

(2023) 08 J&K CK 0050
In the Jammu And Kashmir High Court
Case No : Criminal Appeal No. 03 Of 2018

State Of Jammu And Kashmir

APPELLANT

Vs

Nazir Ahmed And Others

RESPONDENT

Date of Decision : 23-08-2023

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 109, 201, 302, 120B
Code Of Criminal Procedure, 1973 — Section 161
Evidence Act, 1872 — Section 27

Citation : (2023) 08 J&K CK 0050

Hon'ble Judges : Atul Sreedharan, J;Mohan Lal, J

Bench : Division Bench

Advocate : Prince Khanna, Sahil Bhardwaj

Final Decision : Dismissed

Judgement

Atul Sreedharan, J

1. The present appeal has been filed by the State which is aggrieved by the judgment of acquittal passed by the court of 2nd Additional Sessions Judge, Jammu in case FIR no.31/2010 for offences under Sections 302/120B/109/201 RPC.

2. The case of the prosecution is that on 04.08.2010, an information was received from a source at Police Station Bagh-E-Bahu that at Ragora Bye Pass, the dead body of a nude male is lying under a bridge (Puli) which bears injury on the head with a blood stained stone also lying on the spot. The police registered the FIR as hereinabove mentioned for the offences under Section 302 RPC and investigation commenced.

3. In the course of investigation, the IO prepared the site plan, photographed the place of occurrence and summoned the FSL team. The dead body was totally decomposed. A Tabeez (amulet) was present on the left arm of the body and a pair of plastic chappal, one leather belt which black in colour, one amulet along

with string, one torch cell, one kara of ladies, one empty beer Can and one broken tooth of the deceased were found near the body. The artifacts were seized and sealed and since the face of the deceased was mutilated because of injuries, the dead body could not have been identified. It was kept in mortuary room of GMC, Jammu for identification and publication through media was done but it could not be ascertained to which faith the deceased belonged to and after 72 hours, post mortem was conducted and though the dead body could not be identified nor its faith ascertained. The body was handed over to the Administrator Islamia, Jammu and on the direction of the District Magistrate, the same was buried. Seized material was got re-sealed by the Executive Magistrate and sent for chemical analysis to the FSL and thereafter statement of witnesses were recorded under Section 161 CrPC.

4. As per the charge sheet, during investigation, the police came to know that one Riaz Ahmed S/o Bashir Ahmed, Caste Gujjar, resident of Sidhara, who was chowkidar at Aircel Tower Sidhra, was missing since 31.07.2010 and a missing report was registered at Police Post Sidhra, a copy of which was obtained and thereafter the family members of Riaz Ahmed were informed and called to the police station and the sealed amulet, belt and chappal were opened in the presence of Magistrate and got identified by the mother of the deceased Mst. Mukhtiyaran Bibi, Maqbool Ahmed brother and Nasiran Banu, sister-in-law who had seen the seized articles stated that it belonged to Riaz Ahmed who was wearing them on the day he went missing. It is also pertinent to mention here that the mother of the deceased also said that the amulet was obtained by her from Molvi Mohd. Zubair of Jamia Masjid, Karyani Talab, Narwal and the name of the deceased was written on the amulet. The amulet was also got identified by Nazir Moulvi who stated that he had given the said amulet to Mukhtiyaran Bibi and got it resealed from Magistrate and sent for examination to the FSL.

5. Further investigation revealed that the deceased was married to one Shafiq Banu (the accused no.3 in this case) at the instance of Nazir Ahmed @ Bulla the accused no.1 and Abdul Majeed @ Gouri, residents of Sidhra against the wishes of family members of the deceased.

6. On 31.07.2010 also, the deceased and Nazir Ahmed with Abdul Majeed were present at tower (the place of work of the deceased) and thereafter the deceased went missing and therefore suspicion arose against these two persons as they along with Shafiq Banu would deter the family members of the deceased to take appropriate action for the search of the deceased. Thereafter, the accused Nazir was taken into custody and his disclosure statement under Section 27 of the Evidence Act revealed that he along with Abdul Majeed, on the instigation and instance of Mst. Shafiq Banu, took deceased in the night of 31.07.2010, in his car no. JK02AQ-5423 to Ragora and killed him and threw him below a bridge (puli), disfigured his face and head by stone, removed the clothes and the mobile phone of the deceased which was given to Parveen Kumar S/o Chaman Lal and got the same recovered. Co-accused Abdul Majeed was also arrested and on his

disclosure one purse along with passbook of J&K Bank Ltd., having photo of the deceased affixed on it along with complete address of the deceased were recovered from Ragora Nallah about 300 yards from the place of occurrence. On completion of the investigation, the charge sheet was filed against the respondents herein.

7. The allegation in the charge sheet was that Nazir Ahmed, Abdul Majeed and the deceased being members of the same community, the respondent nos.1 and 2 got the accused no.3 married to the deceased allegedly against the wishes of the family members of the deceased and though for some time conditions between the two remained cordial but thereafter A-1 and A-2 started visiting the house of the deceased in his absence and despite objections raised by the family members of the deceased, A-1 and A-2 used to visit the house of the deceased frequently. Things began to change allegedly in their life as accused Nazir Ahmed wanted to marry one Manzooran Bibi and the accused Abdul Majeed is alleged to have taken a fancy to accused no.3 Shafiqa Banu who was married to the deceased. However, it is the case of the prosecution that the deceased refused to give talaq to Shafiqa Banu and they used to even quarrel on this issue. Elsewhere in the prosecution case it has also come that the deceased was also interested in marrying Manzooran Bibi who had caught the fancy of accused Nazir Ahmed. Therefore, it is alleged that Shafiqa Banu the accused no.3 herein in conspiracy with Nazir Ahmed and Abdul Majeed killed the deceased Riaz and threw the body under the bridge.

8. The judgment of the trial court is elaborate and it has taken into consideration the statement of all the witnesses and discussed them threadbare. However, PW-1, Mukhtiyaran Bibi who is the mother of the deceased stated that on 31.07.2010, respondent Abdul Majeed came to their house and the deceased and the said respondent sat in a matador (vehicle). It is further stated by this witness that the accused Abdul Majeed told the deceased that accused Nazir is waiting for him at the tower and so at 11.30 they left for the tower on foot. Mukhtiyaran Bibi is stated to have left for the hospital immediately thereafter as her daughter was admitted there. She is stated to have returned home at 8/8.15 pm and asked accused Shafiqa about the deceased to which the respondent Shafiqa is alleged to have replied that the deceased should mend his ways or he will never return.

9. Thereafter PW-1 asked her elder son Maqbool to call the deceased who spoke to the deceased and said he was waiting for the 'oil vehicle' at the tower and would come home thereafter. He also informed him (Maqbool) that the accused Abdul Majeed and Nazir are also with him and they should not bother. However, as the deceased does not return, next morning at 10 am the witness PW-1 went to the tower where the accused Majeed and his elder brother were present who told them that the deceased had taken the vehicle and gone somewhere and would not be available for the next 5/6 days. The uncle of the deceased Nazir Ahmed and she along with brother Sultan lodged a report at Police Post Sidhra.

10. The missing report was registered on 14.08.2010 and the accused Nazir was taken to custody on 14.09.2010. The case of the prosecution is that the three respondents conspired and killed the deceased and threw him down the bridge and then using the stones smashed his head, took away his clothes in order to avoid identification disfigured the face with stones and thereafter left the body to decompose. The motive for this murder was to facilitate the marriage of the respondent no.3 to the respondent no.2. The further motive was that the respondent Abdul Majeed wanted to marry Manzooran Bibi who also caught the fancy of the deceased who wanted to marry Mazsooran Bibi as a second wife which was objected to by the respondent Shafiq Banu. The other motive is that the accused Nazir was in illicit relationship with respondent Shafiq Banu which was objected to by the deceased.

11. After having elaborately discussed the evidence, learned trial court has held that there was no evidence adduced which could prove the fact of an illicit relationship between Nazir and Shafiq and neither was any evidence produced to prove that Abdul Majeed had any kind of interest in Manzooran Bibi. Manzooran Bibi who has been examined as prosecution witness and has been declared hostile by the prosecution has stated, that she was under police pressure and was detained in the police station and threatened with involvement in the case if she did not testify the way the police wanted her to.

12. Learned counsel for the State while trying to impress upon us that the order passed was perverse has referred to statements of PW-3 Anwar Hussain and PW-4, Fiaz Mohd who are probable witnesses to last seen evidence. PW-3, Anwar Hussain says that he has seen the deceased in the car with the accused persons and therefore the prosecution insists that there was a witness to last seen.

13. Learned counsel for the State has also relied upon the statement of PW-4 Fiaz Mohd who says that he saw the respondents throwing something down the bridge. As regards PW-3 Anwar Hussain, the learned Trial Court has rightly observed two things; firstly, that the period between the last seen and the recovery of the body is too long to affirmatively hold that it was the respondents who have committed the murder. Besides, the learned trial court also observes that the witness to the so-called last seen evidence does not suggest that there was any kind of quarrel taking place between the respondents and the deceased.

As regards Fiaz Mohd's statement that he saw three respondents throwing something down the Puli, the same has rightly been disbelieved as the witness does not state the car from which the material was removed and thrown down the Puli and neither he gives the car registration number. Besides this, if what Fiaz Mohd had seen was actually true, he would have immediately informed the police about the strange occurrence of the three persons throwing an unknown substance down the Puli. The trial court has also referred to the body being shown to the A-3 where after looking at the remains she has testified that it is not that of the deceased. The trial court has also taken into consideration that as the A-3 herself was an accused and if she was indeed involved in the crime it

would be only rational for her to refuse the identification of the body. However, the IO himself has deposed before the trial court that the witnesses did not raise any suspicion when they allegedly identified the artifacts of the deceased. As regards the recovery and identification of the artifacts, the trial court has held that the identification of the amulet by the mother and the moulvi who has made the amulet may be believed but then it has held that it is trite law that merely the recovery of one of the artifacts which may be associated with the deceased only on the basis of the name written on the amulet cannot a sufficient enough material to convict the accused in a case based entirely on circumstantial evidence. It is also relevant to state here that the learned Trial court has held that PW-8 and PW-9 have stated that the artifact was not on the body but lying near it. As regards the footwear that formed the part of the identification of the body by the family members of the deceased, the learned Trial Court has held that the chappals that were recovered on the site were plastic chappals whereas what was worn by the deceased at the time he went missing were allegedly nylon chappals.

14. Besides this, the learned Trial Court has found one circumstance very very suspicious and that is the fact that the family members/witnesses never demanded the disinterring of the mortal remains of the deceased and handing over the same to the family members so that the remains may be buried in accordance with the Islamic rites. Thus, overall, the learned Trial Court has held that the identification of the body was never ascertained with an element of certainty and therefore, it cannot be said that the body recovered was indeed that of the missing person Riaz. Therefore, we are of the opinion that the case of the prosecution was extremely weak and fragile with too many missing links in the circumstances and the benefit of the same has rightly been given to the accused persons. The case against the respondents may have raised a strong suspicion against them, however, it is trite law that suspicion cannot ever take the place of proof beyond reasonable doubt. Therefore, we find that the order passed by the learned trial court is extremely well reasoned going deep into the allegations and the evidence adduced in the process of the trial and the same does not require to be interfered with by us. The appeal is, thus, dismissed.