SUPREME COURT OF INDIA

State of Himachal Pradesh

Vs.

Raj Kumar

Crl.A.No.413 of 2005

(Ranjana Prakash Desai and Madan B.Lokur JJ.)

17.04.2014

ORDER

1. In this appeal judgment and order dated 19/11/2004 passed by the High Court of Himachal Pradesh at Shimla in Criminal Appeal No.401 of 2002 is under challenge.

2. The respondent is the sole accused. He was tried by the Additional Sessions Judge, Una, (Himachal Pradesh) for offence punishable under Section 302 of the Indian Penal Code (the IPC). The Sessions Court convicted the respondent under Section 302 of the IPC and sentenced him to suffer life imprisonment and to pay a fine of Rs.3,000/-. In default of payment of fine, he was ordered to suffer simple imprisonment for further period of three months. The respondent preferred an appeal to the High Court. By the impugned judgment and order, the High Court set aside the order of conviction and acquitted the accused. Being aggrieved by the acquittal of the accused, the State of Himachal has approached this Court.

3. According to the prosecution, on 1/10/1998 at about 7.15 a.m., PW-7 Balbir Singh, Ward Panch and Nambardar of Halqua Bhadorkali, went to the Police Post Daulatpur and lodged daily diary report (Ex-PA) stating that at about 7.00 a.m, PW-6 Dev Raj of the same village came to his house and informed him that one Ashwani Kumar @ Pinku (the deceased) had been killed. They went to the house of Ashwani Kumar. They found the deceased lying in a pool of blood on a cot with various cut injuries on his head. PW-9 immediately rushed to the Police Post on his Scooter to lodge the

report. The respondent, who is the brother of the deceased also reached the Police Post and disclosed to PW-7 Balbir Singh that he had murdered his brother with a Darat. On the basis of daily diary report (Ex-PA), First Information Report (Ex-PW-11/A) was recorded by PW-11 HC Yog Raj, at the Police Station Gagret. Investigation was set in motion. After completion of investigation, the respondent came to be charged as aforesaid.

4. In support of its case, the prosecution examined as many as 14 witnesses. The respondent pleaded not guilty to the charge. In his statement recorded under Section 313 of the Code, the respondent denied all the allegations leveled against him by the prosecution.

5. Admittedly, the prosecution case is based on circumstantial evidence. The circumstances were enumerated by the trial court as under:

> 1) that the relationship between the deceased and the accused was not cordial due to the dispute on account of the possession of the room;
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> 2) that on the evening of 30.9.1998, there was a scuffle between the accused and the deceased;
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> 3) that the accused had made an extra judicial confession of his guilt on the morning of 1.10.1998 in presence of Balbir Singh;
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> 4) that the accused got recovered the blood stained Darat from his possession under Section 27 of the Indian Evidence Act;
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> 5) that he had handed over to the police his blood stained Pyazama and shirt to the police;
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> 6) that the accused was seen with the Darat coming out of the room of the deceased in the early morning of 1.10.1998 by his brother Naresh Kumar an Smt. Neelam Kumari;
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> 7) that the blood group of the Darat, Chadar and Pyazama of the accused was opined to be the same i.e. group B by the chemical analyst; and

8) that the shirt of the accused the khessi and pillow cover of the deceased had the blood stains of human being.

6. The trial court held that the circumstances Nos.3, 4 and 6 were not proved. Thus, the extra-judicial confession of the respondent, the alleged recovery of blood stained Darat from the respondents possession and the claim of PW-4 Naresh Kumar and PW-9 Smt. Neelam Kumari that the respondent was seen by them coming out of the room of the deceased with a Darat in the early morning of 1.10.1998 are held to be not proved.

7. Circumstances Nos.3, 4 and 6 having been held not proved, the trial court erred in convicting the respondent on the basis of the remaining circumstances. The strained relationship between the respondent and the deceased, the scuffle that had allegedly taken place between them on 30/9/1998; the alleged handing over of pyazama and shirt to the police by the respondent; same group of blood found on Darat (the recovery of which is not proved), on the Chadar found on the cot on which the deceased was lying and on pyazama of the respondent and human blood found on the khessi and pillow cover of the deceased were not, in our opinion in the facts of this case, sufficient to convict the respondent.

8. While overturning the trial courts order, the High Court held that the trial court has rightly held that the first two circumstances are proved. The High Court, however, held that strained relationship between the respondent and the deceased and a minor scuffle between the two is not sufficient to convict the respondent. The High Court confirmed the trial courts finding that circumstances Nos.3, 4 and 6 are not proved. The High Court further held that circumstances Nos.5, 7 and 8 are also not proved and the trial court was wrong in holding that they were proved. The upshot of this is that there is a concurrent finding reached by the trial court and the High Court that circumstances Nos.3, 4 and 6 have not been proved. Having carefully perused the impugned judgment and also the evidence on record, we are of the opinion that the High Court has rightly held that strained relationship and minor scuffle between the respondent and the deceased in the facts of this case is not sufficient to convict the respondent. The High Court has discussed circumstances Nos.5, 7 and 8 in detail and has rightly held them not proved. We are, therefore, of the view that no fault could be found with the impugned judgment.

9. In Sharad Birdhichand Sarda v. State of Maharashtra[1], this Court laid down the five principles as regards the proof of a case based on circumstantial evidence. This Court has reiterated those principles time and again. They are:

> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
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> xxx xxx xxx
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> (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,
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> (3) the circumstances should be of a conclusive nature and tendency,
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> (4) they should exclude every possible hypothesis except the one to be proved, and
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> (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.
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> 154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

10. In our opinion, in this case, for the reasons which we have already noted, the chain of circumstances is not so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the respondent. It is not possible to say that in all human probability the respondent was the culprit. The High Court has, therefore, rightly set aside the conviction and sentence and acquitted the respondent. Besides, while dealing with an appeal against order of acquittal, we have to be cautious. Unless the order of acquittal is perverse, it cannot be overturned. We find the impugned judgment to be well reasoned and legally sound. It is not perverse. The appeal is, therefore, liable to be dismissed and is dismissed.

[1] (1984) 4 SCC 116