SUPREME COURT OF INDIA

Raghunandan

Vs.

State of M.P.

Crl.A.No.1439 of 2004

27.08.2007

(C.K. Thakker and D.K. Jain JJ.)

JUDGMENT:

C.K. THAKKER, J.

1. This appeal is filed by the appellant-original accused No. 2 against the judgment and order of conviction dated July 2, 1991 passed by the Addl. Sessions Judge, Sidhi in Sessions Case No. 78 of 1990 and confirmed by the High Court of Madhya Pradesh, Jabalpur on July 7, 2003 in Criminal Appeal No. 812 of 1991. By these orders, both the Courts convicted the appellant for an offence punishable under Section 302 of Indian Penal Code (IPC for short) and awarded sentence of imprisonment for life and to pay a fine of Rs.1000/-, in default of payment, to suffer further rigorous imprisonment for three months.

2. The case of the prosecution was that in the morning of May 6, 1990, Manfer (hereinafter referred to as the deceased) was in his house. The appellant (original accused No.2) came to the house of the deceased and asked him that one Sakkhu (original accused No.1) was calling him. The deceased went with the appellant. Till afternoon, the deceased did not come back from the house of the appellant for taking meal. Buddhsen-PW1, son of the deceased, hence, went to the house of the appellant for calling his father. There he saw that the appellant had mounted on the chest of the deceased and Sakkhu had chopped off the neck of the deceased. Manfer died on account of assault perpetrated on him and cutting of the neck. Buddhsen raised alarm and the accused persons fled away from the place. PW2-Faguni, wife of Manfer came in search of Manfer to the house of the appellant where she found her husband lying dead. Dadua-PW3, another son of Manfer also reached there. Other persons assembled at the place of occurrence and witnessed dead body of Manfer lying in the house of the appellant with injury on his neck present. It was also the case of the prosecution that before committing murder of Manfer, accused persons had caused Manfer to consume liquor. The motive, according to the prosecution, was that Manfer had not got married his son Dadua-PW3 with the daughter of the appellant. The appellant, therefore, had animosity against Manfer due to which he, alongwith Sakkhu, caused murder of Manfer.

3. PW1-Buddhsen lodged First Information Report (FIR) (Ex.P-1) of the incident at Sidhi Police Station. A.K. Dwivedi-PW6, Town Inspector, Kotwali, Sidhi, conducted investigation, visited the place of occurrence, prepared inquest panchnama of dead body of Manfer and seized plain as well

as bloodstained earth from the place in the house of the appellant. He also seized two empty bottles of liquor and a glass. Dead body of Manfer was then sent through PW5-Constable Rajkumar Singh to hospital, Sidhi. PW7-Dr. H.P. Singh conducted the postmortem examination of the dead body and gave his report (Ex.P-12). Viscera of Manfer was also collected and sealed. Dhoti and Baniyan were taken off from the dead body of Manfer and were sealed and sent to the Police Station. The said articles were forwarded for chemical examination. Both the accused were then arrested on May 8, 1990. At the behest of Sakkhu, a knife said to have been used for commission of the crime was recovered. Seized clothes, viscera, bloodstained and plain earth, bottles and glass and knife were sent for examination to Forensic Science Laboratory, Sagar. After completion of investigation, challan was filed against the accused. The Chief Judicial Magistrate, Sidhi committed the case to the Sessions Court for trial.

4. The accused were charged for an offence punishable under Section 302 read with Section 34 IPC. Both the accused, however, denied their guilt and claimed to be tried. According to them, they were falsely implicated in the case. The appellant herein denied the fact that he had taken Manfer to his house. Accused Sakkhu asserted that having learnt about the incident, he went along with PW1-Buddhsen to lodge a report at the police station. He stated that he was watchman at jungle and did not allow Buddhsen and others to pasture their cattle in jungle. Due to that animosity, he was falsely involved in the case. According to him, he was not present in the house of the appellant and he had gone to seek his calf and subsequently he learnt about the death of Manfer. No defence witness was examined by the accused persons.

5. The trial Court, on the basis of evidence adduced by the prosecution, held that Manfer died homicidal death. The trial Court also held that from the facts and circumstances of the case, it could not be said that PW1-Buddhsen had seen the incident and he was an eye witness. Keeping in view omissions on the part of PW1-Buddhsen about certain facts in his first version and later on in his substantive evidence before the Court, the trial Court held that it could not be said that PW1-Buddhsen had witnessed the occurrence. But, considering the circumstances in their entirety, including the testimony of PW4-Pardesi who was an independent witness, the trial Court held that it was proved beyond reasonable doubt and the chain of circumstances was complete to connect the present appellant (accused No.2)s with the crime. The Court, however, held that there was no reliable evidence against co-accused Sakkhu (accused No.1). He was, therefore, ordered to be acquitted.

6. Being aggrieved by the order of conviction and sentence, the appellant herein preferred an appeal before the High Court and the High Court also confirmed the order passed by the trial Court holding that it was proved beyond doubt that the appellant had committed murder of deceased Manfer.

7. On February 9, 2004, notice was issued by this Court and thereafter on December 3, 2004, leave was granted. The matter has now been placed before us for final hearing.

8. We have heard learned counsel for the parties.

9. Learned counsel for the appellant submitted that both the Courts had committed an error in recording conviction against the appellant and in imposing sentence on him. He submitted that when the evidence of PW1-Buddhsen, who claimed himself to be an eye witness to the incident was not believed, there was no evidence worth the name on the basis of which the appellant could have been convicted. It was also submitted that when on appreciation of prosecution evidence, co-accused-

Sakkhu was acquitted, the Courts could not have convicted the appellant for the offence punishable under Section 302 IPC on the same evidence. The counsel urged that it was the case of the appellant from the beginning that he was falsely charged and since the chain of circumstances was not unbroken and intact, benefit of doubt ought to have been given to the appellant. It was, therefore, prayed that the appeal be allowed and the appellant be ordered to be acquitted.

10. The learned counsel for the State, on the other hand, supported the order of conviction and sentence recorded by the trial Court and confirmed by the High Court. He submitted that evidence of PW1-Buddhsen was not relied upon because of omission of certain facts in the FIR and in the police statement which he stated later on in his substantive evidence before the Court. But both the Courts were right in relying upon circumstantial evidence and in observing the chain of circumstances to be complete and link unbroken. So far as motive is concerned, it has come in evidence that since the deceased Manfer and his family members did not approve the act of the accused of getting his daughter married to Dadua-son of the deceased, the appellant had animosity against the deceased. He, therefore, killed Manfer. There is ample evidence to show that accused took deceased with him at his residence on the day of incident and the said fact is proved beyond reasonable doubt from the prosecution evidence of Buddhsen-PW1, Faguni-PW2, Dadua-PW3 and also PW4-Pardesi an independent witness. It was, therefore, submitted that the appeal deserves to be dismissed.

11. Having heard learned counsel for the parties, in our opinion, it cannot be said that by convicting the appellant-accused any illegality is committed either by the trial Court or by the High Court. It is true that both the Courts have held that no implicit reliance can be placed on evidence of PW1-Buddhsen-son of the deceased when he claimed to be an eye witness seeing accused Nos.1 and 2 killing the deceased. That, however, does not mean that circumstantial evidence also should be discarded. As is clear from the judgments of the Courts below, certain facts were not stated at the initial stage by PW 1 Buddhsen. The Courts, therefore, did not accept him to be an eye witness to the incident. In our opinion, however, both the Courts were right in relying upon circumstantial evidence. Such circumstances may be summarized thus:

1. There is ample evidence to show that the deceased was at his residence and it was the appellant who went to the deceased at the latters residence, told him that Sakkhu wanted him and took the deceased along with him.

2. The evidence of last seen together i.e. when the deceased was taken by the appellant at his residence. It was seen by PW1-Buddhsen, PW3- Dadua, both the sons of the deceased and PW2-Faguni, widow of the deceased.

3. PW4-Pardesi was an independent witness. He had seen accused taking Manfer at his residence. He also heard the shriek of the deceased.

4. Motive of commission of crime i.e., the appellant wanted his daughter to get married to Dadua-PW3, son of the deceased but the proposal was not approved by the deceased, PW2-Faguni, widow of the deceased and other family members.

5. Medical evidence of Dr. H.P. Singh, PW7 who had conducted post mortem examination of the deceased. Dr. Singh had proved the injuries on the person of the deceased which were responsible for the death of the deceased.

6. The most important and clinching circumstance that the dead body of deceased was lying inside the house of the appellant having serious injuries on his person.

7. No explanation has been offered by the appellant as to how the dead body of deceased came inside his house.

8. Seizure of empty bottles of liquor from the house of the appellant and the presence of liquor in the viscera of the deceased which went to support the allegation of the prosecution that initially the accused served liquor to the deceased and thereafter killed him.

12. If, on the basis of all these facts, both the Courts have come to the conclusion that it was the appellant who had caused death of Manfer at his residence, in our opinion, it cannot be said that by taking such view, any error was committed by them. We see no infirmity in the order passed by the trial Court and confirmed by the High Court.

13. For the foregoing reasons, we see no substance in this appeal filed by the appellant. We hold that the order of conviction and sentence recorded by the Sessions Court and confirmed by the High Court is legal and proper. The appeal deserves to be dismissed and is accordingly dismissed.

14. Before parting with the matter, we may observe that the trial court was not right in making certain remarks against PW1-Buddhsen, son of the deceased while not accepting his claim to be an eye witness. The Court, while negativing the assertion of the witness that he had seen the incident of killing his father by the accused observed that he had not stated in his police statement that the appellant sat on the chest of the deceased and accused Sakkhu had cut his throat with a knife. To that extent, therefore, the Court was not wrong. But the Court added that the witness had falsely concocted those facts. In our considered opinion, on the facts and in the circumstances of the case, the remarks were ill-founded, unnecessary and uncalled for and the Court was not justified in making them. All those remarks are, therefore, ordered to be deleted from the record.