
(2009) 02 DEL CK 0190

In the Delhi High Court

Case No : Criminal Appeal No. 25 of 2005

Satbir Singh @ Gattu

APPELLANT

Vs

The State (G.N.C.T. of Delhi)

RESPONDENT

Date of Decision : 03-02-2009

Acts Referred:

Citation : (2009) 02 DEL CK 0190

Hon'ble Judges : Pradeep Nandrajog, J;Aruna Suresh, J

Bench : Division Bench

Advocate : D.M. Bhalla, for the Appellant; Richa Kapoor, APP, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Heard learned Counsel for the parties.

2. At 7.30 A.M. on 23.12.2002 Smt. Dayawati PW-10, found a dead body inside a gher in her mustard fields. She rang up 100 and informed about the same with additional information that the fields were in village Kakrola. The call was picked up at the Police Control Room by HC Onkar Singh PW-20 at 7.30 A.M. He filled up the relevant form Ex.PW-20/A and conveyed the information received by him to the local Police Station i.e. PS Uttam Nagar.

3. Const. Babu Lal PW-4 recorded DD No. 39, Ex.PW-3/A, at 7.45 A.M.

4. ASI Satbir Singh PW-3, accompanied by SI Umesh Kumar PW-18 and Const. Ranthoo Rao PW-13 proceeded to the spot and took along with them a copy of the DD No. 39-A. They reached the spot at around 8.00 A.M. and noticed a dead body lying in the gher in the mustard fields.

5. Smt. Dayawati PW-10, who had first noted the body and had informed the police about its presence was found at the spot. Two villagers, namely, Mohd. Aji Mullah PW-9 who happens to be the pradhan of the village and Surat Singh PW-11 were also present at the spot inasmuch as Smt. Dayawati had required their presence.

6. ASI Satbir Singh PW-3, recorded the recovery of the dead body at the spot and prepared the rukka Ex.PW-3/B and transmitted the same through Const. Ranthoo Rao for registration of a FIR. At the Police Station, HC Rajesh Kumar PW-15, recorded the FIR Ex.PW-15/A which was forthwith sent to the illaqa Magistrate through Const. Ravinder Kumar PW-

7. At the site where the dead body was recovered ASI Satbir Singh PW-3 conducted spot investigations and was joined by Insp. Rajbir Sharma PW-21 who was the SHO of the Police Station concerned and had reached the spot on receiving information on his wireless set that the dead body of a young boy was found in the village.

8. Insp. Rajbir Sharma PW-21, prepared the site plan Ex.PW-21/A with marginal notes. A grey colour jacket Ex.P-6 and a pair of chappal Ex.P-7/1 and Ex.P-7/2 lying by the side of the dead body were seized vide memo Ex.PW-3/C prepared by Insp. Rajbir Sharma. The seizure was witnessed by ASI Satbir PW-3 and Const. Ranthoo Rao PW-13. Const. Bhagwat Dayal PW-19, a photographer, was summoned. He reached the spot at 9.00 A.M. and took photographs Ex.PW-1/1 to PW-1/5 of the site.

9. The body was sent to DDU Hospital for postmortem. Dr. Manoj Nagpal PW-5, conducted the post-mortem on 24.12.2002 and prepared the post-mortem report Ex.PW-5/A. In the post-mortem report he noted that the deceased had ante mortem injuries being:

(1) Abrasion contusion on outer canther of eye extending to zygomatic arch and cheek measuring 3 x 2 cm.

(2) Abrasion present on the right wrist radial aspect on the palmer side, measuring 3 cm x 2 cm.

(3) Multiple abrasions present over back covering nearly whole of it.

10. He noted haemorrhage under scalp over the left temporal region, sub-arachnoid haemorrhage and subdural haemorrhage all over the brain. He opined that all the injuries were ante mortem in nature and were of the same duration. Cause of death was opined to be coma following head injuries. He noted that the estimated time of death was 10/12 hours before.

11. Being a case of dead body being recovered in a village, the news had spread.

12. One Ved Prakash PW-1, and his son Gulshan PW-8, also received the information. They contacted the Police. The reason was that Gaurav, son of Ved Prakash and brother of Gulshan, had not returned to the house since he had left the house at around 5.30 P.M. - 6.00 P.M. on 22.12.2002.

13. They learnt that the dead body had been sent to DDU Hospital for post-mortem. From the photographs of the deceased and the description of the dead body, Ved Prakash and Gulshan identified that the deceased was Gaurav.

14. Ved Prakash PW-1, informed the police that at around 5.30 or 6.00 P.M. on 22.12.2002, after Gaurav had handed over medicine to him, he i.e. Gaurav left in the company of one Satbir on being called by Satbir to come out of the house and that at that time there were two other persons with Satbir. He disclosed that his son Gaurav had not returned home the entire night and that his son Gulshan had gone to the house of his in laws. Gulshan returned home on 23.12.2002 at 11.00 A.M. At that time he i.e. Gulshan was informed that Gaurav had not come back. They left to search for Gaurav and in the meanwhile learnt about a dead body being found.

15. Obviously, Satbir became a suspect as he was the person with whom, Ved Prakash had last seen his son leaving the house. Needless to state, the two other persons who were stated to be accompanying Satbir also became suspects.

16. Satbir being a resident of the same village, it was not difficult for the police to reach his house. The police reached the house of Satbir i.e. his father, Ramphal and apprehended Satbir along with Jitender and Sunil Sharma who were present in the house. The latter two are juvenile. Since we are concerned with the trial of Satbir only and the appeal pertaining to him, we hereinafter notice the facts relatable to Satbir alone.

17. He was interrogated. His disclosure statement Ex.PW-1/A was recorded by Insp. Rajbir Sharma PW-21, which was witnessed by Ved Prakash PW-1 and HC Rajpal PW-14.

18. As per the disclosure statement, Satbir admitted having murdered Gaurav and Jitender and Sunil being his accomplices. The motive disclosed by him was that he had learnt that Jitender was having unnatural sex with the deceased and even he was tempted to do so. He did so. He learnt that the deceased was likely to spread the said information in the village, and if it was so done, he i.e. Satbir and Jitender would be defamed. They hatched a conspiracy in which even Sunil participated, to do away with Gaurav and in furtherance thereof went to Gaurav's house at 5.45 P.M. on 22.12.2002. They called for Gaurav who came out of the house. As per their plan, they took Gaurav to a park near the village and removed the leather belt worn by Gaurav. The same was used as an instrument to strangulate Gaurav. Jitender caught hold of the hands of Gaurav and Sunil caught hold of his legs. Satbir wrapped the belt around the neck of Gaurav and strangulated him and thereafter all pounded the body of the deceased. They did so for ten minutes till the deceased died. They dragged the dead body towards a corner of the park and removed the belt which had been tightened around the neck of the deceased. It was handed over to Jitender. He i.e. Satbir removed the jacket of the deceased and from a pocket inside removed a purse to give colouration of robbery being the motive of the crime; and thereafter left for their respective homes. He disclosed that the purse of Gaurav has been kept by him in his house and he could get the same recovered.

19. As per the disclosure statement Ex.PW-1/A, Satbir got recovered a purse

from the sheet spread on a cot in the room in the house. From the purse an identity card in the name of the deceased issued by "Spring Meadows Public School", Main Najafgarh Road, four or five visiting cards, a photograph of the deceased and a receipt evidencing purchase of cattle fodder was recovered. The same were seized vide seizure memo Ex.PW-1/B.

20. Armed with the aforesaid material, namely, the deceased being last seen in the company of the appellant in presence of Sunil Sharma and Jitender and there being a motive to murder the deceased as also the recovery of the purse of the deceased containing his identity card, visiting cards, a photograph and a receipt pertaining to purchase of animal fodder; relying upon the post-mortem report of the deceased which showed a homicidal death, the charge sheet was filed against the appellant for having committed the murder of Gaurav.

21. The two co-accused Sunil Sharma and Jitender, being juvenile; qua them, matter was referred to the Juvenile Justice Board for trial.

22. At the trial, apart from examining the various police officers who were associated with the registration of the FIR, commencing from receipt of the information over the telephone that a dead body was found in the fields in the village, ASI Satbir Singh, Const. Ranthoo Rao, SI Umesh Kumar and Insp. Rajbir Sharma were examined as PW-3, PW-13, PW-18 and PW-21 respectively. The villagers who were present when the dead body of the deceased was seized, namely, Mohd. Aji Mullah, Smt. Dayawati and Shri Surat Singh were examined as PW-9, PW-10 and PW-11 respectively. Dr. Manoj Nagpal who conducted the post-mortem of the deceased was examined as PW-5.

23. After prosecution evidence was over and the incriminating circumstances were put to the appellant, defence evidence was led. The appellant intended to establish a plea of alibi and examined his friend Sumit as DW-1 to prove that the appellant was arrested by the police along with Sumit on 24.12.2002 at around 8:00 A.M. when he i.e. Sumit could not show a driving license and that whereas Sumit was let off, the appellant was arrested. The intention was to prove that the appellant was not apprehended at his house as claimed by the prosecution.

24. With reference to the testimony of Ved Prakash PW-1, the father of the deceased, to the effect that the deceased had left in the company of Satbir and two other persons at around 5.30 P.M. or 6.00 P.M. on 22.12.2002 and that Gaurav was found dead the next morning at around 6.30 A.M., learned trial Judge has held that the last seen evidence was proved and was an incriminating piece of evidence linking the appellant with the crime. The plea of alibi has been rejected because Sumit DW-1 has not been believed. The recovery of the purse of the deceased from which his identity card, four-five visiting cards, his photograph and a slip evidencing purchase of cattle fodder were recovered has been held to be duly proved and with reference thereto the learned Trial Judge has held that the chain of circumstances was complete wherefrom the guilt of the appellant could be inferred without there being a scope of an inference from the

evidence that the appellant was innocent.

25. At the hearing of the appeal today, Shri Deepak Manmohan Bhalla, learned Counsel for the appellant who has been appointed as an Amicus Curiae has urged the following points:

(a) The post-mortem report Ex.PW5/A, categorically opines that the time of death was 10 hours to 12 hours prior to the time when the post-mortem was conducted. Since the post mortem report does not record the hour of starting the autopsy and the hour of concluding the autopsy; only notes the date when the autopsy was conducted i.e. 24.12.2002; learned Counsel urges that assuming that the autopsy was conducted at 10.00 A.M., being the time when the mortuary opens for purposes of conduct of post-mortem; working 10 hours to 12 hours backward from 10.00 A.M., the deceased would presumably have died any time between 8.00 P.M. to 10.00 P.M. on 23.12.2002. Counsel urges that as per father of the deceased, the father had last seen his son alive with the appellant (if at all) at around 6.00 P.M. on 22.12.2002. Submission made is that the time of 24 hours is long enough for the possibility of the deceased being in the company of somebody else and that somebody else was the perpetrator of the crime.

(b) Attacking the recovery of the purse containing the identity card of the deceased and a few visiting cards as also his photograph and a receipt evidencing purchase of cattle fodder; learned Counsel urges three distinct submissions. Counsel urges that each one of them individually and collectively cast a serious doubt on the authenticity of the stated disclosure statement made by the appellant and the recovery effected pursuant thereto. The first limb of this submission is:

(i) The father of the deceased i.e. PW-1 has deposed that the disclosure statement of the appellant was recorded at the jeep which was parked outside the house of Ramphal, the father of the accused. PW-14 HC Rajpal has stated that the disclosure statement was recorded at the place where the dead body was lying i.e. the gher in the mustard fields of PW- 10. Insp. Rajbir Sharma PW-21 has deposed that the disclosure statement was recorded in an open space between the gate and other portions of the house of the father of the appellant. The submission made, based on aforesaid depositions, is that each one of them is disclosing a different place where the disclosure statement was recorded and this casts a serious doubt on the authenticity of the disclosure statement and PW-1 and PW-14 having witnessed the same when PW-21 recorded the same.

(ii) The second limb to question the authenticity of the disclosure statement is based on the stated discrepancies in the depositions of the three witnesses; in that, PW-1 has deposed that when they went to the house of the appellant and knocked the door, the appellant opened the door of the house. PW-14 has deposed that when they went to the house of the appellant and knocked at the door, father of the appellant namely Ramphal opened the door. PW-21 deposed

that when they reached the house of the appellant they found that the door was lying open. The submission made by learned Counsel for the appellant is that each of the witnesses has spoken on a different set of facts pertaining to what was the status of the house of the appellant i.e. whether the door was open or close and if closed who opened the same when the same was knocked; meaning thereby, a further doubt is cast, either on the presence of PW-1 and PW-14 when PW-21 recorded the disclosure statement, or alternatively, that each one of them was speaking a lie.

(iii) Third limb to question the recovery was, that it was an unnatural conduct for an accused to retain with him a property of the deceased which had no monetary value. Learned Counsel urges that the identity card, the visiting cards, the photograph of the deceased and the receipt of paper, evidencing purchase of cattle fodder, as also the purse itself, were all useless things to be retained and it is unbelievable that the appellant would have retained the incriminating evidence with him. Learned Counsel elaborated the last submission by urging that it is obviously a case where the police officers have planted the purse on the appellant, which in all probability was recovered by the police from a pocket of the jacket of the deceased, which jacket was recovered from the spot.

26. Learned Counsel proceeds to urge that the motive for the offence has not been proved. Learned Counsel urges that in a case of circumstantial evidence, proof of motive assumes significance. Learned Counsel urges that in a somewhat similar backdrop, in the decision reported as, State of Karnataka Vs. A.B. Nagaraj and Another, the Supreme Court overruled a concurrent finding of guilt by the court of the Sessions and affirmed in appeal by the High Court.

27. Learned Counsel urges that in a latest decision reported as 2009 (1) Crimes 11 (SC), Chattar Singh and Anr. v. State of Haryana, panch-sheel of circumstantial evidence has been reiterated, that:

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established;

(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.

28. Learned Counsel urges that tested on the applicability of the five noted principles of circumstantial evidence, the case of the prosecution must fail.

29. Pertaining to the first submission made, the fact of the matter is that the dead body of Gaurav was noted in the field by Dayawati PW-10 at around 7:30 A.M. on 23.12.2002 upon which she passed on the information to the police. Dayawati has not been cross examined on this aspect and this testimony of hers has gone unchallenged. Thus, there is proof that Gaurav died prior to 7:30 A.M. on 23.12.2002. We note that HC Onkar Singh PW-20 has filled up the form Ex.PW-20/A at the Police Control Room at 7:30 A.M. It is unfortunate that the doctor who has conducted the post-mortem has gone about giving an opinion in a most callous way.

30. Pertaining to the post-mortem report Ex.PW-5/A we would be failing if we do not note the callous conduct of Dr.Manoj Nagpal PW-5 in even recording the statutory requirements pertaining to an autopsy. Ex.PW-5/A has used a statutory proforma with columns pertaining to the date and hour of receipt of inquest papers and the dead body; the date and hour of starting autopsy; the date and hour of concluding autopsy etc. Not a single column has been filled up. Further, the reasons for the opinion that the time of death was 10/12 hours have not been noted. Indeed, the report shows that the doctor was just interested in completing a formality.

31. Be that as it may in the teeth of the unchallenged testimony of Dayawati PW-10, HC Onkar Singh PW-20, Const. Bablu Lal PW-4, ASI Satbir Singh PW-3, SI Umesh Kumar PW-18 and Const. Ranthoo Rao PW-13 it is established that Gaurav had died prior to 7:30 A.M. on 23.12.2002.

32. Thus, the time gap between last seen and the recovery of the dead body is approximately 13 hours.

33. The law pertaining to how incriminating is the evidence of last seen is clear. If the time gap between the time when the victim was last seen and was found dead is so small that the possibility of someone else being the author of the crime becomes impossible, the solitary of circumstance of last seen is enough to prove the commission of the crime by the accused unless the accused leads evidence to show that he and the deceased parted company when the deceased was alive. The close proximity of time has to be such that a rational mind is persuaded to reach an irresistible conclusion that either the accused should explain or own up liability.

34. But aforesaid considerations come into play when the prosecution has no other evidence except last seen evidence to prove the guilt.

35. Where recovery of the property of the deceased is made soon after the time when the dead body was recovered and is not too far off from the point when the deceased was last seen with the accused, unless the accused explains the circumstance of his acquiring possession of the property of the deceased, the

said evidence becomes fairly fatal and completes the chain of circumstances wherefrom the guilt of the accused can be inferred.

36. Pertaining to the appellant being last seen with the deceased, learned Counsel for the appellant has not shown any inherent infirmity, contradiction or variation in the testimony of PW-1, the father of the deceased wherein he has deposed that in the evening of 22.12.2002, at the calling of the appellant a son left the house and joined company with the appellant who was standing outside their house and thereafter left.

37. Whether the recovery of the purse of the deceased as claimed by the police is proved or not; this is the next question which we have to consider and this discussion embraces the three limbs of the second submission made by learned Counsel for the appellant.

38. Minor variations or variations which are not of a material kind have never been treated in law as of consequence for the reason witnesses deposed to an event after months and years when they first saw an event and it is natural for memory to fade with the passage of time and either a witness forgetting some details here or there or changing the sequence of some details here or there. Pertaining to the place where the disclosure statement of the appellant was recorded, PW-1 has deposed that Insp. Rajbir Sharma recorded the same at the jeep which was parked outside the house of Ramphal i.e. the father of the appellant. Insp. Rajbir Sharma has deposed that he recorded the same standing in the open space between the gate and other portions of the house. The house abuts a narrow lane in the village. The police had gone to the house in a jeep. That PW-1 deposes to the statement being recorded at the jeep is not at material variance with the deposition of PW-1 that it was recorded in the open space between the gate and other portions of the house. HC Rajpal PW-14 has, in the examination-in-chief stated that when they reached the house of Ramphal and entered, appellant Satbir was present and was overpowered and made a disclosure statement Ex.PW- 1/A and even Jitender made a disclosure statement and thereafter led the police to the bushes near a school and got recovered a belt from near the bushes. It is apparent that in his examination-in-chief, though not with clarity, PW-14 has deposed of the disclosure statement being made at the house of Ramphal. It is true that when cross examined he has deposed that the disclosure statement was made by the appellant at the place where the dead body was lying. It has to be noted that the examination-in-chief was conducted on 29.2.2003 and Rajpal was cross examined on 5.4.2004 i.e. there was a time lag of nearly 6 months. The witness having confused on some part of the investigation conducted pertaining to identification of the dead body at the site with the recording of the disclosure statement cannot be ruled out.

39. The second limb of the submission to challenge the disclosure statement of the appellant is again based on facts disclosed by three persons with a gap of time and hence minor variations whether the door was already opened or whether it was opened pursuant to a knock given on the door and whether Satbir

or his father Ramphal opened the door are wholly irrelevant because in a police investigation, who opened the door when the police reached is a very trivial issue. Police personnel who are involved in investigations and at any given point of time have 5 to 6 investigations at hand are not expected to remember such minor and trivial details. Further, when three people reached a spot and one out of three knock at the door, he is the one most likely to remember having knocked at the door. The others may not remember about the door being knocked at all.

40. The third limb of the argument is nothing but a hypothesis without any factual basis. Why does a particular accused not destroy all incriminating evidence can never be answered by any person. Probably nature has so created a human being that he has been rendered incapable of destroying all incriminating evidence against him. But we need not answer esoteric questions for the reason learned Counsel for the appellant concedes that no suggestion has been given to either of the police witnesses or the public witnesses who were present when the police seized the body of Gaurav and entered in the recovery memo the seizure of a pair of chappals and a jacket from near the dead body, to the effect that even a purse of the deceased was recovered but not recorded in the seizure memo.

41. The decision in A.B. Nagarjuna's case relied upon is distinguishable for the reason the dead body was found in a national park i.e. a wild life sanctuary and there was evidence that the accused had entered the forest to search for the deceased. Under said circumstances the accused in said case not attempting to flee was held to be a material circumstance justifying their innocence and the evidence of last seen with the accused was held to be weak. We note that it was not a case of concurrent finding upset by the Supreme Court. The High Court had overruled the decision of the Sessions Court and the matter had reached the Supreme Court by way of an appeal filed by the State.

42. Be that as it may, no decision in a criminal case can be a precedent for the reason each criminal trial unfolds facts which are peculiar to the said case.

43. The five principles of circumstantial evidence cannot be joined issues upon by us for the reason they have stood the test of time for over a 100 years. But the problem is of applying the facts to the law.

44. We note that the appellant has miserably failed to prove with the aid of his friend Sumit of being apprehended along with Sumit when Sumit and he were allegedly on a motorcycle; Sumit being the driver. The version of Sumit that he was caught without a license and he and the appellant were taken to the police station where he was let off and the appellant detained, is unbelievable because no police officer would let off the driver of a motorcycle who has not license but would detain the pillion rider.

45. We find no infirmity with the impugned decision.

46. The appeal is dismissed.