

SUPREME COURT OF INDIA

Dharminder Singh @ Vijay Singh

Vs.

State

Crl.A.No.1614 of 2010

(P.Sathasivam CJI. and Ranjan Gogoi JJ.)

12.08.2013

JUDGMENT

RANJAN GOGOI, J.

1. Leave granted in SLP (Crl.) No. 1939 of 2011.

Each of the appellants in the appeals under consideration have been convicted under Sections 364 and 302 read with Section 34 of the Indian Penal Code by the Learned Additional Sessions Judge, Rohini, Delhi. They have been sentenced to undergo RI for 10 years for the offence under Section 364/34 IPC whereas for the offence under Section 302/34 IPC they have been sentenced to undergo RI for life. Aggrieved, appellant Dharminder Singh @ Vijay Singh had filed Crl. A. No. 603/2008 and appellant Chintu Malhotra had filed Crl. A. No. 406/2008 before the High Court of Delhi. As the said appeals have been dismissed by the common order of the High Court dated 11.05.2009 appellant Dharminder Singh @ Vijay Singh has filed Crl. A. No.1614/2010 whereas appellant Chintu Malhotra has filed the connected appeal. Both the appeals were heard together and are being disposed of by this common order.

2. The prosecution case, in short, is that on 26.08.2000 the accused- appellants alongwith two other co-accused, namely, Gyan Chand Kashyap @ Kalu and Mohd. Tayyab Alam had hired Maruti Van No. DL 3CR 1271 to go to Haridwar. The said Van was driven by deceased Krishan Kumar and was registered in the name of his son Anirudh Kumar (PW-8). According to the prosecution the four persons

including the two accused appellants were seen driving off in the vehicle with the deceased in the driver's seat by PW-4 Jitender Kumar, another son of the deceased. According to the prosecution, PW-4 was called by the deceased to Kaushik Travels to deliver fresh clothes to the deceased and at the said place he had met the accused appellants, including accused Dharminder who is a friend of his brother Anirudh. They told PW-4 that they had hired the vehicle to go to Haridwar. Though the deceased was supposed to return on the next day he did not do so and, in fact, in the morning of 27.08.2000 an un-identified dead body was recovered from beneath a bridge at a place near Haridwar. The same was later identified to be that of Krishan Kumar. According to the prosecution on 29.08.2000 at about 9.15 P.M. the vehicle in question, i.e., Maruti Van bearing Registration No. DL 3CR 1271 was intercepted at Purnia, Bihar and the accused appellants and the other two co-accused persons were apprehended from the said vehicle. The aforesaid persons were later identified by PW-4 Jitender Kumar to be the persons who had hired the vehicle on 26.08.2000 to go to Haridwar.

3. To prove and establish its case the prosecution had examined 25 witnesses and had also exhibited a large number of documents. The events leading to the death of Krishan Kumar and the apprehension of the accused having taken place at three different places, i.e., Delhi, Haridwar and Purnia at Bihar, the evidence of the prosecution may be conveniently noticed from the sequence of the events that had occurred at the aforesaid three places.

4. In so far as the hiring of the vehicle by the accused appellants to go to Haridwar is concerned, PW-4 Jitender Kumar, PW-8 Anirudh Kumar, PW-24 SI Dal Chand and PW-25 Inspector TPS Tomar would be the material witnesses. So far as recovery and identification of the dead body at Haridwar is concerned PW-11 Govind Singh Bhatuni, PW-12 Chander Kishor, PW-20 Insp. Kuldeep Singh and PW-23 SI Rajesh Kumar are the material witnesses. As regards the interception of the vehicle at Purnia and apprehension of the accused at the said place, the material witnesses are PW-5 SI Rajesh Kumar Dubey and PW-14 SI Ajit Kumar. PW-6 Mahadev Kesari and PW-7 Surinder Kumar examined in this regard had turned hostile alongwith PW-5 SI Rajesh Kumar Dubey.

Events at Delhi

5. The scrutiny of the evidence of PWs 4, 8, 24 and 25 would go to show that on 26.08.2000 sometime in the afternoon PW-4 Jitender Kumar was asked by the deceased to come to Kaushik Travels with fresh clothes as he was required to go to

Haridwar. PW-4 reached Kaushik Travels and came to know that the accused appellants and two other persons, namely, Gyan Chand Kashyap @ Kalu and Mohd. Tayyab Alam had hired the vehicle to go to Haridwar. According to PW-4 accused appellant Dharminder was known to him from before as he is a friend of his elder brother, PW-8. PW-4 further deposed that he was informed by his father (deceased Krishan Kumar) that he would return on the next day. PW-4 had made a statement to the police (Exh.-PW-4/A) on the basis of which the FIR in the case was registered. This witness had also identified the appellants and the other two co-accused on 4.11.2000/5.11.2000 after they were arrested and brought to Delhi from Purnia.

PW-8 Anirudh Kumar on the other hand deposed that he was informed on 26.08.2000 by his younger brother Jitender Kumar (PW-4) that their father had gone driving the vehicle to Haridwar with four passengers and he was to come back the next day. According to PW-8 accused Dharminder was known to him as he was his class fellow. PW-8 had further deposed that on 28.08.2000 he received a call from Purnia, Bihar about the recovery of the Maruti Van and apprehension of four persons who had informed the police that they had killed the driver of the vehicle and kept the dead body under a bridge at a place near Haridwar. According to PW-8 the voice on the telephone appeared to be that of accused Dharminder but before the same could be ascertained the telephone call was disconnected. Thereafter, he informed police station Uttam Nagar of the telephone call received by him and on receipt of the said information DD-10A was recorded at the police station.

PW-24 SI Dal Chand had initially investigated the case. According to PW-24, on 29.08.2000 on receipt of information from the police station to the PCR Van in which he was performing his duties, he went to Kaushik Travels and recorded the statement of PW-4 (Exh.PW-4/A). This witness had deposed that he went to Purnia in the night of 29.08.2000 and had moved several applications before the concerned Court at Purnia for production of the accused in the Court at Delhi. Finally, he obtained the necessary permission from the Court on 01.11.2000 whereafter the appellants and the other accused persons were produced in the Court of Metropolitan Magistrate at Delhi on 03.11.2000. PW-25 Insp. TPS Tomar had taken over the investigation of the case from PW-24 SI Dal Chand on 18.10.2000. According to this witness the appellant and other co-accused had pointed out

the place from where the vehicle was hired to go to Haridwar and that at that time the four accused were identified by PW-4.

Events at Haridwar

6. From the evidence of PW-20 Insp. Kuldeep Singh it is evident that on 27.08.2000 an information was received at Police Station Jawalapur, Haridwar to the effect that the dead body of a male person was lying beneath the bridge at Ranipur Nahar. Thereafter, PW-20 alongwith some constables, i.e., PW-18 and PW-22 had gone to the spot and found the dead body with injuries lying beneath the bridge. On completion of the requisite formalities, including post-mortem, as the dead body was lying unclaimed it was handed over to the Seva Samiti, Haridwar for cremation. From the deposition of PW-11 and 12 it transpires that the family members of the deceased had received a phone call from Bihar to the effect that the persons apprehended from the vehicle had made a statement that they had thrown the dead body under a bridge at a place near Haridwar. Therefore, PW-11 and 12 went to Haridwar and could identify the dead body from the photographs that were taken by the police before the cremation of the body. The said photographs were also subsequently identified by PW-4 and PW-8 to be that of their deceased father Krishan Kumar.

Events at Purnia, Bihar

7. PW-5, SI Rajesh Kumar Dubey, had deposed that he had apprehended a vehicle (Maruti Van Registration No. DL 3CR 1271) alongwith four persons traveling therein for over speeding and refusing to stop when signaled by the patrolling party. He had registered FIR No. 330/2000 under Section 413/414 IPC at PS Kajanchi Hatt in this regard. PW-5, however, failed to identify the accused as the persons who were apprehended by him. He was, therefore, declared hostile. PW-6 and PW-7, in whose presence the accused appellants were apprehended had also turned hostile. PW-14, SI Ajit Kumar, who alongwith PW-5 was as a member of the patrolling party had, however, supported the prosecution version. PW-24 SI Dal Chand in his deposition had given details of the several attempts made by him to secure an order from the Court at Bihar to ensure the presence of the accused before the court at Delhi and the fact that it is eventually on 3.11.2000 that the accused could be produced before the court of the learned Metropolitan Magistrate at Delhi on the basis of a remand order passed by the court in Bihar.

8. Learned counsel for the appellant has vehemently argued that in the present case it would be wholly unsafe for the court to come to any conclusion adverse to the accused on the basis of the circumstances alleged by the prosecution. According to the learned counsel, none of the said circumstances have been conclusively proved. It is specifically contended that apart from PW-4, who is the son of the deceased, there is no other witness who had testified on the most vital circumstance of the case, namely, that the deceased was last seen in the company of the accused. It is contended that certain serious infirmities are inherent in the evidence of PW-4 which makes the said witness unworthy of credence. In this regard it is specifically pointed out that the FIR registered at 2.30 P.M. on 29.8.2000 must be understood to be ante-dated inasmuch as the vehicle and the accused appellants were apprehended in Purnia only at 9.15 P.M of the said day. The recovery of the dead body in no way is connected with the accused; no test identification parade was carried out and no recovery of weapons used in the alleged crime has been made by the prosecution. A large number of witnesses vital to the prosecution case had turned hostile. Therefore, according to the learned counsel, none of the circumstances alleged by the prosecution has been proved so as to disclose the involvement of the accused in the alleged crime.

9. On the other hand, learned counsel for the State has contended that the evidence of PWs 4 and 8 clearly establish that the accused appellants had hired the vehicle driven by the deceased to go to Haridwar and on the very next morning the dead body of Krishan Kumar was recovered under the bridge from a place near Haridwar. The above facts required a reasonable explanation from the accused so as to absolve them from the liability sought to be cast by the prosecution. No explanation whatsoever has been forthcoming. According to the learned counsel mere denial of the incident by the accused in their statements recorded under Section 313 CrPC will not be sufficient to exonerate them. Learned counsel has pointed out that prosecution in the present case has proved highly incriminating circumstances against the accused, namely, that they were last seen in the company of the deceased and within a span of about 18 hours thereafter the dead body of Krishan Kumar was recovered from Haridwar. Alongwith the vehicle the accused were apprehended in Purnia, Bihar. They have failed to account for the absence of the deceased; their presence in Bihar with the vehicle and the recovery of the dead body of Krishan Kumar at Haridwar. In these circumstances, according to the learned counsel for the State, there can be no doubt that it is the accused alone who are responsible for the death of deceased Krishan Kumar.

10. The prosecution case hinges on circumstantial evidence as no direct evidence of the commission of the crime is forthcoming. The test(s) that have to be applied by the court to hold a prosecution case to be proved beyond reasonable doubt on the basis of circumstantial evidence has been laid down in a plethora of judgments of this Court. In a recent pronouncement in the case of Vadlakonda Lenin Vs. State of A.P.[1] the law has been summed up in paragraph 12 which may be usefully extracted hereinbelow:-

“12. The culpability of the appellant-accused, in the absence of any direct evidence, has to be judged on the basis of the circumstances enumerated above. The principles of law governing proof of a criminal charge by circumstantial evidence would hardly require any reiteration save and except that the circumstances on which the prosecution relies must be proved beyond all reasonable doubt and such circumstances must be capable of giving rise to an inference which is inconsistent with any other hypothesis except the guilt of the accused. It is only in such an event that the conviction of the accused, on the basis of the circumstantial evidence brought by the prosecution, would be permissible in law. In this regard a reference to the “five golden principles” enunciated by this Court in Sharad Birdhichand Sarda v. State of Maharashtra [(1984) 4 SCC 116] may be recapitulated for which purpose para 153 of the judgment in the above case may be usefully extracted below:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) 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 legal distinction between ‘may be proved’ and ‘must be or should be proved’ as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra (1973 2 SCC 793) where the following observations were made:

‘19. ... 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 divides vague conjectures from sure conclusions.’

(emphasis in original)

(2) 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,

(3) the circumstances should be of a conclusive nature and tendency,

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

(5) there must be a chain of evidence so 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.”

11. Due consideration of the evidence on record makes it abundantly clear that in the present case the prosecution has proved that on 26.8.2000 at about 4.30 p.m. the appellants and two other co-accused were in the van driven by deceased Krishan Kumar and that they had hired the said van to go to Haridwar. On the next morning at about 10.00 a.m. the dead body of Krishan Kumar (subsequently identified by PWs 11 and 12 on the basis of photographs taken before the cremation) was recovered from under a bridge at a place near Haridwar. The accused appellants were apprehended along with vehicle at Purnia in Bihar on 29.08.2000. They had failed to give any explanation for their presence in Purnia and also as to what had happened to Krishan Kumar who was driving the vehicle hired by them on 26.8.2000 to go to Haridwar. In view of the very close proximity of the time between the accused and the deceased being seen together (4.30 P.M. of 26.8.2000) and the recovery of the dead body (10 A.M. of 27.8.2000) it was necessary for the accused to offer a reasonable explanation as to what had happened to the deceased Krishan Kumar with whom they had gone to Haridwar in the previous evening. The accused could not have opted to remain silent. They were duty bound to give adequate and reasonable explanation as regards the events that had taken place at Haridwar and the circumstances in which they had parted company with the deceased. In their statement recorded under Section 313 CrPC the accused while admitting that they were arrested at Purnia in Bihar had given no

explanation whatsoever as to what had happened at Haridwar and to Krishan Kumar and under what circumstances they had gone to Bihar without him.

12. Applying the law consistently laid down by this Court including the principles noticed in *Vadlakonda Lenin* (supra) to the facts of the present case, we are left with no doubt whatsoever that the circumstances proved by the prosecution, in the absence of any reasonable explanation on the part of the accused, cannot give rise to any other conclusion except that it is the accused alone who had abducted deceased Krishan Kumar and had killed him at Haridwar. We, therefore, have to conclude that the conviction of the accused appellants do not call for any interference. Accordingly, we affirm the conviction and sentence awarded by the trial court, as upheld by the High Court. Both the appeals consequently are dismissed.

[1] (2012) 12 SCC 260