

SUPREME COURT OF INDIA

Bishwa Nath Aggarwal

Vs.

Meena Gupta

(K.T. Thomas and D.P. Mohapatra JJ.)

02.02.2000

ORDER

K.T. THOMAS, J.

1. We heard learned Counsel for the appellant and also learned Counsel for the 1st respondent in extenso. Both respondents were convicted by the trial court of the offence under Section 302 read with Section 34 of I.P.C. besides offences under Sections 201 and 387 of the Code and they were sentenced to imprisonment for life in respect of the principal offence and for lesser term of imprisonment for the other offences. The appeal preferred by them was allowed by a Division Bench of the High Court of Patna, Ranchi Bench, and both accused were acquitted. The father of the victim of the homicide has filed this appeal by special leave.

2. The victim was a young boy of 7 who was strangled to death on 12.2.1978. When his parents sensed that the boy was missing from their home as he did not return home, they made frantic search for him but failed to find him out. 5 days later a ransom note was found lying inside the kitchen of the house of the appellant. The dead body of the boy was recovered from the roof of the house of second accused - Yashwant Singh 1st accused - Meena Gupta, a young lady was also arrested. Finally, the case was challenged by the police against both the accused.

3. Prosecution had only circumstances to be proved for establishing the offences charged against the accused. The trial court found that the circumstances proved were sufficient enough for holding that the murder of the boy was committed by the 2nd accused in joint concert with the first accused.

4. A statement of 1st accused - Meena Gupta was recorded by the sub-Divisional Judicial Magistrate on 21.2.1978. It was marked in the case and proved through the said Magistrate, as though it was a judicial confession. The High Court did not find any inculpatory statement therein and hence declined to act on it as a confession. We have gone through the translation of the said statement as extracted in the trial court judgment. Learned Counsel for the appellant after perusing the original of the statement submitted before us that what is extracted in the judgment is substantially correct. We cannot but agree with the conclusion of the High Court that said statement does not have even one limb of inculpatory admission so far as the maker of the statement is concerned. If it is not inculpatory then the same cannot be used against a co-accused because Section 30 of the Evidence Act permits only a confession made by one accused to be taken into consideration against the co-accused also subject to the conditions laid down in the Section.

5. Learned Counsel for the appellant submitted that barring the said statement, there are 3 other circumstances against the 2nd accused. First is that he adopted a false plea of alibi, second is that a ransom note was written in the hand- writing of 1st accused - Meena Gupta on a sheet of paper, which was torn off from a diary, which was recovered from the bed room of the 2nd accused. The third is that 2nd accused was absconding from the day the dead body was recovered from the roof of his house till the date of his arrest in May 1978.

6. Even if those circumstances can be treated as proved they are hardly sufficient to form a complete chain which would unerringly point to the guilt of the 2nd accused in the murder of the deceased.

7. As far as 1st accused is concerned the statement made by her to the Magistrate can be treated as an admission by her though not as confession. That admission is self-exculpate of her guilty involvement in the murder of the deceased. If that is a true version, the 1st accused is totally innocent of the murder of the deceased.

8. In the result, this appeal is dismissed.