonment. The finding of the learned trial Court is based upon evidence of recovery of blood-stained clothes, knife and seizure of tempo on which blood stains were found on the seat cover of the tempo and, on the basis of fact that the blood group found upon above article and clothes of deceased was the same as per FSL report. The learned trial court gave finding that prosecution has proved its case beyond reasonable doubt and there is ample evidence to connect the accused-appellant with the crime. Of course, learned trial Court has discredited the testimony of P.W.-6 Yashpal with regard to "last seen" and, so also, not accepted the testimony of P.W.-1 Sribhagwan as eye-witness but the learned trial Court gave finding that on the basis of so called recovery of articles the prosecution has proved its case beyond reasonable doubt.

19. The apex Court in so many cases has held that when a case rests upon circumstantial evidence, then, such evidence must satisfy the 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 definite tendency unerringly pointing towards 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; and

(iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

20. On the strength of the judgment cited by learned Counsel for the appellant also, it is argued that conviction cannot be based upon probabilities. The prosecution is required to prove beyond reasonable doubt if the conviction is based upon circumstantial evidence.

21. In our opinion, in this case, admittedly, the occurrence took place in the night intervening 1st and 2nd December, 2003 at about 12.30. As per the prosecution case, at that time, P.W.-1 saw a tempo coming from Ganganagar side and stopped near the field of P.W.-1 Sribhagwan, situated at Vivekashram, Mohanpura Road; and, the learned trial Judge has observed that the said witness

in his initial information stated that one person was throwing other person who was blood-smirched from his tempo, and, thereafter, the person took away his tempo and speeded towards Teen Pulia. It is further stated that the tempo was new and without registration number and, on the back-side of it, word "KULDEEP" was written. Though the above information was given by P.W.-1 Sribhagwan, upon which, FIR was registered but, before the Court, the witness improved his version and stated that he saw that said person was inflicting injuries with knife in front of him; but, the learned trial Court refused to accept the improved version of P.W.-1 Sribhagwan. The trial Court has, however, accepted the only version which was narrated in the FIR that he saw that one person came in tempo and threw body of another person on the road stain with the blood and ran away in the tempo and in the back side of tempo word "KULDEEP" was written; meaning thereby, the learned trial Court relied upon the testimony of P.W.-1 Sribhagwan to the extent that he saw the tempo come up near the field from which one person threw body of another person on the road. It is thus obvious that the trial Court has applied its mind and accepted the truth which was initially stated by him when information was given in writing upon which FIR was registered. To the extent as held by the trial Court, testimony of P.W.-1 Sribhagwan cannot be discredited, because, learned trial Court has rightly accepted the testimony of P.W.-1 Sribhagwan to the extent that he saw that one person was thrown from the tempo who had sustained injuries but the trial Court did not accept further statement that in the light of torch he saw that said person was inflicting injuries with knife. In our considered opinion, the finding arrived at by the learned trial Court with regard to accepting the testimony of this witness to the aforesaid extent is perfectly in consonance with law.

22. With regard to recovery of clothes, the prosecution has adduced ample evidence that as per information of the accused-appellant, vide Ex.-P/12, on 07.12.2003, clothes were recovered. Though the said articles were recovered from a nala which was full of dirty water but it is also important fact that these clothes were tied with lace of shoes, therefore, in all probabilities, it emerges that there is possibility of the fact that blood was found on the clothes upon untying and unrolling the said clothes after recovery. These clothes were sent to the FSL for chemical examination and, similarly, blood taken from the tempo was also sent for analysis to the FSL and likewise blood-stained knife was also sent for chemical examination to the FSL; and, as per the report of the FSL, the blood found upon these articles was same as found upon the clothes of the deceased of Group - A, which is evident from the FSL report Ex.-P/54; meaning thereby, the prosecution has proved its case that blood found upon the recovered articles including shirt, pant and sweater as well as knife was the same as that found upon the clothes of the deceased and this fact is very important fact for convicting the accused-appellant. The finding of the learned trial Court on this score is arrived at after right appreciation of evidence and, therefore, the same does not call for any interference.

23. Learned trial Court has taken into consideration the testimony of the

witnesses of recovery memo before whom the incriminating articles were recovered. We have also perused the statements of those witnesses which bear correct fact of recovery. Therefore, the recovery of articles has been proved by the prosecution before the trial Court by leading cogent oral evidence of P.W.-2 Sukhvinder Singh, P.W.-3 Ram Kumar and P.W.-5 Mukhtiyar Singh and the learned trial Court has rightly arrived at the finding that the articles were recovered at the instance of the accusedappellant, therefore, on the basis of this finding also it is obvious that the prosecution has proved its case on the basis of leading cogent circumstantial evidence.

24. In this case, very important fact is that the injuries upon the body of the accused-appellant himself was examined by the doctor. According to Ex.-P/24, injury report of the accused-appellant, there were as many as 8 injuries upon the body of the accused himself and, in further statement recorded u/s 313, Cr.P.C., it is stated by him that these injuries were sustained when he fell down and this statement was given by him on his own without being asked any question. This fact speaks that just after one day of the occurrence there were injuries upon the body of the appellant which were examined by the doctor as per request of the investigating officer and accusedappellant himself tried to explain that these injuries were found upon his body but told that these injuries were sustained due to a fall. In our opinion, the testimony of the accused with regard to sustaining the injuries is not trustworthy; moreover, it supports the prosecution case that some quarrel has arisen in between deceased and accused, in which, the accusedappellant himself received 8 injuries and he inflicted injuries with knife to deceased and when the victim of knife injuries died, then, he has thrown his body upon the place of occurrence where P.W.-1 Sribhagwan had seen him. In this view of the matter, the finding arrived at by the learned trial Court is based upon valuable and trustworthy circumstantial evidence, therefore, the same does not require interference by this Court.

25. As a sequel to the aforesaid discussion, we do not find any force in this appeal. The appeal is accordingly dismissed.