
(2017) 05 RAJ CK 0075
In the Rajasthan High Court
Case No : 16 of 2009

Ramesh S/o Shri Kalu, by caste Meena	APPELLANT
Vs	
State of Rajasthan	RESPONDENT

Date of Decision : 17-05-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 313, Section 374(2), Section 437A - Power to examine the accused - Appeals from convictions
Indian Penal Cod

Citation : (2017) 05 RAJ CK 0075

Hon'ble Judges : Gopal Krishan Vyas, Ramchandra Singh Jhala

Bench : DIVISION BENCH

Advocate : Shambhoo Singh, Vikram Singh, Vishnu Kachhawaha

Judgement

1. In this criminal appeal filed by the accused appellant, Ramesh Meena, u/s 374 (2) of Cr.P.C ., the judgment dated 29 th of November, 2008 passed by learned Additional Sessions Judge (FT) No.3, Udaipur Udaipur Camp Salumber, Udaipur (for brevity, hereinafter referred to as "Trial Court") in Session Case No.18/2008 is under challenge, whereby the accused appellant was convicted for the offence under Section 302 of IPC and sentenced for life imprisonment along with fine of Rs.100/- with the default stipulation to further undergo one month's imprisonment.

2. Briefly stated, the facts of the case are that a written complaint (Ex.P/1) was filed by PW.1, Dharamchand, on

14.01.2008 at Police Station Rishabhdeo, Distt: Udaipur, in which following allegations were levelled by him: -

"VERNACULAR MATTER OMITTED"

3. Upon the aforesaid written complaint submitted by PW.1 Dharamchand, FIR No.21/2008 was registered against unknown person u/s 302 IPC at Police Station Rishabhdevo, and investigation commenced by the Sub-Inspector, Jagannath. First of all investigating officer went on the place of occurrence and prepared site plan (Ex.P/2). The "Panchnama" of the dead body was also prepared at 02.30 PM on 14.01.2008 itself and after postmortem the dead body of deceased Smt. Ramila W/o Ramesh Meena (appellant) was handed over to his brother-in-law Mukesh for cremation.

4. During the investigation, from the place of occurrence, which is house of appellant and deceased, blood smeared soil and sample of control soil was taken in possession vide Ex.P/5 and clothes of deceased, viz. "Ghagra" and undergarment, having blood upon them, were also taken in possession vide Ex.P/6. During investigation, one agreement (jkthukek) was also taken in possession vide Ex.P/7, and after arrest, one blood stained shirt was recovered on the basis of information given by accused appellant, Ramesh vide Ex.P/13 on 19.01.2008 at 03.15 PM from the house of co-accused Smt. Babli, so also, one stick (M.Mk) having blood upon it, was recovered vide Ex.P/15 on 17.01.2008 at 03.40 PM on the information given by accused appellant, Ramesh.

5. After completion of investigation, charge sheet was filed against the accused appellant, Ramesh and two other co-accused, namely, Shyamlal and Smt. Babli @ Pari W/o Babulal Meena under Section 302 and 302 / 120B of IPC in the court of Addl. Chief

Judicial Magistrate, Kherwada, Distt: Udaipur, from where the case was committed to the court of Sessions Judge, Udaipur, but later on transferred to the court of Addl. Sessions Judge (FT) No.3, Camp Salumber, District Udaipur, for trial. The charge sheet was filed against the accused persons on the basis of circumstantial evidence because there was no eyewitness of the incident.

6. The learned trial court thereafter framed charge against the appellant, Ramesh, co-accused Shyamlal and Smt. Babli for offence u/s 302 and 302/120B of IPC, but all the three accused denied the charge and claimed trial.

7. In the trial, statements of 19 prosecution witnesses were recorded and 28 documents were exhibited from the prosecution side to prove the case on the basis circumstantial evidence. After recording the evidence of prosecution, statements of all the accused were recorded u/s 313 Cr.P.C . In the statements recorded u/s 313 Cr.P.C ., all the three accused stated that they are innocent and falsely implicated in this case. Accused appellant, Ramesh specifically stated that on the date of incident, I was not present in my house. However, no evidence was led by the accused persons.

8. The learned trial court finally heard the arguments and after evaluating the evidence available on record proceeded to acquit the co-accused, Shyamlal and Smt. Babli, from the offence u/s 302/120B of IPC, but convicted the accused appellant, Ramesh, for the offence u/s 302 of IPC vide judgment dated 29.11.2008 and passed sentence of life imprisonment along with fine of Rs.100/- with the default stipulation to further undergo one month's imprisonment. In this appeal, the judgment is under challenge on various grounds.

9. Learned counsel for the appellant vehemently argued that the learned trial court has failed to appreciate the entire evidence of prosecution in right perspective because there is no eyewitness of the incident and entire prosecution case is based upon circumstantial evidence. It is also argued that the investigating officer, Jagannath, who has conducted the investigation did not appear in the witness box to prove the investigation, which is based upon circumstantial evidence. Therefore, in absence of any evidence to prove the investigation it cannot be said that prosecution has proved its case beyond reasonable doubt against the appellant.

10. It is further argued that relation of appellant with his wife Smt. Ramila (deceased) were cordial and there is no evidence on record to prove the fact that there was any motive for the appellant to cause death of his wife. The motive, which is alleged by the prosecution has not been proved beyond reasonable doubt, which resulted in the acquittal of two other co-accused persons, namely, Shyamlal and Smt. Babli. Learned counsel for the appellant invited our attention towards the fact that entire prosecution case is based upon circumstantial evidence and to prove the case on the basis circumstantial evidence, the complete chain of circumstances is required to be proved beyond reasonable doubt so as to hold accused appellant guilty, but in the instant case it has not been proved by the prosecution, therefore, accused appellant is entitled for acquittal.

11. In the statements recorded under Section 313 Cr.P.C., a specific plea was taken by the appellant that on the date of incident, he was not at his home and this fact is proved from the statement of PW.13, Amritlal, who has deposed in his statement that on the date of incident as per his instructions, Shyamlal,

made a phone call at the house of accused appellant Ramesh, which was replied by his wife Ramila (deceased) informing that Ramesh is not at home. Furthermore, the investigating officer has filed Challan against the appellant on the basis of recovery of blood stained shirt from the house of co-accused Babli and one stick having blood upon the same, from the house of accused appellant, and to prove the said recovery of articles the prosecution was under obligation to produce the investigating officer, Jagannath, who has prepared the recovery memos and conducted investigation but the investigating officer did not appear as witness to prove the recovery and entire investigation conducted by him, therefore, obviously it is a case in which prosecution has failed to prove the case.

12. As per contention of the learned counsel for the appellant, the whole case is based upon circumstantial evidence, collected during investigation by the Investigating Officer, Mr. Jagannath, Sub-Inspector, however, prosecution has failed to produce said witness to prove the recoveries and investigation, therefore, the finding of conviction recorded by the trial court based upon circumstantial evidence vide judgment impugned deserves to be quashed.

13. Per contra, learned Public Prosecutor submitted that although the investigating officer Jagannath, Sub-Inspector of Police Station Rishabhdeo, did not appear before the trial court as witness to prove the recoveries but other two Motbir witnesses, namely, PW.11 Amar Singh and PW.12 Kamal Singh, specifically stated in their statements that at the time of recovery of shirt and stick, their signatures were obtained by the investigating officer on Ex.P/13, P/14, P/15 and P/16, therefore, there is no strength in the argument of learned counsel for the appellant that prosecution

has failed to prove its case beyond reasonable doubt.

14. Learned Public Prosecutor further argued that although other two co-accused, Shyamlal and Smt. Babli were acquitted from the charge levelled against them, but undisputedly the accused appellant is husband of deceased Smt. Ramila and the dead body of Smt. Ramila was found in the house of appellant, therefore, it can be presumed that offence was committed by the appellant none else. Therefore, this appeal may kindly be dismissed.

15. After hearing the learned counsel for the parties we have minutely scanned the entire evidence and find that prosecution has failed to prove its case beyond reasonable doubt, because there is no evidence on record to prove the fact that the day on which the incident took place, the accused appellant was present in the house or in the village. More so, the written report (Ex.P/1) was filed by one Dharamchand, in which it was stated that he (Dharamchand) was informed in the morning on the date of incident by Smt. Rasi, mother of appellant Ramesh Meena that today I went to house of her elder son in the morning and saw that dead body of Smt. Ramila wife of my son, lying on the cot and blood was spread over the clothes, legs of the deceased, and on floor of the room, and my son is not at home. Upon receiving the aforesaid information, witness Dharamchand (PW.1) Sukhlal, Mangiram, Somaram, Shanker, Harji etc. went to the house of deceased and saw the dead body.

16. We have perused the statements of PW.1 Dharmchand and find that his evidence is hearsay evidence because he has reported the incident to the police as per information given to him by Smt. Rasi, mother of appellant. We have also perused the statement of PW.2 Smt. Rassi, mother of accused appellant, in it is deposed by her that: -

"VERNACULAR MATTER OMITTED"

17. The other witness PW4. Manji, has not made any allegation of bad relationship of accused appellant with deceased Smt. Ramila. PW.5, Sukhlal, PW.6 Shanker, and PW.8 Ramesh turned hostile and did not support the prosecution case. In view of above, obviously it is a case in which the entire prosecution case is based upon recovery of blood stained shirt and one stick vide Ex.P/15 and Ex.P/13. As per prosecution case, both above documents and other document of investigation were prepared by Jagannath S.I./Investigating Officer of Police Station Rishabhdeo, but said witness did not appear before the court to prove the prosecution story. It is settled question of law that all the documents of prosecution should be proved so as to convict any person for alleged crime. Admittedly it was the duty of the prosecution to prove all the documents of recoveries to connect the accused appellant with the crime because no other evidence is on record, to prove the case. In the case of Sharad Birdhichand Sarda Vs. State of Maharashtra reported in AIR 1984 SC 1622, the Hon"ble Apex Court held that the prosecution is required to prove its case beyond reasonable doubt, if the allegation is based on circumstantial evidence. The following parameters/ guidelines are laid down by the Hon"ble Supreme Court to assess the circumstantial evidence, which reads as under:-

"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 & Anr. v. State of Maharashtra (") 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 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. These five golden principles, if we may say so, constitute the Panchsheel of the proof of a case based on circumstantial evidence."

18. We have considered the entire evidence on record in the light of above golden principles to consider the case on circumstantial evidence, and also considered the fact that this case is based upon circumstantial evidence of recovery of shirt and stick, but admittedly the investigating officer, Jagannath, Sub-Inspector, who has prepared the recovery memo, has not been produced before the court to prove the recovery made upon the information given by the accused appellant. Furthermore, the other witnesses categorically stated before the court that on the date of incident, the appellant was not present in the village.

19. In view of above, we are of the firm opinion that in this case complete chain of circumstances, has not been proved by the prosecution beyond reasonable doubt. Therefore, the accused appellant, who has been convicted on the basis of circumstantial evidence, is entitled for benefit of doubt.

20. Consequently, the present criminal appeal is hereby allowed, the judgment impugned dated 29th of November, 2008 passed by learned Additional Sessions Judge (FT) No.3, Udaipur Camp Salumber, Udaipur. in Session Case No.18/2008, convicting and sentencing the appellant for offence u/s 302 of IPC is hereby quashed and set aside. The appellant may be released forthwith if not required in any other case.

21. Keeping in view, however, the provisions of Section 437A Cr.P.C. the accused appellants are directed to forthwith furnish personal bonds in the sum of Rs.20,000/- and a surety bond in the like amount each, before the learned trial court, which shall be effective for a period of six months to the effect that in the event of filing of Special Leave Petition against the judgment or for grant of leave, the appellants, on receipt of notice thereof, shall appear before Hon"ble the Supreme Court.