SUPREME COURT OF INDIA

Dhan Raj @ Dhand

Vs.

State of Haryana

Crl.A.No.1410 of 2010

(Chandramauli Kr. Prasad and Pinaki Chandra Ghose JJ.)

09.05.2014

JUDGMENT

PINAKI CHANDRA GHOSE, J.

1. These appeals arise from the impugned judgment of the High Court of Punjab and Haryana wherein vide a common judgment dated February 26, 2010, the High Court disposed of Criminal Appeal No. 496-DB of 1999, Criminal Appeal No. 510-DB of 1999, Criminal Appeal No. 719-DB of 2009 and Criminal Revision No. 334 of 2000. The present appeals however arise out of Criminal Appeal No. 496-DB of 1999 filed by accused Dhan Raj challenging the judgment of conviction and order of sentence dated September 25 and 27, 1999 passed by the Additional Sessions Judge, Jhajjar in Sessions Case No.21 of 21.5.1997/13.08.1998 and Criminal Appeal No. 719-DB of 2009 filed by the State of Haryana against the judgment of acquittal dated February 18, 2009 passed by the Sessions Judge, Jhajjar in Session Case No.73 of 21.5.1997/17.3.2008, acquitting the accused Badal of the charges framed against him.

2. The High Court in the present matters convicted the accused appellants on the basis of circumstantial evidence by the impugned judgment. It has been well established by leading judicial precedents that where the prosecutions case is based on circumstantial evidence, only the circumstantial evidence of the highest order can satisfy the test of proof in a criminal prosecution. In order to base conviction on circumstantial evidence the circumstantial evidence put forth by the prosecution should establish a complete

unbroken chain of events so that only one inference is drawn out from the same. If more than one inference can be drawn then the accused should be entitled to the benefit of doubt.

3. In the present appeals we therefore would evaluate the case of the prosecution in terms of the evidence brought on record and the statements and discovery made in the course of investigation.

4. The case of the prosecution revealed in the first appeal (being Crl.A. No.1410 of 2010) is that the deceased Vijaypal was serving a doctor who was posted in the Dispensary of Village Kheri Jat and residing at Jhajjar. On January 24, 1997 he left for his dispensary from his home at 9.45 a.m. by a Maruti car which did not have a registration number. Sukhbir Singh (PW 13), a dispenser posted at Kheri Jat informed Harpal Singh (PW 6), brother of deceased that the dead body of Vijaypal was found in a field of village Bizidpur where Harpal Singh went with Sukhbir Singh and found the body in a side posture bearing injuries from a sharp-edged weapon. There was blood on the ground and the Maruti car was found to be missing. Harpal Singh filed an FIR and investigation was initiated. Post mortem was also performed. The wife of the deceased disclosed that the deceased had with him a briefcase and a wrist-watch when he left home. Co-accused Sanjay, while in custody of Delhi Police for a different case, made a statement about the occurrence of this case. Subsequently, his production warrants were obtained and he was arrested for the present murder on February 4, 1997. Sanjay in his disclosure statement states that Dhan Raj and Badal, the appellants herein, were associated with him in the commission of the crime and that Dhan Raj had taken away the briefcase and Badal took the wrist-watch of the deceased. Furthermore, in his statement, Sanjay disclosed that he had concealed a Kirpan along with his blood stained clothes near Sadli Road, and he got the same articles recovered as well. Dhan Raj and Badal were arrested on February 4, 1997 and recovery of briefcase and wrist-watch was effected. Subsequently, on completion of investigation, a challan was presented in the court.

5. The case of the prosecution in the second appeal is also the same. However, the accused were tried separately as the accused Badal was arrested later.

6. After perusing the material brought on record, we would narrate the facts as they appear to us. However, as the preliminary facts are the same, for conveniences sake,

they are narrated from the trial in Criminal Appeal No. 1410 of 2010 and the trial in Criminal Appeal No. 703 of 2011 will be discussed separately.

1. Vijaypal (the deceased herein) was posted as a doctor in the Kheri Jat village dispensary and he was residing at Jhajjar. As per the statement of Raj Singh (PW 15), who was the elder brother of the deceased and stayed in the deceaseds house, on January 24, 1997 at about 9.45 a.m., Dr. Vijaypal left his home for the dispensary in his Maruti car, the registration of which was awaited; that after a few minutes, the accused Sanajay, Dhan Raj and Badal in a four-wheeler reached the deceaseds home and inquired about him and disclosed their names afterwards, whereafter they immediately left towards Delhi. Later in the day, Sukhbir Singh (PW 13) a dispenser posted at Village Kheri Jat, informed Harpal Singh (PW 6), the younger brother of the deceased, and the complainant that the dead body of Vijaypal was found lying in the wheat crop bearing injuries caused by a sharp edged weapon with blood on the ground nearby and the car of the deceased was also found to be missing. On the basis of the statements of Harpal Singh, FIR No. 26 of 1997 was registered and investigation was initiated with the conduction of the post-mortem and the recording of statement of the witnesses by the Investigating Officer.

2. The statement of the wife of the deceased being PW 7 which was corroborated with the statement of Sub-Inspector Brij Pal (PW-10) revealed that the deceased also had with him a wrist watch and a briefcase when he had left his home, which were also missing. On the next day, accused Sanjay was arrested by the Delhi Police in a case under Section 411 of the Indian Penal Code arising out of FIR No. 32 of 1997 and from him, the car of the deceased (determined after the engine and chassis-number of the car were tallied) was recovered. While in custody of Delhi Police, he made a statement about the present case on January 25, 1997. In the said statement, it must be noted that he named one Rohtas as his accomplice and stated that Rohtas only took the wrist-watch and the briefcase of the deceased.

3. Subsequently, Sanjays production warrants were obtained and he was arrested by the Haryana Police on February 4, 1997 in the present case arising out of FIR No.26 of 1997 and therein he made a disclosure statement averring that appellants Dhan Raj and Badal were associated with him in the commission

of the crime and that Badal had taken away the wrist-watch of the deceased and Dhan Raj had taken away the briefcase. It must be noted that there is a discrepancy between the two statements of Sanjay.

4. Furthermore, Sanjays disclosure led to the recovery of a Kirpan concealed by him and blood-stained clothes, as specified in the statement. The blood on the Kirpan was found to be human blood by the Forensic Science Laboratory, Madhuban. It appears that the accused Dhan Raj was also arrested on February 4, 1997 and the recovery of the briefcase was effected. Accused Badal remained absent during the trial inspite of issuance of warrant of arrest and he was declared a proclaimed offender but he was arrested later and subsequently the recovery of the wrist-watch was effected. The briefcase and the wrist- watch were duly identified by Shanti Devi (PW 7) as possessions of the deceased.

5. As per the report of Dr. Rajinder Rai (PW-5), who had conducted the post-mortem of the deceaseds body, there were seven injuries found on the body, and, in his opinion, death was due to shock and haemorrhage as a result of multiple injuries which were ante mortem in nature and sufficient to cause death might have been committed by a Kirpan.

6. The investigation was completed and the challan was duly presented in court. The case was duly committed to the Court of Sessions vide order dated May 8, 1997 and charge under Section 302 of the Indian Penal Code was framed against Sanjay and under Section 302 read with Section 34 and Section 392 read with Sections 395 and 397 of the Indian Penal Code, against the two accused wherein they pleaded not guilty and sought for a trial. At this point, it is pertinent to mention that the trial of accused Badal was conducted separately as he was arrested later. In the course of the trial, twentythree witnesses were examined by the prosecution to prove its case. The statement of the appellant Dhan Raj was recorded under Section 313 of the Code of Criminal Procedure, wherein he has pleaded that he has been falsely implicated and that the Sub“Inspector has fabricated a false recovery in collusion with one Rohtas @ Maharaja who was also arrested in the matter. The case of the prosecution was based on circumstantial evidence and the trial court after hearing the parties vide judgement dated September 25, 1999 convicted and sentenced the accused Sanjay and Dhan Raj ordering imprisonment for life and a fine of Rs. 2,000/-

under Section 302 read with Section 341 of the Indian Penal Code along with rigorous imprisonment for eight years and a fine of Rs. 1,000/- each under Section 392 read with Section 397 of the Indian Penal Code and the sentences to run concurrently. Vide judgment dated February 18, 2009, the trial court acquitted the accused Badal.

7. As the accused Badal was tried separately and was acquitted in the trial, we find it pertinent to discuss the same briefly. A case under Section 302 read with Section 34 and Section 392 read with Sections 395 and 397 was made against accused Badal and the other co-accused and they were charge-sheeted by an order dated June 4, 1997. Badal was arrested (as stated in the order of the Trial Court dated February 18, 2009) on February 20, 2007 and then his trial began with the earlier witnesses in the trial of Dhan Raj and Badal being recalled and recorded against the accused Badal. He was examined under Section 313 of Cr.P.C. wherein he pleaded not guilty and claimed that he was falsely implicated and that he never made any disclosure statement and no recovery was effected from him.

8. In the said trial, the findings of the court were that the deceased was murdered in Bizidpur by several knife blows on his person while on his way to Kheri Jat. That evidence of PW1 to PW7 recorded in the earlier trial did not amount to material evidence against the accused. The statement of Shanti Devi being PW7 regarding the wrist watch of the deceased that the wrist watch recovered from Badal is the same that belonged to the deceased as the initials VPS were written on the same, does not inspire confidence; there is no corroboration of that fact and that it does not seem logical that a person will write something like this on his wrist watch. Further, it was noted that the prosecution failed to connect the accused with the recovery of the wrist watch in view of a decision of the High Court that there was no sufficient motive. The Trial Court also pointed out that the case of the prosecution that the deceased was robbed and killed on the road and his dead body was left on the road itself, is not supported by any evidence as the dead body was found in the fields and that the prosecution failed to answer how the dead body reached there. It was also noted that in the Kutcha area where the body was found no foot prints of the accused were found by the investigating agency.

9. On the basis of the aforementioned findings, the Trial Court acquitted the accused appellant and concluded that charges against the accused were not proved beyond reasonable doubt as the case of the prosecution was highly doubtful and that PW9 to PW18, who were the material witnesses, did not give any material and conclusive evidence against the accused appellant.

10. Aggrieved by the judgments of the trial court, accused appellant Dhan Raj filed Criminal Appeal No. 496-DB of 1999 and the State of Haryana filed Criminal Appeal No. 719-DB of 2009 before the High Court of Punjab and Haryana. The High Court in its impugned judgment held that the case of the prosecution is based on circumstantial evidence and that in the backdrop of the existing facts the chain of circumstantial evidence is complete and the involvement of the accused in robbery and commission of murder and robbery is established. Thus, the High Court upheld the conviction of the appellant accused Dhan Raj and convicted the appellant Badal on same grounds as those of Dhan Raj and Sanjay.

11. Aggrieved, the appellants Dhan Raj and Badal filed the present appeals and the matter came before us.

7. The High Court convicted the accused appellants and Sanjay the other co- accused on the basis of circumstantial evidence. However, we will confine ourselves only to the circumstantial evidence produced against the accused appellants. The High Court relied firstly, on the statement of the wife of the deceased Shanti Devi (PW7) wherein she stated that the deceased wore a HMT wrist watch gifted to him at the time of his marriage by her parents and was carrying a briefcase with the sticker of the initials VPS when he left his house on January 24, 1997 and that the same were missing when the body of the deceased was found in the fields. Secondly, reliance was placed on the statement of the Raj Singh (PW-15), the brother of the deceased, wherein he has stated that when he was visiting his brother the deceased on January 24, 1997 after the deceased had left the three accused came to the deceaseds house and enquired about him after disclosing their names. Thirdly, the High Court relied on disclosure statement of the co-accused Sanjay on the basis of which the blood stained clothes and the Kirpan were recovered and he had stated that Dhan Raj had taken away the briefcase and the wrist watch was taken away by Badal. Fourthly, the High Court greatly relied on the two disclosure statements of the accused-appellants on the basis

of which the recovery of the briefcase and wrist watch was made.

8. It was also noted by the High Court that the blood on the Kirpan was human blood and that injuries inflicted on the deceased might be caused by a Kirpan as per the opinion of the Doctor. While commenting on the completeness of the circumstantial evidence it was further noted that the truthfulness of the testimony of Sanjay was proved on the basis of the recovery of the car. Furthermore, it was noted that the fact that the deceased was carrying a briefcase and a wrist watch has been proved with the statement of Shanti Devi. Thus, on the basis of the above, the disclosure statements of the accused appellant and the disclosure statement of co-accused Sanjay were treated as clinching evidence proving their involvement by the High Court.

9. In order to discuss the correctness of the order of conviction, we now proceed by considering the four grounds on which the High Court relied. We would first discuss the reliance placed on the evidence given by the co-accused Sanjay. The co-accused Sanjay in the course of investigation by his confessional statement being an extra-judicial confession dated February 4, 1997 named the accused appellants as his accomplices in the murder and robbery and stated that Dhan Raj and Badal took the briefcase and wrist watch of the deceased respectively. However, in an earlier confessional statement dated January 25, 1997 made in the investigation in FIR No. 32 of 1997, Sanjay has named Rohtas as his accomplice and stated that he only took the wrist watch and the brief case and from the same confession the car of the deceased was recovered. From the later confession, the Kirpan and blood stained clothes were recovered.

10. It is well established that extra-judicial confession has been treated by this Court as weak evidence in the absence of a chain of cogent circumstances, for recording a conviction (See: Gopal Sah vs. State of Bihar[1], and Pancho vs. State of Haryana[2]). It was held in Sahadevan and Anr. vs. State of Tamil Nadu[3] that if an extra judicial confession suffers from material discrepancies or inherent improbabilities then this Court cannot base a conviction on the same. In the present case, there is an apparent discrepancy in the confession statement of Sanjay and the same is a glaring one as he has named different accomplices in the same crime in his two confessional statements. Furthermore, Sanjays confessional statements only connect him to the car and the Kirpan, his statement that the accused appellants took the wrist watch and the briefcase in the absence of other evidence except the recovery of the same does not

establish that anything beyond the fact that they may possess stolen goods. In no manner does the later statement of the co- accused supports that the accused appellants were involved in the commission of murder. In the case of Pancho vs. State of Haryana (supra) this Court did not convict the accused Pancho on the basis of the confession statement of the co-accused in the absence of other cogent evidence, inspite of the belated recovery of the alleged weapon of murder.

11. In view of the above, we are of the opinion that reliance on the extra- judicial confession of the co-accused is misplaced.

12. Owing to the later confessional statement of co-accused Sanjay, the accused appellants were arrested and subsequently on the basis of the disclosure statements of the accused appellants and corroboration by Shanti Devi (PW 7), wrist-watch and the briefcase were recovered. Owing to the interdependence of the above evidence, we will discuss the same together. The prosecution relied on the disclosure statements of the accused appellants, the subsequent recovery of the briefcase and wrist watch on the basis of the same and the statement of Shanti Devi corroborating that the recovered wrist watch and briefcase belonged to the deceased. After considering the evidence on record, we find that no proper recovery has been made in the present case. The objects which were recovered were two common articles, not holding much value and it does not seem rational that any accused would keep such incriminating items connecting themselves to a crime with them in their house. Regarding the recovery of the wrist watch from Badal and its identification by Shanti Devi PW7, we concur with the opinion of the Trial Court. The relevant extract of the judgment of the trial court is reproduced hereunder:

> She further stated that she saw the wristwatch Ex.P2 in the Police Station on 13.4.1997 and she identified the watch because alphabets VPS were written on the watch. This statement of PW7 does not inspire confidence because it does not appeal to the common sense that the wrist watch which was allegedly purchased in the year 1971 at the time of marriage of the deceased, could not carry the writing of alphabets VPS thereon uptil 1997. Otherwise also, it does not appeal to the common sense that a person would write any word on the wrist watch to connect him in this fashion. If these alphabets would have actually been written on the wrist watch, the complainant would have also mentioned this fact in the FIR because complainant was none else but the real brother of

the deceased

Furthermore, it appears to us that the recovery has not been corroborated by any proper independent evidence. Moreover, recovery of an object is not a discovery of fact, as per the decision of this Court in Mano vs. State of Tamil Nadu[4]. Recovery must be of a fact which was relevant to connect it with the commission of crime. Therefore, even if the recovery of goods is reliable then it does not indicate that the accused appellants committed the murder and the only admissible fact which can be inferred is that they are in possession of stolen goods.

13. We would refer to the decision of this Court in Madhu vs. State of Kerala[5] the facts of which are relevant in the present case. In the said case, the body of the deceased was found near her home with her ornaments on her person missing. On the basis of the information furnished by the accused recovery of the said ornaments was made. This fact coupled with the sighting of the accused near the place of crime was the basis for conviction. However, this Court reversed the conviction on the ground that said recovery and sighting of the accused near the deceased do not lead to the sole conclusion that murder was committed by the accused only. In State of Rajasthan vs. Talevar and Anr.[6] also it was held that where the only evidence against the accused is recovery of stolen property, then although circumstances may indicate that theft and murder might have been committed at the same time, it is not safe to draw an inference that the person in possession of stolen property had committed murder. Also the recovery of looted articles at the instance of the accused could not be relied upon in absence of any details as to when and where such recovery was made and in absence of any confession of commission of offence by the accused. Besides, the seizure of the goods was not corroborated by any independent witness in the present case.

14. The abovementioned circumstantial evidence was supported with the statement of Raj Singh (PW-15), that when he was visiting his brother the deceased on January 24, 1997 after the deceased had left, the three accused came to the deceaseds house and enquired about him after disclosing their names. Before discussing the admissibility of the said statement, we would refer to the landmark decision of this Court in Sharad Birdichand Sarda vs. State of Maharashtra[7] regarding circumstantial evidence, where this Court held regarding the question of the accused last seen with the

deceased held that where it is natural for the deceased to be with the accused at the material time, other possibilities must be excluded before an adverse inference can be drawn. It is evident from the above that this Court refrains from drawing adverse inferences in a factual matrix which points out toward the guilt of the accused. Thus, we will consider the statement of Raj Singh also in the same light. As per the statement of Raj Singh, the three accused had come asking for the deceased but in the absence of other corroborating evidence and independent evidence, it is not established that the accused appellants had abetted the co-accused Sanjay in the commission of the crime. Also it can be the defences case that the said statement has been added as an afterthought to strengthen the case of the prosecution. We have found no material on record which corroborated the statement of Raj Singh who is an interested witness. Furthermore, there is no other evidence which indicates or established the presence of the accused appellants near the place of commission of crime. Also, as noted by the Trial Court in the trial of Badal, no footprints were found in the surrounding Kutcha area where the body of the deceased was found.

15. We have noticed in the case of Madhu vs. State of Kerala (supra) facts of which were discussed earlier, that this Court inspite of the factum that the accused were sighted close to the place of occurrence at around the time of occurrence reversed the conviction as guilt was not established. In the present factual matrix, it is only an interested witness stating that the accused had come asking for the deceased. This factum alone does not establish guilt as no other evidence is found that they were near the Bizdipur area where the crime was committed or had visited the house of the deceased. For establishing the guilt on the basis of circumstantial evidence, it is also to be taken into account that the chain of circumstantial evidence must be completed. It appears from the facts that the said chain of circumstantial evidence cannot be concluded in the manner sought to be done by the prosecution. The circumstances must be conclusive in nature. In the instant case, after analysing the facts, it appears to us that there is a gap between the circumstances tried to be relied upon to hold the appellants as guilty.

16. Thus, we find many loopholes in the case of the prosecution and grounds on which the High Court has convicted the accused appellants. We would refer to the decision of this Court in Munish Mubar v. State of Haryana[8] wherein Dr. Justice Chauhan has very aptly and succinctly stated the following:

> The 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.
>
> A court has to examine the entire evidence in its entirety especially in case of circumstantial evidence and ensure that the only inference drawn from the evidence is the guilt of the accused. If more than one inference can be drawn then the accused must have the benefit of doubt as it is not the courts job to assume and only when guilt beyond reasonable doubt is proved then it is fair to record conviction.

17. In case of circumstantial evidence, each circumstance must be proved beyond reasonable doubt by independent evidence, and the circumstances so proved must form a complete chain without giving any chance of surmise or conjecture and must also be consistent with the guilt of the accused. None of the circumstances relied upon by the prosecution and accepted by the High Court can be said to be the probability of the appellants guilt or involvement in the commission of the crime.

18. Therefore, for the reasons recorded hereinabove, the judgment and order of the High Court is set aside; the appeals are allowed and the accused are acquitted forthwith. The appellant in Criminal Appeal No.703/2011 is already out on bail granted by this Court; the appellant in Criminal Appeal No.1410/2010 is directed to be set at liberty forthwith, if not required in any other case.

[1] (2008) 17 SCC 128
[2] (2011) 10 SCC 165
[3] (2012) 6 SCC 403
[4] (2007) 13 SCC 795
[5] (2012) 2 SCC 399
[6] (2011) 11 SCC 666
[7] (1984) 4 SCC 116
[8] (2012) 10 SCC 464