

SUPREME COURT OF INDIA

Munish Mubar

Vs.

State of Haryana

CrI.A.No.294 of 2010

(B.S.Chauhan and Fakkir Mohamed Ibrahim Kalifulla,JJ.)

04.10.2012

JUDGMENT

B.S.Chauhan,J.

1. This appeal has been preferred against the impugned judgment and order dated 27.3.2008 in Criminal Appeal No. 553-DB of 2006 of the High Court of Punjab Haryana at Chandigarh, by way of which, the High Court has affirmed the judgment and order of the learned Additional Sessions Judge, Gurgaon, dated 26.4.2006, by which the appellant was convicted alongwith the co-accused, Shivani Chopra under Sections 302/34 of Indian Penal Code, 1860, (hereinafter referred to as the 'IPC'), and sentenced to undergo life imprisonment and to pay a fine of Rs.5000/- each; under Section 201 IPC, to undergo rigorous imprisonment for three years and to pay a fine of Rs.300/- each; and also under Section 120-B IPC, to undergo rigorous imprisonment for three years. In addition to this, the appellant was also convicted under Section 404 IPC, and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.200/-. However, it was ordered that all the aforementioned substantive sentences would run concurrently.

2. The facts and circumstances giving rise to this appeal are as under:

“A. On 27.12.2002 at 1.00 P.M., one Krishan Pal (PW.10), a resident of Village Bhondsi, District Gurgaon, noticed a dead body lying in a plot of land belonging to one Babu Singh. Seeing that the corpse had multiple injuries, he informed Inspector Shamsher Singh, (PW.21), who was present at the Bus Stand, Bhondsi alongwith other police personnel. Inspector Shamsher Singh, thereafter recorded the statement of Krishan Pal (Ex. PL) and reached the said land of Babu Singh. Inspector Shamsher Singh, I.O., then recovered the dead body lying there, and got

the same photographed; he also lifted from the spot, blood stained earth; a blood stained vest; a boarding card issued by Jet Airways; an almond coloured button, one blood stained hammer and a knife, and upon recovery of the same, he prepared the recovery memos. He then sent ruqa on the basis of which, an FIR was registered. An inquest report was prepared, as regards the dead body.

B. On 28.12.2002, the dead body so recovered, was identified to be that of one Ashok Jain, son of Shri Mehar Chand Jain, resident of Mehardeep, 1/9, Sarojni Road, Santa Cruz, Mumbai. On 30.12.2002, Inspector Shamsheer Singh (PW.21) obtained the details of mobile phone no. 9818082192, from the Airtel office at Okhla, New Delhi, and also collected a list of articles which the deceased had brought along with him on 4.1.2003 by Jet Airways.

C. In the course of investigation, the investigating officer took into his possession, the records related to the parking of one Santro car no. UP-32- AG-9991 on 9.1.2003, from the car parking stand of the New Delhi Airport. The investigating officer, further collected the records of hotel Suji International, Paharganj, Delhi and took the same into possession. The investigating officer also arrested Shivani Chopra - the co-accused on 10.1.2003 and recovered from her one mobile phone. The investigating officer then arrested the appellant, Munish Mubar on the same day while he was traveling in the abovementioned Santro car. He recovered from the accused another mobile phone.

D. On 11.1.2003, the appellant made a disclosure statement to the effect that he would show to the police, the place where he, along with the co-accused, had disposed of the dead body of the deceased, as also, the place where they had gotten rid of deceased's clothes. Thus, on 13.1.2003, the investigating officer got recovered the articles belonging to the deceased.

E. The investigating officer recorded the statements of a large number of persons, which revealed that there existed an illicit relationship between the appellant and co-accused Shivani Chopra, and also that, she was an employee of Ashok Kumar Jain - the deceased and was supposed to receive the deceased at the Airport, upon his arrival from Mumbai.

F. Upon conclusion of the investigation, the I.O. submitted a challan against the appellant and the co-accused Shivani Chopra, as well as one Sudhir Srivastava. On committal of the said proceedings, both the accused were charged for the aforementioned offences, and the appellant was additionally charged under Section 404 IPC. Both of them pleaded not guilty and hence, claimed trial. The co-accused Sudhir Srivastava could not be put to trial as he was absconding at the time.

G. In order to substantiate the charges against the accused, the prosecution examined 22 witnesses. The appellant also examined some witnesses in his defence and, after the conclusion of the trial, the trial court upon appreciation of the complete material and evidence on record, found the appellant as well as the co-accused Shivani Chopra, guilty of all the charges against them and imposed upon them punishment as has been described, hereinabove.

H. Aggrieved, the appellant, as well as the co-accused Shivani Chopra, filed Criminal Appeal Nos. 553-DB of 2006 and 359-DB of 2006. Both the appeals were heard and disposed of by way of common judgment dated 27.3.2008.

I. Being aggrieved, the co-accused Shivani Chopra, filed an S.L.P(Crl.) before this Court, which was dismissed in limine. The S.L.P. filed by the present appellant, however, was admitted vide order dated 8.2.2010.

Hence, this present appeal.”

3. Mrs. Kawaljit Kochar, learned counsel for the appellant, has submitted that both the courts below have erred in convicting the appellant, even though there is no evidence against him. In a case of circumstantial evidence, the issue of motive to commit the crime in question, is of paramount importance, which could not be established in the instant case. The parameters laid down by this Court for deciding such a case of circumstantial evidence, have not been applied. The recoveries relied upon by the courts below, alleged to have been made at the instance of the appellant have in fact, all been planted and the appellant has falsely been enroped into the matter, merely because he had an alleged intimate relationship with the co-accused, Shivani Chopra, who was an employee of the deceased and had allegedly also developed an intimate relationship with him. Furthermore, no independent witness has been examined so far as the recoveries are concerned. All the witnesses of recoveries are actually police personnel. Thus, the judgments of conviction passed by the courts below are liable to be set aside.

4. On the contrary, Shri Kamal Mohan Gupta, learned standing counsel appearing for the State, has vehemently opposed the appeal, contending that there is no justification for this Court to interfere with the concurrent findings of fact that have been recorded by the courts below. Of course, the present case is one of circumstantial evidence, but with respect to the same, the chain of events is complete, and every link thereof, is a pointer towards the guilt of the appellant. The appellant has failed to furnish any explanation in relation to the incriminating circumstances put to him, while recording his statement under Section 313 of Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.'). The present appeal, thus, lacks merit and is liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. The post-mortem of the dead body was conducted on 28.12.2002 by Dr. Renu Saroha, Medical Officer, General Hospital Sohna. According to the post-mortem report, the following injuries were found on the person of the deceased:

“i) Cut incised wound on scalp left side 7 cm x 1.5 cm. Spindal shaped left frontal region, bone deep. Reddish in colour. Extending from the hair line to be posteriorly. ii) Spindal shaped wound 4 cm x 1 cm left side of the frontal region.

Fracture of tempo frontal region bone. Subdural hematoma was present.

iii) Incised wound on forehead between two eye brows 6 cm x.5 cm. Obliquely situated on the nasion.

iv) Incised cut wound of the nose horizontally incising thoroughly nasal bone and cavity extending to the both side of the face maxillary region and communicating with the vertical wound as described in injury no.3 right side of cheek to left side 12 cm x .5 cm bone deep. Incising the nose completely disfiguring the face.

v) Incising cut wound on left cheek placed horizontally. Extending horizontally from the left cheek upto the base of the nose. 11 cm x 1 cm in length.

vi) Obliquely placed incised wound extending from the right eye brow merging below with wound no.4 at nasal level.

vii) Obliquely situated cut wound. Size of 7 cm x .5 cm over the left cheek crossing the wound no.5 at perpendicular.

viii) Cut wound incised of the left lower lip 4 cm x 1.2 cm Spindal shaped.

ix) Incised wound on right side starting from right angle of mouth and going posteriorly 2 cm in front of the right pinna.

x) Obliquely situated incised cut wound over to the chin 4 cm x .5 cm.

xi) Cut incised wound of 13 cm x 2 cm extending from the tragus left ear and going to interiorly midline of neck. 4 cm below the chin.

xii) Incised irregular almost spindal shaped wound over the neck. Extending from the anterior border of right crapezius muscle to the opposite left crapezius border anterior part. Cutting the voice box and major vessels of neck on left side.

xiii) Superficial cut wound on left side of the shoulder anteriorly 9 cm in size.

xiv) Cut wound on left side elbow joint front part spindal shaped. Obliquely situated cutting skin and muscle and blood vessels are exposed. 5 cm x 3 cm.

xv) Horizontal incised cut wound on right arm involving skin and muscle at the level of upper 1/3rd and lower 1/3rd. 10 cm x 2 cm spindal shaped.

xvi) Spindal shaped cut wound on right elbow joint 11 cm x 5 cm involving skin, muscle and major vessels.

xvii) Spindal shaped wound on right forearm 5 cm x 2 cm involving skin facia and muscle region at the junction of lower 1/3rd and upper 2/3rd. All the injuries were anti-mortem in nature. In the opinion of the Doctor, the cause of death was due to

haemorrhage and shock caused by the cutting of major blood vessels, as a result of injuries, which were sufficient to cause death in the ordinary course of nature. The duration of time taken to inflict such injuries was approximately 24 hours. Dr. Renu Saroha (PW.13), explained while being cross-examined, that the injuries found on the person of the deceased could have been caused by a sharp edged weapon and were the possible result of stabbing. The possibility of use of two separate weapons could not be ruled out, however, the said injuries could also have been caused using only one weapon. Therefore, it is evident from the aforesaid evidence that, the deceased was a victim of homicidal death.”

7. Chander Shekhar Jain (PW.1), testified that he had gone to identify the dead body of the deceased, but was unable to do so, owing to the fact that his face had been mutilated. The next day, he re-visited the said place, along with Mahender Jain, brother of the deceased and thoroughly examined the dead body. They then identified the same to be that of Ashok Jain.

8. Anil Garg (PW.2) deposed that Ashok Jain was a resident of the United States of America and would visit India occasionally. Shivani Chopra, the co-accused was an employee of Ashok Jain. He stated that the deceased had informed him in December, 2002, that he would be coming to Delhi on 26.12.2002 and that he would instruct him, at a later date whether or not he would be required to come to receive him from the Airport. He further gave the contact numbers (landline and mobile) of Shivani Chopra both, in Delhi and in Mumbai.

9. Bijender Kumar (PW.3), who was in-Charge of the car park at the Delhi Airport testified that on 26.12.2002, Car No.UP-32-AG 9991 remained parked at the Airport parking between 5.26 p.m. and 8.34 p.m.

10. Shambhu Chaudhary (PW.4), the Receptionist of Hotel Suji International, Paharganj, Delhi deposed that the appellant and the co-accused Shivani Chopra had stayed at his Hotel between 18-19.11.2002, and then, between 7-8.12.2002 and yet again, on 26.12.2002, this time along with one Shri Sudhir Srivastava. This witness provided proof of such stay, by producing requisite guest-log registers and further identified both the said accused in Court.

11. Naresh Kapoor (PW.9), the proprietor of Ashoka Continental Hotel, Paharganj, deposed.

that the appellant and co-accused, Shivani Chopra stayed in the said hotel on 24.12.2002, upon providing fake names and representing themselves as Munish Mathur and Shivani Mathur respectively. Their stay here was proved by producing the guest-log Register maintained for the purpose of keeping a record of guests, in the normal course of business.

12. Narain Singh (PW.11), ASI made recoveries of several articles, including cosmetic items, blood stained clothes of the appellant, a gold chain and one gold kara on 11.1.2003 and 14.1.2003 on the basis of a disclosure statement made by the appellant. The appellant and the co-accused Shivani Chopra, identified the place where the dead body was lying.

13. Inspector Shamsheer Singh (PW.21), corroborated the testimony of Narain Singh, ASI (PW.11) with respect to all material particulars. He also supported the case of the prosecution by explaining how the investigation was conducted, how he had taken readings of the said mobile phone numbers belonging to the accused persons, and therefore, concluded the said investigation.

14. Surender Mohan Jain (PW.14), brother-in-law of the deceased deposed that the deceased was a Non Resident Indian. He would however, visit India 2-3 times in a year. It came to the knowledge of the said witness that the co-accused Shivani Chopra, would receive the deceased at the Airport on the day of his arrival, on his particular visit to India. Ms. Urvashi, a niece of Ashok Jain, deceased, informed him that her father had talked to her on the mobile phone of Shivani Chopra, the co-accused before his death. He also stated that Shivani Chopra had told him that she had, in fact, gone to Airport to receive the deceased, however, he never showed up. He further deposed that, Shivani Chopra had developed illicit relations with the deceased.

15. Mahender Kumar Jain (PW.17), elder brother of the deceased corroborated the testimony of Surender Mohan Jain (PW.14), and further deposed that upon hearing the news regarding the death of the deceased, he immediately went to General Hospital on 28.12.2002, and identified the dead body of Ashok Jain. He also disclosed that at the time that Ashok Jain had left the city of Mumbai, he was carrying upon his person, jewellery, i.e., a gold chain, a pair of diamond rings, various cosmetic articles and also cash.

16. Capt. Rakesh Bakshi (PW.22), provided proof regarding the records of mobile phone numbers belonging to the accused persons. Other witnesses also deposed in support of the case of the prosecution and proved all material particulars.

17. When the appellant and the co-accused Shivani Chopra, were examined under Section 313 Cr.P.C., they denied any involvement in the said crime. The appellant explained that he was being falsely implicated in this case. He also stated that in connection with the same, he had been arrested 5 days prior to the alleged date of arrest from Lucknow, and had since such date, been illegally detained. The police had planted each of the alleged recoveries made by them. The jewellery recovered, actually belonged to him. He deposed that he did not know the deceased, Ashok Jain at all, and all alleged details of calls etc., were supported by way of fabricated documents. A similar version was given by the co-accused Shivani Chopra who stated that the deceased Ashok Jain, was in fact, her family friend. He had telephoned her father to inform him that he would visit their house

at Rohini, on 26.12.2002 but then he failed to show up. She had absolutely no intimacy with the deceased. The alleged records of phone calls etc. were untrue stories based on fabricated records. She did not, in fact, own any of the telephone numbers, as shown as part of the evidence on record.

18. The appellant also examined Samita Sinha (DW.1), and Shailender (DW.2), both of whom are sales persons at Bharti Jewellers, Mumbai and also, one Subhash, who is the proprietor of Bharti Jewellers (DW.3), to prove that the jewellery recovered, belonged to his family and not to the deceased Ashok Jain.

19. In the above backdrop, both the courts below have appreciated the entire evidence and material on record and thereafter, have convicted the appellant and the co-accused Shivani Chopra on the basis of the following circumstances:

i) The intimate relations vis-a-vis Shivani Chopra and the appellant, Munish Mubar as also between her and the deceased, Ashok Jain.

ii) Shivani Chopra had knowledge that the deceased was coming to Delhi on the evening of 26.12.2002 and she was to receive him, upon his arrival, from the Delhi Airport.

iii) Shivani Chopra falsely informed Surender Mohan Jain (PW14), that Ashok Jain had not arrived in Delhi at all, and thus, she was unable to receive him at the Airport on the said day. On all prior occasions, Anil Garg (PW2) would receive him at the Airport. iv) Car No. UP-32-AG-9991 belonging to the appellant was parked, on the evening of 26.12.2002, at precisely 17:26:21 hours in the car park of the Domestic Airport, Delhi and was taken therefrom, on the very same day, at 20:34:50 hours and within 3 hours of such taking away of the said car, the murder in question, is known to have taken place. The said car was later recovered from the possession of the appellant himself.

v) The calls made from mobile No.9818082195 at 21:26:41 hours on 26.12.2002, were routed through cell No.6572 which pertains to the Badshahpur, Gurgaon Tower, which was situated in the vicinity of the village Bhondsi, from where the dead body of Ashok Jain was recovered.

vi) The records of hotel Suji International in Paharganj, Delhi prove sufficiently that both the accused, along with one Sudhir Srivastava (since the date of incident, proclaimed absconder), stayed in the said hotel on several occasions, including the evening of 26.12.2002 between 3.40 p.m. and 11.55 p.m. The appellant Munish Mubar, and Sudhir Srivastava also stayed in hotel Ashoka Continental, Paharganj, Delhi on 24.12.2002, whereas the appellant had also stayed in the said hotel along with the co-accused Sudhir Srivastava on 25.12.2002, while representing themselves as Munish Mathur, Shivani

Mathur and Sunil Srivastava, respectively.

vii) There was sufficient motive to rob Ashok Jain of the ?valuables and getting rid of him, as the main hurdle in the love affair between the appellant and Shivani Chopra.

viii) There was telephonic communication between the accused Shivani Chopra and the deceased on the day of occurrence of the said incident and also prior thereto.

ix) There has been recovery of jewellery, cosmetic articles, a gold chain, a gold kara etc. from the appellant, on the basis of disclosure statement made by him.

x) Recovery of a torn vest, a blood stained hammer, one blood stained knife and a blood stained pair of trousers was also made, in pursuance of the disclosure statement made by the appellant on 13.1.2003.

xi) The act of absconding by the accused and ultimately the arrest of the accused on 10.1.2003.

20. Undoubtedly, in a case of circumstantial evidence, all the circumstances must be fully established and all the facts so established, must be consistent with the hypothesis regarding the guilt of the accused. The circumstances so established, should exclude every other possible hypothesis except the one sought to be proved. The circumstances must be conclusive in nature. Circumstantial evidence is a close companion of factual matrix, creating a fine network through which there can be no escape for the accused, primarily because the said facts, when taken as a whole, do not permit us to arrive at any other inference but one, indicating the guilt of the accused.

21. If the case is examined in the light of the aforesaid settled legal propositions, we are of the considered opinion that, there is nothing on record to doubt the existence of the illicit relationship of the co-accused Shivani Chopra with the deceased, Ashok Jain as also with the appellant, as this fact has been fully established from the evidence provided by several witnesses. It has further been proved that the Santro Car belonging to the appellant was parked on 26.12.2002, at the Delhi Airport for a duration of 3 hours, when the flight by which Ashok Jain (deceased) was to arrive, was scheduled to land, and the said car left after the arrival of such Jet Airways flight. The telephone call records reveal the presence of the appellant in the Bhondsi village area, i.e., the place of occurrence, at the relevant time of the incident. The recoveries in the said case, were made upon the disclosure statement of the appellant. Some of the articles found, had human blood on them and the same connects the appellant to the said crime. The appellant failed to furnish any explanation whatsoever in relation to any of the above, when examined under Section 313 Cr.P.C.

22. In a case of circumstantial evidence, motive assumes great significance and importance, for the reason that the absence of motive would put the court on its guard and cause it to scrutinize each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take the place of proof. However, the evidence regarding existence of motive which operates in the mind of an assassin is very often, not within the reach of others. The said motive, may not even be known to the victim of the crime. The motive may be known to the assassin and no one else may know what gave birth to such evil thought, in the mind of the assassin. In a case of circumstantial evidence, the evidence indicating the guilt of the accused becomes untrustworthy and unreliable, because most often it is only the perpetrator of the crime alone, who has knowledge of the circumstances that prompted him to adopt a certain course of action, leading to the commission of the crime. Therefore, if the evidence on record suggest sufficient/necessary motive to commit a crime, it may be conceived that the accused has committed the same. (See: Subedar Tewari v. State of U.P. Ors., AIR 1989 SC 733; Suresh Chandra Bahri v. State of Bihar, AIR 1994 SC 2420; and Dr. Sunil Clifford Daniel v. State of Punjab, JT 2012(8) SC 639)

23. The issue of non-examination of independent witnesses and reliance upon the deposition of police officials as “Panch witnesses” was considered at length by this Court in State, Govt. of NCT of Delhi v. Sunil Anr., (2001) 1 SCC 652, wherein this Court held as under:

“...But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth. We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.”

24. It is obligatory on the part of the accused, while being examined under Section 313 Cr.P.C. to furnish some explanation with respect to the incriminating circumstances associated with him, and the Court must take note of such explanation, even in a case of circumstantial evidence, so to decide, whether or not, the chain of circumstances is complete. The aforesaid judgment has been approved and followed in *Musheer Khan v. State of Madhya Pradesh*, (2010) 2 SCC 748. (See also: *The Transport Commissioner, A.P., Hyderabad Anr. v. S. Sardar Ali Ors.*, AIR 1983 SC 1225).

25. In view of the aforesaid discussion, it is evident that in spite of the fact that in case there is no independent witness of recoveries and panch witnesses are only police personnel, it may not affect the merits of the case. In the instant case, the defence did not ask this issue in the cross-examination to Inspector Shamsheer Singh (PW.21) as why the independent person was not made the panch witness. More so, it was the duty of the appellant to furnish some explanation in his statement under Section 313 Cr.P.C., as under what circumstances his car had been parked at the Delhi Airport and it remained there for 3 hours on the date of occurrence. More so, the call records of his telephone make it evident that he was present in the vicinity of the place of occurrence and under what circumstances recovery of incriminating material had been made on his voluntary disclosure statement. Merely making a bald statement that he was innocent and recoveries had been planted and the call records were false and fabricated documents, is not enough as none of the said allegations made by the appellant could be established. In view of the above, we do not find any force in this appeal. The appeal is therefore, dismissed accordingly.