
(2015) 02 SC CK 0014
In the Supreme Court Of India
Case No : Criminal Appeal No. 1544 of 2008

Vinod	Vs	APPELLANT
State of M.P.		RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 201, 302, 34, 394, 397

Citation : (2015) 2 SCALE 390

Hon'ble Judges : Rohinton Fali Nariman, J.;Sudhansu Jyoti Mukhopadhaya, J.

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been preferred by the Appellant Vinod against the judgment dated 07.08.2006 passed by the High Court of Madhya Pradesh, Indore Bench in Criminal Appeal No. 772 of 2003. By the impugned judgment, the Division Bench of the High Court while setting aside the order of conviction and sentence in so far it relates to deceased Harivallabh, affirmed the conviction and sentence for murder of deceased Meenu, a two year old child. Confirming the conviction and sentence imposed upon the Appellant, the High Court held:

"[i] Conviction Under Section 450 Penal Code and sentence thereunder for 10 years RI.

[ii] Conviction Under Section 302/34 Penal Code relating to the murder of Meenu and sentence thereunder of Life Imprisonment and fine of Rs. 1,000-00 with direction and default of fine payment would entail 10 months separate RI.

[iii] Conviction Under Section 201/34 Penal Code and sentence thereunder of RI for 7 years.

And all substantive sentences running concurrently."

The case of the prosecution is that P.W. 1, the complainant Ms. Suman was

working as sales girl in Indira Export situated at Yeswant Niwas Road, near Rani Sati Gate, Indore. She and her husband Harivallabh had two children, a son aged four years named Shonu and daughter aged two years, named Meenu. Her husband Harivallabh was not having any regular employment and was involved with petty works. Therefore, when Shonu, who was studying in Merit school went to school and complainant Smt. Suman went to her work, Harivallabh used to stay back at home at Bhamori, Indore, and look after their two year old daughter Meenu. Based on an understanding between Smt. Suman with her neighbour, Shonu after he returned from School was being taken care of at the neighbour's residence till complainant Smt. Suman returned from work.

2. On the fateful day, that is 09.11.2001, around 9 a.m., as usual the complainant, Smt. Suman went to her work and Shonu went to the school, leaving behind Harivallabh and daughter Meenu at home. When she came back to her home at around 7.30 p.m., taking Shonu from the neighbour's home, she found that one of the doors of her first room was closed from inside and another gate was closed from outside with a chain. She entered through the same gate into the room. As she reached there, she found her husband Harivallabh lying in a pool of blood on the floor. The complainant, therefore, called for help, hearing which, Neighbour - Mantu along with his mother reached there. They all found that Harivallabh was dead and Meenu was also missing. Search for Meenu was made but in vain. The complainant Smt. Suman through the help of a passerby informed to the police about the incident. On the said information sub-inspector Vinod Dixit reached the house of the complainant and took a Dehati Nalish Ex. P/1.

3. The Station House Officer MIG Police Station, Indore - B.P.S. Parihar (PW-17) was informed telephonically about the incident. He, therefore, reached there and on the basis of Dehati Nalish (complaint/information), at the instance of the complainant, prepared spot map [Ex. P/29] at 8.40 p.m. First Information Report [Ex. P/14] was prepared and the Crime No. 954/2001 was registered at 8.50 p.m.

4. The Investigation Officer B.P.S. Parihar [PW-17], on the date of the incident at 8.50 p.m. collected samples of the blood spots on the floor and also took into his possession blood strained clothes which were used for cleaning the floor and the knives placed near the wash-basin in the bathroom. Out of the three knives, one of the knives was broken and tilted. Around the dead body of deceased Harivallabh, playing cards, one plastic can and one red coloured wallet containing a visiting card of accused/appellant Vinod with the name of B.M. Rai was also found. All the above articles were seized by B.P.S. Parihar vide Ex. P/27, the Seizure Memo. At 9.10 p.m. in the presence of Panch witnesses, Panchayatnama Lash Ex. P/4 was prepared. Taking a clue from the above visiting card, at 10.05 p.m. accused/appellant Vinod was arrested by B.P.S. Parihar [PW-17] vide Ex. P/7. Soon thereafter, another accused Sandeep was also arrested.

5. Soon after the arrest, Sandeep had informed at 10.15 p.m. that the dead body of the Meenu was lying in a plastic drum in the inner room of the house of

complainant. He also gave disclosure about clothes. Following the said information, accused/appellant Vinod also disclosed to the police that the dead body of Meenu was lying there and in the presence of the Panch witnesses the said information was recorded in Ex. P/10, the memo Under Section 27 of the Indian Evidence Act, the same was prepared by Station House Officer B.P.S. Parihar. Same day at about 10.30 p.m., on the information given by Sandeep and Vinod, Meenu's dead body was taken out from the plastic drum by Vinod. The same was seized in the presence of Panch witnesses vide Ex. P/11 being prepared by B.P.S. Parihar. Then B.P.S. Parihar prepared the Panchayatnama Lash of Meenu at 10.45 p.m. after the issuance of Subpoena Form Ex. P/5 at 10.45 p.m. in the presence of Panch witnesses. Same day at 11.05 p.m. B.P.S. Parihar [PW-17] at the instance of accused/appellant Vinod, in the presence of witnesses, seized blood stained clothes of Vinod. His visiting card was also seized. Seizure Memo Ex. P/12 relating to the seizure of the above articles was prepared by B.P.S. Parihar. Thereafter at the instance of accused Sandeep, certain other articles were also recovered. At 11.30 p.m. B.P.S. Parihar prepared requisition Ex. P/31 for postmortem of the dead body of Harivallabh and requisition Ex. P/32 for the postmortem of the dead body of Meenu. The same were forwarded to Head of the Department, Forensic Science Department, M.Y. Hospital, Indore.

6. Dr. Ravindra Choudhary [PW-7] conducted the postmortem of Harivallabh and Meenu on 10.11.2001 and prepared the autopsy report, Ex. P/17 and Ex. P/18 giving opinion thereby that both died a homicidal death. The clothes taken from the dead bodies were also forwarded by him to concerned Police Station.

7. Further case of the prosecution is that on 10.11.2001, the accused Vinod also gave disclosure statement regarding Meenu's Paizeb, Kada and coins taken out from her coin collection box. His information was recorded in Ex. P/23 by B.P.S. Parihar [PW-17] in the presence of Panch witnesses. Similar information was also given by the acquitted accused Sandeep. On 12.11.2001, accused/appellant Vinod led to the discovery of above articles which were seized by B.P.S. Parihar [PW-17] in the presence of Panch witnesses preparing Ex. P/24, the Seizure Memo. Certain seizure were also effected at the instance of accused Sandeep.

8. On 13.11.2001, at the instance of accused/appellant Vinod, coins to the tune of Rs. 350/- were seized by B.P.S. Parihar vide Ex. P/16 in the presence of Panch witnesses. On 28.11.2001, vide Memo Ex. P/34, requisition for chemical examination of the relevant articles, was forwarded along with other articles. On 01.12.2001, three knives seized during the investigation were also sent for opinion vide Letter Ex. P/19 to Dr. Choudhary. Dr. Choudhary after seeing the knives, on the back of Ex. P/19 wrote his opinion that the possibility of their use in the commissioning of the crime under reference was not ruled out.

9. Complainant Smt. Sumanbai was called upon to make a test identification of Silver Kada and Silver Paizeb and Silver coin. The test identification was conducted by Munnalal Yadav [PW-12] who prepared the record of the test

identification vide Ex. P/3, the Memo once Smt. Suman identified the above articles.

10. The Appellant Vinod and other accused Sandeep were charged for offences punishable Under Sections 450, 394/397, 302 and 201 of the Indian Penal Code (hereinafter referred to as "Indian Penal Code for short). The Trial Court charged them for offences punishable Under Sections 450, 394/397, 302 and in the alternative 302/34 Indian Penal Code and also charged them for offence Under Section 201/34 Indian Penal Code. The accused persons pleaded not guilty. The case went to trial. During the trial, prosecution rested its case entirely on circumstantial evidence. No evidence was produced by accused persons.

11. The trial court by its judgment dated 08.07.2003 in Sessions case No. 48 of 2002 acquitted accused Sandeep on the ground that no circumstantial evidence was found against him except the recovery of the dead body of the Meenu at his disclosure. The accused/appellant Vinod was convicted on the basis of the following circumstantial evidence:

"(a) Before the incident, accused Vinod living in the neighbourhood, used to come to the husband of complainant Hariballabh alias Bjallu alias Balram.

(b) Immediately after the incident, a visiting card kept in a purse card was found at the place of incident near the dead body of deceased Hariballabh.

(c) After lodging the Dehati Nalisi Report and after arrest of accused Vinod, on his information, the dead body of girl Meenu was recovered from the plastic drum kept in the house of the complainant.

(d) Accused Vinod had given coins to a shopkeeper in Dewas. The above coins were recovered from the concerned shop at the instance of accused Vinod.

(e) On the clothes of accused Vinod, recovered immediately after the incident, blood group A of deceased Hariballabh alias Ballu alias Balram was found on the clothes of accused Vinod."

12. The Trial Court in view of the above circumstances, did not find Sandeep guilty and accordingly, acquitted him whereas held the accused/appellant Vinod guilty and sentenced him as shown at the outset.

13. Before the High Court, the counsel for the Appellant submitted that the court below has attached importance to the fact of Appellant's visiting terms with the deceased Harivallabh in neighbourhood and recovery of his Wallet by the side of the deceased. The Appellant was neighbour of the deceased and was also on visiting terms with him, thus that does not give rise to his criminality of conduct and is only reflective of good relations between the two. The recovery of wallet is also inconsequential since it could be an unnoticed droppage during some friendly visit of the Appellant to deceased's place previous to the incident. Having noticed aforesaid submission, the High Court observed that the aforesaid

circumstances do not invariably point to the conclusion that it was the Appellant and Appellant only who was the perpetrator of the offence and the above evidence is not incompatible with the innocence of the Appellant.

14. The High Court noticed the decision of this Court in Eradu and Others Vs. State of Hyderabad, , wherein the Court held that for proposition that it is a fundamental principle of criminal jurisprudence that circumstantial evidence should point invariably to the conclusion that it was the accused and the accused only who were the perpetrators of the offence and such evidence should be incompatible with the innocence of the accused. Thus, agreeing with the counsel for the Appellant, the Appellant Vinod was not held guilty for murder of Harivallabh and his conviction and sentence for the murder of the deceased Harivallabh was set aside.

15. However, on the basis of same set of evidence, the conviction of Appellant for murder of deceased Meenu was upheld based on circumstantial evidence as noticed above.

16. The fact that the accused Vinod was living in the neighbourhood and used to come to the house of Harivallabh, shows that he had friendly visiting terms with the deceased and it does not give a rise to his criminal conduct but is only reflective of good relations between the two, has been accepted by the High Court. Therefore, such evidence cannot be relied upon for holding Appellant guilty for the offence for murder of deceased Meenu.

17. The fact that immediately, after the incident, a visiting card and purse was found at the place of the incident near the dead body of deceased Harivallabh, was also not accepted to be a valid evidence for convicting the Appellant for the murder of deceased Harivallabh. The probability of droppage of such visiting card and purse during a previous visit cannot be refuted. On the same ground, the Appellant cannot be held guilty for the murder of deceased Meenu.

18. Insofar as the recovery of the dead body of the girl deceased Meenu from the plastic drum kept in the house of the complainant at the instance of accused/appellant is concerned, it is desirable to notice the case of the prosecution and statement of B.P.S. Parihar [PW-17]. According to the case of prosecution as disclosed by the statement of PW-17 soon after the arrest, accused Sandeep had informed at 10.15 p.m. that the dead body was lying in the plastic drum in the inner room of the House of the complainant. The disclosure statement made by the Appellant Vinod is at 22.20 hours that is 10.20 p.m. which means five minutes after the disclosure statement made by accused Sandeep. Investigation officer B.P.S. Parihar PW-17 has stated in his evidence that in presence of witnesses, both the accused persons, that is Sandeep and Appellant Vinod, had given information Under Section 27 of the Indian Evidence Act regarding recovery of the dead body of the girl Meenu from the plastic drum of 50 litres capacity. He, further stated that, pursuant to the information by both the accused persons that is Sandeep and Appellant Vinod, the dead body of the

deceased girl Meenu was recovered. In the statement of witnesses Banshilal PW-2 and Mahesh Kumar PW-16 also this fact is mentioned that on the basis of information of both the accused persons that is Sandeep and Appellant Vinod, the dead body of deceased girl Meenu was recovered. After recording the Memos Ex. P-9, P-10, at 10.30 p.m., the investigation officer has prepared Seizure Memo P-11 of the dead body of the girl Meenu. In this Memo, it is written that the Appellant Vinod had taken out the dead body of the girl Meenu from the drum which means the dead body was taken out by the Appellant Vinod in the presence of the investigating officer B.P.S. Parihar (PW-17) and other two witnesses PW-2 and 16 and the other accused Sandeep.

19. Mere discovery of the body was not accepted by the trial court to convict the accused Sandeep. Both Sandeep and Appellant Vinod been similarly placed that is, the recovery of body of deceased Meenu having been made at their disclosure, there was no occasion to acquit one accused that is Sandeep and convict the other that is the Appellant, Vinod. Apart from the aforesaid evidence, there is no other circumstantial evidence, which corroborate or link the deceased in committing offence of murder of the deceased Meenu. The circumstantial evidences as noticed by the trial court and the High Court cannot be relied upon to come to an invariably conclusion that it was the accused and the accused only that is the Appellant Vinod who was the perpetrator of the offence and such evidence is incompatible with the innocence of the accused. Both the trial court and the High Court failed to notice the aforesaid fact and erred in coming to a definite conclusion that the Appellant is guilty of the offence of murder of deceased Meenu.

20. For the reasons aforesaid, we set aside the impugned judgment dated 07.08.2006 passed by the High Court of Madhya Pradesh, Indore Bench in Criminal Appeal No. 772 of 2003, insofar it relates to conviction of Appellant Under Section 450, 302/34 and 201/34 Indian Penal Code relating to the murder of Meenu. Fine amount which forms a part of the sentence for the murder of Meenu, if paid, be refunded.

21. The Appellant in jail be released.

22. The appeal is allowed. On request, Mr. P.K. Dey, Learned Counsel, assisted the Court as Amicus Curiae on behalf of the Appellant. Appreciating the assistance, we direct the office to pay the Amicus Curiae the cost as permissible under the Rules.