

SUPREME COURT OF INDIA

State of Himachal Pradesh

Vs.

Raj Kumar

CrI.A.No.31 of 2018

(R.Banumathi and Uday Umesh Lalit, JJ.,)

08.01.2017

JUDGMENT

R. Banumathi, J.,

SLP(CrI.)No.1204 of 2015

1. Leave granted.

2. This appeal preferred by the State challenges the judgment of the High Court of Himachal Pradesh in Criminal Appeal No.559 of 2008 acquitting the respondent under Section 302 IPC by setting aside his conviction and the sentence of life imprisonment imposed upon him by the trial court.

3. Husband of deceased Meena Devi passed away about eleven years ago prior to the incident. Meena Devi was residing with her son Jeewan Lal (PW-1), daughter Rekha Devi (PW-2) and accused Raj Kumar (brother-in-law) in the joint family house. On 23.08.2007 at 08.30 p.m., while Meena Devi was taking meal along with her family, respondent-accused came there in drunken condition and started abusing Meena Devi and her children PW-1 and PW-2 without any reason and threatened to kill them. Barfi Devi-grandmother of PW-1 who was present in the house took Jeewan Lal (PW-1) to adjoining sleeping room and bolted the room from outside. She asked Rekha Devi (PW-2) daughter of deceased to go to the house of her maternal uncle Anant Ram (PW-3). While being inside the room, PW-1 heard the cries of his mother Meena Devi and from the window saw the respondent-accused taking her mother towards the house of another accused Om Prakash. After few hours, accused opened the door and told him that his mother had run away from the house and that he should tell the same to his maternal uncle Anant Ram (PW-3). Under such threat from respondent-accused and another accused Ramesh Kumar, PW-1 told his maternal uncle (PW-3) that his mother had run away from the house. On 24.08.2007 at about 02.00 a.m., Anant Ram (PW-3) came to the house of accused. Thereafter, PW-1 and PW-3 went to Dharampur Police Station and informed the police about missing of Meena Devi. On 25.08.2007, they again went to the police station Dharampur and at about 11.00-11.30 a.m; at the time Anant Ram (PW-3)

received a phone call from Nek Ram informing that the dead body of deceased Meena Devi was found hanging from a tree at Ghat Bahu forest. Thereafter, PW-1 and PW-3 along with police party went to the spot and found that the dead body of Meena Devi was hanging from the branch of a pine tree with a plastic rope, tied around her neck. Statement of PW-1 was recorded, based on which, case in FIR No.250 of 2007 was registered under Section 302 IPC and Section 201 read with Section 34 IPC.

4. Initial investigation was conducted by Sub-Inspector of Police Sat Prakash (PW-20) and further investigation was conducted by Inspector of Police LR Thakur (PW-22). PW-22 prepared spot map, inquest and conducted further investigation. Dr. Vivek Banyal (PW-24) conducted autopsy and opined that "...death was because of haemorrhagic shock due to rupture of spleen and anti-mortem injuries suggesting gagging. Hanging was post-mortem". Accused Raj Kumar was taken to custody on 25.08.2007 and he was interrogated. Confession statement of accused was recorded on 27.08.2007 which led to the recovery of a lady shirt from the room of the house of accused Ramesh Kumar which was under construction. Upon completion of investigation, chargesheet was filed against accused Raj Kumar, Ramesh Kumar, Om Prakash and Barf Devi under Section 302 IPC and Section 201 read with Section 34 IPC.

5. To bring home the guilt of the accused, in the Sessions Court, prosecution has examined as many as twenty four witnesses and marked number of exhibits and material objects. In the questioning under Section 313 Cr.P.C., the accused denied all the incriminating circumstances and evidence and pleaded that he is innocent. The accused has not offered any explanation on the death of deceased Meena Devi.

6. Based upon the evidence of Anant Ram (PW-3) and Bhindra Devi (PW-15), the trial court held that Meena Devi suffered harassment at the hands of her brother-in-law (respondent-accused). The trial court held that Jeewan Lal (PW-1) son of the deceased had spoken about the overt act of the accused in beating the deceased and that the accused taking away Meena Devi from the house. The trial court held that no reasonable explanation was forth coming from the accused for the death of the deceased Meena Devi who was living jointly with the respondent-accused. On those findings, the trial court convicted the respondent-accused under Section 302 IPC and Section 201 IPC read with Section 34 IPC and sentenced him to undergo imprisonment for life. Other accused Ramesh Kumar and Om Prakash were acquitted. Accused Barf Devi remained absconding.

7. In the appeal preferred by the accused, the High Court observed that Jeewan Lal (PW-1) son of the deceased, while deposing as witness before the court in narrating the whole incident, had made improvements and hence, PW-1 is not a reliable witness. The High Court further held that there were bald assertions regarding dispute, but no specific motive was attributed to the accused for committing murder of the deceased Meena Devi. Observing that the case of prosecution suffers from serious infirmities, the High Court allowed the criminal appeal filed by the respondent-accused thereby setting aside the conviction and the sentence of life imprisonment imposed upon him. Being aggrieved, the State is before us.

8. We have heard the learned counsel for the parties and perused the impugned judgment and materials on record.

9. Prosecution case is based on circumstantial evidence. It is well settled that in a case based on circumstantial evidence, the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established and that those circumstances must be conclusive in nature unerringly pointing towards the guilt of the accused. Moreover all the circumstances taken cumulatively should form a complete chain and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

10. In a case, based on circumstantial evidence, the inference of guilt can be drawn only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. In *Trimukh Maroti Kirkan v. State of Maharashtra*¹, it was held as under:-

"12 The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence."

The same principle was reiterated in *State of Rajasthan v. Kashi Ram*², *Ganesh Lal v. State of Rajasthan*³, *State of Maharashtra v. Suresh*⁴ and *State of Tamil Nadu v. Rajendran*⁵.

11. After death of her husband, Meena Devi was living with her children viz. Jeewan Lal (PW-1) and Rekha Devi (PW-2) along with the accused Raj Kumar in the joint family. In their evidence, PW-1 and PW-2 clearly stated that on 23.08.2007, respondent came in drunkard condition and threatened to kill them. Jeewan Lal (PW-1) who is the son of deceased Meena Devi clearly stated that he had heard the cries of his mother and also seen accused taking his mother towards the house of accused Om Parkash. On 25.08.2007, body of Meena Devi was found hanging from a pine tree in the nearby forest. PW-24-Dr. Vivek Banyal who conducted the autopsy has clearly said that "anti-mortem injuries were caused due to gagging and hanging process of dead body was post-mortem".

12. In his evidence, Jeewan Lal (PW-1) stated that he was threatened by the accused Om Parkash to make telephonic call to his maternal uncle Anant Ram (PW-3) that Meena Devi had run away from the house and under such threat Jeewan Lal (PW-1) informed Anant Ram (PW-3) accordingly. After Anant Ram (PW-3) came to the village at 02.00 a.m. on 24.08.2007, PW-1 and PW-3 went to P.P. Dharampur and informed them about missing of Meena Devi. Meena Devi was living with her brother-in-law/accused along with her children. If Meena Devi was so missing, the natural conduct of the accused was to inform the

police and also Anant Ram (PW-3). But that was not done. In view of Section 106 of the Evidence Act, burden is cast upon the accused, being the inmate of the house to give a cogent explanation as to how Meena Devi died. No reasonable explanation is forthcoming from the accused as to why he had neither lodged the complaint nor informed the police about the missing of Meena Devi. The respondent-accused being inmate of the house cannot get away by simply keeping quiet and offering no explanation. This is a strong militating circumstance against the respondent indicating that he might be responsible for the commission of the offence.

13. The motive attributed to the accused is that he had frequently quarrelled with the deceased and also assaulted her. A dispute is also suggested pertaining to the land of one Swami who wanted to give his property solely to the deceased Meena Devi which was not acceptable to the accused. Yet another motive attributed to the accused was his greed for the fixed deposit of Rs.1,20,000/- which had become due payable to the deceased on 13.08.2007. PW-15 Bhindra Devi, sister-in-law of the deceased in her evidence had clearly stated that as and when Meena Devi visited her house, Meena Devi used to tell her about the suffering meted out to her by the accused Raj Kumar. Further, Bhindra Devi (PW-15) had clearly spoken about the motive attributed to the accused. From the evidence of PW-15, it is brought out that the accused Raj Kumar is a chronic drunkard. On previous occasion, respondent-accused had beaten Meena Devi and he had entered into compromise with Meena Devi by assuring her that he would not beat her in future. Evidence of PW-15 as to the motive attributed to the accused was not properly appreciated by the High Court.

14. Jeewan Lal (PW-1) has clearly spoken as to the attack on Meena Devi by the accused on the night of 23.08.2007 and the subsequent threat to PW-1 by the accused and one Om Prakash. The trial court which had the opportunity of seeing and observing demeanour of the witnesses held that Jeewan Lal (PW-1) is a trustworthy witness. While so, the High Court was not right in doubting the version of Jeewan Lal (PW-1) on the ground that PW-1 made improvements in his version. In his statement (Ex.P/A) dated 25.08.2007, Jeewan Lal (PW-1) did not disclose the participation qua accused Nos. 2 and 3 namely Ramesh Kumar and Om Parkash in the commission of the offence. Evidence of Jeewan Lal (PW-1) cannot be doubted simply because names of Ramesh Kumar and Om Prakash were not mentioned in his statement recorded on 25.08.2007 immediately after bringing down the hanging body of Meena Devi from the tree. The circumstances in which PW-1 was placed at that time, is to be kept in view. PW-1 was only aged nineteen years. On the night of 23.08.2007, he had heard the cries of his mother at the time when she was beaten. PW-1 and PW-3 had been searching for Meena Devi for more than twenty four hours that is from 24.08.2007 to 25.08.2007, only to find her dead. PW-1 was already threatened by accused Om Parkash to inform Anant Ram (PW-3) that Meena Devi had run away. On 25.08.2007, when PW-1's statement was recorded, he must have been in trauma and fear psychosis. In such circumstances, omission to mention the names of Om Parkash and Ramesh Kumar in his statement (Ex.P/A) does not render PW-1's evidence untrustworthy. Upon proper appreciation of the evidence, the trial court observed that evidence of PW-1 inspires confidence of the court. While so, in our view, the High Court ought not to have doubted the version of PW-1 and his credibility.

15. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to be truthful in the given circumstances of the case. Once that impression is formed, it is necessary for the court to scrutinize the evidence more particularly keeping in view the drawbacks and infirmities pointed out in the evidence and evaluate them to find out whether it is against the general tenor of the prosecution case. Jeewan Lal (PW-1) is the son of the deceased Meena Devi residing with her and the accused in the same house, and a natural witness to speak about the occurrence. Evidence of PW-1 is cogent and natural and is consistent with the prosecution case. The High Court was not right in doubting the evidence of PW-1 on the ground of alleged improvements made by Jeewan Lal (PW-1) and rejecting his evidence on the premise that there were certain improvements.

16. As pointed out by the Sessions Judge, deceased Meena Devi was last seen alive in the company of accused Raj Kumar and the accused did not satisfactorily explain the missing of deceased Meena Devi and the same is a strong militating circumstance against the accused. Meena Devi who was residing in the same house with the accused and was last seen alive with the accused, it is for him to explain how the deceased died. The accused has no reasonable explanation as to how the body of Meena Devi was found hanging from the tree. As held in Kashi Ram case, it is for the accused to explain as to what happened to the deceased. If the accused does not throw light on the fact which is within his knowledge, his failure to offer any explanation would be a strong militating circumstance against him.

17. As pointed out earlier, in his questioning under Section 313 Cr.P.C., the accused simply denied the evidence of incriminating circumstance put to him and pleaded that he is innocent. A feeble attempt was made by the defence to suggest that the deceased consumed poison and committed suicide. Viscera of deceased Meena Devi was sent to FSL Tungand. As per FSL report, no poison was detected in the viscera of the deceased. In our considered view, the trial court rightly rejected the plea suggested by the defence.

18. As pointed out earlier, in a catena of judgments, this Court held that when conviction is based on circumstantial evidence, there should not be any gap in the chain of circumstances; the accused is entitled to the benefit of doubt. In the present case, by cogent and convincing evidence, prosecution has established the circumstances:- (i) Motive (evidence of PW-15); (ii) accused beating the deceased and taking her away (Evidence of PW-1); (iii) Death of Meena Devi is homicidal (evidence of PW-24); (iv) Conduct of accused in not reporting to the police about missing of the deceased Meena Devi; and (v) Absence of explanation from the accused as to the death of the deceased. The circumstances relied upon by the prosecution are proved by cogent and reliable evidence. The circumstances cumulatively taken form a complete chain pointing out that the murder was committed by the accused and none-else.

19. In the appeal, the High Court has not properly appreciated the evidence and intrinsic worth of testimony of prosecution witnesses and the formidable circumstances established by the prosecution against the accused. The High Court entertained fanciful doubts and rejected the credible evidence of Jeewan Lal (PW-1) on slender grounds. Due to mis-appreciation of evidence, the High Court set aside the conviction and caused a miscarriage of justice.

Reasonings of the High Court for acquitting the accused are unsustainable and the impugned judgment cannot be sustained.

20. In the result, the impugned judgment is set aside and the appeal is allowed. The conviction of the respondent under Section 302 IPC and the sentence of life imprisonment imposed on him by the trial court are affirmed. The respondent shall be taken into custody to serve the remaining sentence.

Judgment Referred.

¹(2006) 10 SCC 0681

²(2006) 12SCC 0254

³(2002) 1 SCC 0731

⁴(2000) 1 SCC 0471

⁵(1999) 8 SCC 0679