
(2015) 04 AHC CK 0009
In the Allahabad High Court
Case No : Government Appeal No. 577 of 2015

State of Uttar Pradesh

APPELLANT

Vs

Imran

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2015) 2 ACR 2052 : (2015) 3 ALJ 798

Hon'ble Judges : Ravindra Singh, J;Raghvendra Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Raghvendra Kumar, J.—Heard learned AGA for State of U.P. and perused the record.

2. This application for granting leave to appeal has been filed against the judgment and order dated 12.11.2014 passed by learned Additional Sessions Judge, Khurja, District-Bulandshahar in Sessions Trial No. 483 of 2012 in Case Crime No. 88 of 2012 u/s. 302 IPC, P.S. Khurja, District-Bulandshahar whereby the accused Imran @ Bablu has been acquitted.

3. From perusal of judgment and record it reveals that the information of death of Sheelendra was lodged on 19.2.2012 with S.O. of the P.S. concerned by Rai Sahab, who also lodged tehriri report with police of P.S. Khurja. As per the FIR, Sheelendra was found dead on 19.2.2012 in his house in suspicious circumstances. His wife, Shalini was present in the house. Sheelendra was having injuries on his head and back. Wife of Sheelendra, Shalini was having frequent visit to Imran @ Bablu, which was being objected by the deceased. The complainant/informant Rai Sahab expressed his suspicion that Shalini committed the murder of Sheelendra, deceased. On the basis of tehriri report, chik FIR on prescribed format was executed. After that the investigation proceeded in accordance with the provisions of Code of Criminal Procedure, which culminated

into filing of police report in the shape of charge sheet against accused Shalini Singh and Imran @ Bablu.

4. The judgment reveals that Shalini Singh died during pendency of the trial and proceedings were abated against her vide order dated 24.8.2013.

5. Rai Sahab, complainant/informant has been examined as PW 1, Veer Pal has been examined as PW 2 and Smt. Satyawati has been examined as PW 3. These three witnesses are alleged to be witnesses of fact. None of the witnesses has seen the alleged incident. They have simply expressed suspicion about committing the murder of deceased by Shalini Singh and Imran @ Bablu on the assumption of accused having intimacy inter se.

6. PW 4 is witness of inquest report. He has reached the spot after receiving information about death of deceased. PW 5 is a formal witness, who has conducted post mortem examination of deceased Sheelendra and recorded five injuries in post mortem examination report, which is Ext Ka 7 and is available on record. PW 6 is a formal witness, who has proved the execution of inquest report, which is Ext Ka 5 and he has also proved the execution of report addressed to Additional S.P., which is Ext Ka 12. He has proved the execution of memo or recovery of blood stained clothes, bed sheet, mattress, cover which is Ext Ka 4, memo of recovery of blood stained weapon of assault, fokni, which is Ext Ka 3 and memo of recovery of blood stained pillow and bed sheet, which is Ext 6.

7. PW 7 Constable Suraj Singh has proved the execution of chik FIR, Ext Ka 13 and relevant entry of the G.D., Ext Ka 14 and the information Ext Ka 15.

8. PW 8 Sanjay Pandey is the I.O. Of the case, who has conducted the investigation of the case. He has proved the execution of site plan, Ext Ka 16. He has proved the site plan of recovery of blood stained pillow and bed sheet, Ext Ka 17 and the recovery memo thereof Ext Ka 6. PW 9 is subsequent I.O. He has proved the execution of charge sheet.

9. PW 1, PW 2 and PW 3 are alleged to be the witnesses of fact. None of these witnesses has seen the occurrence. Shalini, wife of deceased has been reported to be present at her residence at the time of alleged murder of Sheelendra. She is the main accused, who had named the co-accused Imran @ Bablu. She has died during pendency of the trial and the proceedings pending against her have been abated. Thus, remains the evidence of recovery of pillow and bed sheet against the accused-respondent Imran @ Bablu. If the recovery made at the instance of accused Imran @ Bablu is presumed to be true even then in absence of any other evidence, the conviction is not possible. It is a case which rests on circumstantial evidence, it is well settled that when a case rests on circumstantial evidence, such evidence must satisfy three 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 a definite tendency unerringly pointing towards the 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.

It has been held by the Apex Court in following cases:

S.D. Soni Vs. State of Gujarat, AIR 1991 SC 917 : (1991) CriLJ 330 : (1991) 2 Crimes 4 : (1991) 1 DMC 212 : (1991) 1 JT 1 : (1990) 2 SCALE 1342 : (1992) 1 SCC 567 Supp : (1990) 3 SCR 668 Supp , Padala Veera Reddy Vs. State of Andhra Pradesh and others, AIR 1990 SC 79 : (1989) 4 JT 223 : (1989) 2 SCALE 906 : (1989) 2 SCC 706 Supp : (1990) 1 UJ 137 , AIR 1976 SC Chandmal v. S. The same has been reiterated in the case of Brijlal Prasad Sinha v. State of Bihar (1998) 4 Scale 25 at 35 (SC).

10. The law regarding circumstantial evidence is more or less well settled. The Apex Court laid down the following principles:

"(a) 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 logical distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, AIR 1973 SC 2622 : (1973) CriLJ 1783 : (1973) 2 SCC 793 : (1973) SCC(Cri) 1033 : (1974) 1 SCR 489 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 divided vague conjectures from sure conclusions."

(b) 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.

(c) the circumstances should be of conclusive nature and tendency.

(d) they should exclude every possible hypothesis except the one to be proved and

(e) there must be a chain of evidence 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 Panchasheel of the proof of a case bases on circumstantial evidence."

11. In the present case none of the above mentioned principles is applicable. It is a case in which in any manner conclusion of guilt may not be drawn. The trial Court has perused the entire material available on the record. There is no misreading of the facts also and the trial Court has not taken any imaginary view. The view of the acquittal taken by the trial Court is a possible view. It does not require any interference by this Court. Therefore, leave to appeal is refused.

12. Accordingly, this application is dismissed.

Heard learned AGA for the State of U.P. and perused the lower Court record.

Since the application for granting leave to appeal against the judgment and order dated 12.11.2014 has already been dismissed today, this government appeal is also dismissed.

Let the lower Court record be sent back to the Court concerned, forthwith.