

(2015) 03 DEL CK 0238
In the Delhi High Court
Case No : Criminal Appeal 117/2014

State	Vs	APPELLANT
Parveen Sharma and Others		RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Arms Act, 1959 — Section 25, 27
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2015) 03 DEL CK 0238

Hon'ble Judges : Ashutosh Kumar, J.; Sanjiv Khanna, J.

Bench : Division Bench

Advocate : Varun Goswami, APP, for the Appellant; Amit Sahni and Ashwani Bansal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ashutosh Kumar, J.—The present appeal on behalf of the State is directed against the judgment and order of acquittal dated 2.9.2011 passed by the learned Additional Sessions Judge-02 (South), Saket Courts, New Delhi in SC No. 222/2009 (refer FIR No. 250/2009, P.S. Malviya Nagar) whereby the Respondents herein have been acquitted of the charges under Section 302/201 and 34 of the Indian Penal Code (IPC for short).

2. The Respondents namely Praveen Sharma and Hemant Sharma were charged for murdering one Babu Lal @ Mukul in furtherance of their common intention as also for destroying the evidence of the crime by throwing the dead body and parking the motorcycle of the deceased near a drain at Sheikh Sarai, Delhi.

3. A dead body of a male and a motorcycle bearing registration No. DL 3S BA 0150 at some distance from the body, was located by constable Manmohan, (P.W. 11) in the night intervening between 22nd and 23rd May, 2009. This was informed by him to the Police Station and DD No. 46A was recorded. The same was handed over to ASI Gopi Chand, (P.W. 13), who found injuries on the neck of

the deceased and blood stains on the motorcycle. Sensing it to be a case of murder, crime team was summoned. The crime team came to the spot and took the photographs.

4. The identity of the owner of the motorcycle could be garnered on the basis of certain documents, which were found in the motorcycle. It was found to be belonging to one Babu Lal, son of Ram Kishore. P.W. 13, prepared a rukka (Ex. P.W. 13/A) and an FIR No. 250/2009 was registered under Sections 302/201 and 34 of the IPC (Ex. P.W. 1/B).

5. At about the same time, a missing report was lodged at Kalkaji police station at about 2.40 AM vide DD No. 38A, intimating that one Babu Lal @ Mukul son of Ram Kishore had not reached home.

6. One Chote Lal (P.W. 6), the brother of aforesaid Babu Lal @ Mukul (deceased) on receiving information that a dead body has been found at Sheikh Sarai reached the place of occurrence and identified the dead body and the motorcycle to be that of his brother. His statement was recorded (Ex. P.W. 6/H) in which he stated that his wife Vandana, (P.W. 3) had talked to Babu Lal (deceased) in the evening when she was told by him that he would come home by 10 PM. When Babu Lal (deceased) did not reach home till late in the night, an attempt was made to contact him on telephone but the same was switched off.

7. Dr. Raghvinder Kumar, (P.W. 21) performed the autopsy on the dead body and found the following injuries:--

"1. A firearm entry wound was present over right side of neck which was oval in shape having irregular margins with dimension 4.5 x 3.0 cm and 3.0 cm from midline just above clavicle. The margins were blackened on medical aspect. Multiple pellets wound were present around the wound in total area of 15.0 X 6.0 cm and were superficial. The blood vessels of right side were severed due to firearm injury. Multiple pellets were recovered from deep tissues and vertebral column. Cervical fifth vertebra found to be fractured alongwith laceration of spinal cord. Diffused haematoma was present in right side of neck, muscles and vertebral columns.

2. One abrasion of size 3 x 2 cm was present over left cheek. It was reddish in colour.

3. One contusion of size 1x 1 cm was present over inner aspect of left side of lower lip. It was reddish in colour. No other external injury was present.

In the stomach about 50 ml of semi digested food was present. Mucosa congested."

8. P.W. 22 has opined that the death was due to haemorrhagic shock as a result of injury No. 1 which was caused by fire arm and it was sufficient to cause death in the ordinary course of nature. The time was fixed at 1 1/2 days of the time of post mortem examination.

9. Chote Lal, (P.W. 6) stated before the Trial Court that the deceased had left home for his office on 22.5.2009 but had not come back till 10 PM. When he did not return till about 12 in the midnight, he called Adarsh, (P.W. 2) on his mobile. Aforesaid Adarsh is stated to have told P.W. 6 that the deceased had not met him on that day and that he did not have any talk with him for last so many days. When P.W. 6 confronted him with the statement of his brother (deceased) that he was with him, aforesaid Adarsh did not give any response. Thereafter a call was made at number 100 and a missing report ultimately was lodged.

10. P.W. 6 has further stated that the telephone number of Adarsh, (P.W. 2) was taken from him by the police. When P.W. 6 had visited Malviya Nagar police station in the morning of 23.5.2009, he found Adarsh at the police station. Further, during the course of investigation, the Respondents were apprehended at the instance of Adarsh, (P.W. 2) and Nek Ram, (P.W. 4). At the time of the arrest of the Respondents, no recovery was effected from their person. However, it was stated by P.W. 6 that the Respondents took the police party and him to Devika Security Services, House No. 550, 2nd Floor, Chirag Delhi, where his brother was murdered. The Respondents also led the police party to the parking area near B Block, Safdarjung Enclave behind Delhi Police Public School and at the pointing out of the Respondents a country made pistol was recovered. A live cartridge was also found near the weapon. A used cartridge was found inside the weapon.

11. P.W. 6 has averred before the Trial Court that his wife Vandana, (P.W. 3) told him at about 10 PM on 22.5.2009, that the deceased had told her that he would come home by 11 PM and would take dinner.

12. Vandana, (P.W. 3) has stated before the Trial Court that she had called the deceased between 8 - 8.30 PM. The deceased had then informed her that he would come home late in the night. He also informed her that he was present at that time in Devika Security Services office at 550, 2nd Floor, Chirag Delhi with his friends namely Praveen Sharma and Hemant Sharma (respondent Nos. 1 and 2 respectively), Adarsh (PW2) and Nek Ram (PW 4). Since the deceased did not return, an attempt was made to talk to him on telephone which also could not materialize as the telephone was found to be switched off. Thereafter a missing report was registered.

13. From the testimonies of P.W. 6 and P.W. 3, it becomes evident that P.W. 3 had contacted the deceased sometime between 8 - 8.30 PM on 22.5.2009 when the deceased is said to have spoken about his being in the company of the Respondent Nos. 1 and 2 and P.Ws. 2 and 4 at Devika Security Services, House No. 550, 2nd Floor, Chirag Delhi. This information was transmitted to P.W. 6 by P.W. 3. Thereafter when the deceased did not come at around 12 AM, a missing report was lodged at the instance of P.W. 6. However, DD No. 38A has neither been proved nor has been marked as an exhibit.

14. Further as per testimonies it appears that the police visited Devika Security

Services, House No. 550, 2nd Floor, Chirag Delhi only on 25.5.2009, i.e. after three days of the recovery of the dead body of the deceased. This creates doubts, as to why it was not informed by P.W. 6 to the police that the deceased, as per the version of P.W. 3, was at Devika Security Services, House No. 550, 2nd Floor, Chirag Delhi with P.W. 2 and P.W. 4, in the company of Respondent Nos. 1 and 2, when the missing report was lodged by P.W. 6 after the deceased not having returned home till late in the night. Had P.W. 6 stated about this fact, the police would have proceeded for that place straightway after the identification of the dead body. Admittedly, the police party visited Devika Security Services, House No. 550, 2nd Floor, Chirag Delhi only on 25.5.2009. The withholding of such vital information in the missing report by P.W. 6 creates a doubt about the prosecution version that the deceased was in company of the Respondent Nos. 1 and 2 and P.W. 2 and P.W. 4 at the office of Devika Security Services, House No. 550, 2nd Floor, Chirag Delhi. Thus we doubt, whether the deceased Babu Lal when he spoke to P.W. 3 between 8 to 8.30 PM on 22.05.2009, had indicated and told her that he was in the company of the respondents, P.W. 2 and P.W. 4 at the office of Devika Security services. The aforesaid facts have been added, in view of the police version to implicate the respondents.

15. In this context the observation of the Trial Court appears to be very logical and justified and is reproduced as under:--

?P.W. 3 Vandana in her testimony deposed on oath that on 22.05.09 she had called her devar Babu Lal (deceased) between 8 pm to 8.30 pm as he had not returned to house till that time, who informed her that he would return to home by 10 or 10.30 pm and also informed that he was present at Devika Security Services office at 550, Chirag Delhi with his friends namely Hemant, Praveen, Adarsh and Nek Ram.

P.W. 6 Chote Lal in this regard deposed on oath that on 22.05.09, his brother had left for his office and did not return back till 10 pm. At around 10 pm, when he reached back his home, his wife told him that Babu Lal would come around 11 pm and would take dinner and also stated that we may take dinner. His wife further told him that around 8.30 pm, she had called Babu Lal and Babu Lal had told her that he was sitting at Devika Security office with Adarsh, Hemant, Praveen and Nek Ram.

Thus, both these witnesses tried to make out a case that at 8.30 pm, deceased had told them that he was with Adarsh, Hemant, Praveen and Nek Ram at office of Devika Security Services. However, this part of the testimony becomes doubtful in view of the fact that firstly in DD No. 31A recorded at P.S. Kalkaji at around 2.40 pm, it was merely informed from telephone number 9899766882, which is telephone number of P.W. 6 Chote Lal, as reflected in his own testimony, that Babu Lal @ Mukul aged 23 years who had started from Nehru Place at 8.30 pm has not reached home. Beside this, P.W. 6 in his statement Ex. P.W. 6/H recorded by ASI Gopi Chand simply stated that his wife Vandana (PW3) called

Babu Lal to enquired at around 8.30 pm on which Babu Lal told that he is in Chirag Delhi and would come back at around 10 pm. In both these versions of PW6 Chote Lal, there is no mention of deceased being present along with accused persons. It is also pertinent to mention here that this part of the testimony is only regarding the fact that deceased had told that he was with the accused persons before the death. There is no evidence led by the prosecution to the fact that deceased was seen with the accused persons before his death. I consider that non mentioning of the accused persons in DD No. 31A, which has not been proved by the prosecution for the reasons best known to them, and in the statement Ex. P.W. 6/H, makes the version of prosecution doubtful."

16. This brings us to the testimonies of P.Ws. 2 and 4 who as per the prosecution version were eye witnesses to the occurrence, but had later resiled and turned hostile.

17. Adarsh, P.W. 2 stated before the Trial Court that on 22.5.2009 at around 7 PM, the deceased had come to his office at 550, 2nd Floor, Chirag Delhi and both of them had left for their houses at 8 PM. He claims to have gone back to his home on his bike whereas deceased also left for his home on his motorcycle. According to him no incident took place in his presence. He could learn about the death of the deceased only on the information provided by P.W. 6 on the next day.

18. Nek Ram, (P.W. 4), another eye witness also does not support the case of the prosecution and has stated that he worked as a field officer in Devika Security Services and after staying in the office till 8 PM he left for his home. He also claims to have learnt about the murder of the deceased after 2-3 days of the occurrence when he received a call from the Malviya Nagar police station. On reaching Malviya Nagar police station he found Respondent Nos. 1 and 2 present there.

19. From the deposition of the aforesaid two witnesses, who have turned hostile, the only fact which can be discerned is that the deceased was known to P.Ws. 2 and 4. P.W. 2 has also deposed as to the presence of the deceased with him at 550, 2nd Floor, Chirag Delhi on 22.5.2009 at about 7 P.M. However, the aforesaid witnesses failed to connect the respondents with the crime or depose as to their presence.

20. The prosecution, thus having failed to bolster up its case through the eyes of P.Ws. 2 and 4, relied upon other connecting links to the crime namely the recovery of fire arms on the disclosure of the Respondents; recovery of blood stained furniture from Devika Security Services, House No. 550, 2nd Floor, Chirag Delhi as well as the forensic report.

21. Be it noted that charges against the appellants were not framed under Section 25 of the Arms Act, 1959. On going through the records, it appears that an application was filed on behalf of the prosecution for framing of the charges under Section 27 of the Arms Act on the ground that no sanction was required. The Respondents have made disclosure statements (Ex. P.W. 14/A and 14/B)

stating that they had thrown the fire arm along with the used and live cartridge at a parking place near Delhi Police Public School, Safdarjung Enclave, New Delhi. The same was recovered from the place pointed out by the Respondents. Chote Lal, (P.W. 6) has attested to such seizure. No independent person has been a witness to such a seizure which apparently has been made from a public place.

22. Thus in the absence of any definite and categorical information as to on whose pointing out, the weapon was discovered; charges not having been framed under the Arms Act and no independent person having been a witness to such a seizure, the same cannot be taken as incriminating for any useful purpose, in the facts of the present case, elucidated below. The recovery must be connected with offence, for application of Section 27 of the Indian Evidence Act.

23. The country made pistol, which was allegedly recovered at the instance of the Respondents was put to forensic examination. The forensic report which is exhibit (Ex. P.W. 23/XI) discloses that the weapon was in a working condition. However, the independent characteristics of the lead pellets were insufficient for comparison and it could not be ascertained with exactitude whether those had been fired through the weapon which is said to have been recovered. Thus the pistol could not be connected and linked with the lead pellets recovered from the body of the deceased.

24. As has been noted above, after about three days of the finding of the dead body of the deceased, office of Devika Security Services, at House No. 550, 2nd Floor, Chirag Delhi was visited by the police authorities. The door of the office was found to be locked. There is complete blurring of evidence as to who had locked the doors or whether anybody had entered the precincts in the interregnum i.e. between 22.5.2009 and 25.5.2009, when the police party had visited that office. However, blood was found on the chairs and table in the office. The blood group of the stains found in the office and that of the deceased was found to be matching, but this by itself does not take us to any conclusions on involvement of the respondents. In case of circumstantial evidence, we have to rule out possibility of involvement of third persons. The very factum of the police finding blood stains on the furniture of Devika Security Services, House No. 550, 2nd Floor, Chirag Delhi after 3 days is a cause to suspect and creates doubts. If at all the door of the office was found to be locked on 25.5.2009, whether the evidence of the crime would have been allowed to remain there, becomes somewhat questionable. Even if we accept that the deceased Babu Lal, was murdered in the said office, the question remains as to who had murdered him.

25. It would further be relevant in this context to state that Dinesh, (P.W. 10) who is the owner and the landlord of the premises has also expressed his ignorance as to whether the Respondents were present at the time in premises of Devika Security Services, House No. 550, 2nd Floor, Chirag Delhi. He has not deposed whether the office had remained open between 22.05.2009 to 25.05.2009, and who were the visitors.

26. These surrounding circumstances, in our opinion, do not complete the chain and leave many latent wedges and chinks open in the entire prosecution version. The questions which trouble us are as to how the deceased was bundled in a bed sheet and brought to a considerable distance along with his motorcycle, without anybody noticing such a movement. Why did no one hear the gun shot and see the body being taken down? What could have been the reason for P.Ws. 3 and 6 for withholding such a vital information, namely the deceased being present at Devika Security Services, House No. 550, 2nd Floor, Chirag Delhi in the company of Respondents and P.Ws. 2 and 4 in the night of 22.5.2009, at around 8 to 8:30 p.m. in the missing report? Why did P.W. 2 and P.W. 4 not report and inform P.W. 3 and P.W. 6 about the occurrence on 25.5.2009? Only absence of such a vital information having been disseminated, one can justify the visit of the police at the suggested place of crime after three days of the finding of the dead body. Who locked the doors of Devika Security Services, House No. 550, 2nd Floor, Chirag Delhi and why was the evidence with respect to the crime left when sufficient number of hours had elapsed. The factum that the crime was committed in the said office, would be the starting point and could possibly reflect involvement of a person associated or working there, but this would not be sufficient, to implicate the respondents, unless the respondents presence at the spot is established.

27. The law with regard to circumstantial evidence is no longer *res integra*. In order to prove the case on the basis of circumstantial evidence, all the circumstances so put up must unerringly indicate towards the guilt of the accused persons and should simultaneously exclude their innocence and involvement of a third person. The latter part is equally material and should be established.

28. In *State of Himachal Pradesh Vs. Raj Kumar*, , the Supreme Court, has reiterated and reproduced the "five golden principles" of proof of a case based on circumstantial evidence. The same has been reproduced hereunder:

"9. In *Sharad Birdhichand Sarda Vs. State of Maharashtra*, , this Court laid down the five principles as regards the proof of a case based on circumstantial evidence. This Court has reiterated those principles time and again. They are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

xxx xxx xxx

(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."

29. In *Dhan Raj @ Dhand Vs. State of Haryana*, , the Supreme Court whilst setting aside a judgment and order of conviction passed by the Punjab and Haryana High Court had observed as under:

"2. The High Court in the present matters convicted the accused Appellants on the basis of circumstantial evidence by the impugned judgment. It has been well established by leading judicial precedents that where the prosecution's case is based on circumstantial evidence, only the circumstantial evidence of the highest order can satisfy the test of proof in a criminal prosecution. In order to base conviction on circumstantial evidence the circumstantial evidence put forth by the prosecution should establish a complete unbroken chain of events so that only one inference is drawn out from the same. If more than one inference can be drawn then the accused should be entitled to the benefit of doubt...."

"14. We would refer to the decision of this Court in *Madhu Vs. State of Kerala*, the facts of which are relevant in the present case. In the said case, the body of the deceased was found near her home with her ornaments on her person missing. On the basis of the information furnished by the accused recovery of the said ornaments was made. This fact coupled with the sighting of the accused near the place of crime was the basis for conviction. However, this Court reversed the conviction on the ground that said recovery and sighting of the accused near the deceased do not lead to the sole conclusion that murder was committed by the accused only. In *State of Rajasthan Vs. Talevar and Another*, also it was held that where the only evidence against the accused is recovery of stolen property, then although circumstances may indicate that theft and murder might have been committed at the same time, it is not safe to draw an inference that the person in possession of stolen property had committed murder. Also the recovery of looted articles at the instance of the accused could not be relied upon in absence of any details as to when and where such recovery was made and in absence of any confession of commission of offence by the accused. Besides, the seizure of the goods was not corroborated by any independent witness in the present case."

"17. We have noticed in *Madhu v. State of Kerala* (supra) facts of which were discussed earlier, that this Court inspite of the factum that the accused were sighted close to the place of occurrence at around the time of occurrence reversed the conviction as guilt was not established. In the present factual matrix, it is only an interested witness stating that the accused had come asking for the deceased. This factum alone does not establish guilt as no other evidence is found that they were near the Bizdipur area where the crime was committed or had visited the house of the deceased.

18. For establishing the guilt on the basis of circumstantial evidence, it is also to be taken into account that the chain of circumstantial evidence must be completed. It appears from the facts that the said chain of circumstantial evidence cannot be concluded in the manner sought to be done by the prosecution. The circumstances must be conclusive in nature. In the instant case, after analyzing the facts, it appears to us that there is a gap between the circumstances tried to be relied upon to hold the Appellants as guilty. Thus, we find many loopholes in the case of the prosecution and grounds on which the High Court has convicted the Appellant- accused.

19. We would refer to the decision of this Court in *Munish Mubar Vs. State of Haryana*, wherein Dr. Justice Chauhan has very aptly and succinctly stated the following: (SCC p. 473, para 28)

"28....The circumstantial evidence is a close companion of factual matrix, creating a fine network through which there can be no escape for the accused, primarily because the said facts, when taken as a whole, do not permit us to arrive at any other inference but one indicating the guilt of the accused." A court has to examine the entire evidence in its entirety especially in case of circumstantial evidence and ensure that the only inference drawn from the evidence is the guilt of the accused. If more than one inference can be drawn then the accused must have the benefit of doubt as it is not the court's job to assume and only when guilt beyond reasonable doubt is proved then it is fair to record conviction. In case of circumstantial evidence, each circumstance must be proved beyond reasonable doubt by independent evidence, and the circumstances so proved must form a complete chain without giving any chance of surmise or conjecture and must also be consistent with the guilt of the accused.

20. None of the circumstances relied upon by the prosecution and accepted by the High Court can be said to be the probability of the Appellants' guilt or involvement in the commission of the crime...."

30. Thus from a conspectus of the foregoing discussions, there is no scintilla of doubt that the prosecution has failed to prove its case beyond all shadow of doubts.

31. The Trial Court has taken a reasonable view. There is no substantial or compelling reasons for us to take any different view. In *Sheo Swarup and Others vs. The King-Emperor* AIR 1934 227 (Privy Council) , the Privy Council held that despite their being no limitations on the exercise of the power of the High Court in extensively reviewing the evidence on the basis of which judgment of acquittal has been passed by the Trial Court, certain basic principles are to be kept in mind while exercising such jurisdiction, viz. giving of proper weight and consideration to (1) the views of the Trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused; (3) the right of the accused to the benefit of any doubt; and (4) observing restraint in disturbing the finding

of fact arrived at by a Judge, who has observed the demeanour of witnesses at the trial. These principles have been reiterated in many subsequent decisions in *Tulsiram Kanu Vs. The State*, , *Balbir Singh Vs. State of Punjab*, , *M.G. Agarwal Vs. State of Maharashtra*, , *Khedu Mohton and Others Vs. State of Bihar*, , *Sambasivan and Others Vs. State of Kerala*, , *Bhagwan Singh and Others Vs. State of Madhya Pradesh*, and *State of Goa Vs. Sanjay Thakran and Another*, .

32. In *Chandrappa and Others Vs. State of Karnataka*, , the law in this regard as been summed up and anthologized as

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

A similar view has been expressed in *Murugesan and Others Vs. State through Inspector of Police*, .

33. We are thus of the considered opinion that no interference is required with the impugned judgment of the Trial Court. We hereby affirm and uphold the same.

34. The appeal fails and is dismissed. The bail bonds are cancelled/discharged.

35. Trial Court record be returned forthwith.