

SUPREME COURT OF INDIA

Manoj Kumar

Vs.

State of Uttarakhand

CrI.A.No.2122 of 2010

(N.V.Ramana and Mohan M.Shantanagoudar,JJ.,)

05.04.2019

JUDGMENT

1. The present matter is placed before us by virtue of referral order dated 22.05.2014 wherein the following question was placed for reference before us that, “whether the 2nd FIR and the investigation in pursuance of further information thereof should be straightway quashed or should it require a scrutiny during trial of the permissible matter of prejudice, and truthfulness of the evidence collected on the basis of second FIR.”

2. But it is to be noted that, during the course of arguments counsels from both the sides admitted that, no second FIR was registered in the present case. Although the reference was made to us, to adjudicate the above question of law, basing on the submissions we can conclude that the issue of second FIR does not arise in the present matter. Therefore, we are proceeding to adjudicate the matter on merits.

3. The brief facts of the case necessary for adjudication are as follows: the accused-appellant used to stay in the same block under the complainant (PW-1) and he used to frequently visit the house of complainant (PW-1). Further he also owned a betel shop in the vicinity. On the day of incident, i.e. 24.08.1993, both the complainant and his wife left for their duties, and their daughter (hereinafter referred as ‘the deceased’) aged around 17 years, was alone at the house. Thereafter, on finding an opportunity at around 10.45 A.M., the accused-appellant entered the house and tried to establish forceful physical relations with the deceased and the same was strongly resisted by her. Thus, a physical altercation broke out between the two, wherein the accused-appellant strangled the deceased by putting the weight of his right hand on the throat of the deceased. The accused-appellant thereafter orchestrated the entire incident into a suicide, by hanging the deceased from the roof with the help of a white bedsheet. However, during this incident, two key witnesses namely Kushalpal and Vinod Kumar (PW-2), visited the house of the complainant (PW-1) for some personal work. On their call at the main-door, they were addressed by the accused-appellant who informed them that nobody was present at home and therefore, considering the accused-petitioner to be a neighbour, both the persons left the house without doubting the accused-petitioner or suspecting that anything was wrong.

4. Later that day, after returning from duty at around 12:00 noon, the complainant (P.W-1) found the dead body of his daughter hanging from the roof and informed the police about the same. But subsequently, on 26.08.1993, Vinod Kumar (PW-2), visited the house of complainant and informed him that on the day of the incident, at around 11:00 A.M., the accused-appellant came out of their house on their call and informed them that nobody was at home. Therefore, the complainant (P.W-1) approached the police on 26.08.1993 to inform them about the presence of the accused at the scene of offence. On the basis of the aforesaid information the First Information Report No. 221 was registered under Section 302 of Indian Penal Code against the accused-appellant and the search for the accused was initiated. Simultaneously, on 26.08.1993, the accused appellant had made an extra-judicial confession before Sanjay Sharma (PW-4); who in turn narrated the entire incident before the Investigating Officer. Thereafter, investigation was conducted and after completion of the same, charge sheet was filed against the accused-appellant.

5. The trial court vide its judgment dated 14.05.1997, convicted the accused for offence under Section 302 of the IPC and sentenced him to undergo life imprisonment and pay a fine of Rs. 20,000/-, in default rigorous imprisonment of 5 years. Aggrieved, the appellant approached the High Court in Criminal Appeal No.1192 of 2001, wherein the High Court upheld the order of conviction passed by the trial court and dismissed the appeal preferred by the appellant. Aggrieved, the appellant preferred the present appeal.

6. Learned counsel for the accused-appellant contended that the High Court gravely erred in convicting the accused for the aforesaid offence without any incriminating evidence against him. The counsel emphasized that the conviction was solely based on the extra-judicial confession which is not corroborated by any material evidence. Moreover, it was also contended that, it is a simple case of suicide but PW-1 with the help of the testimonies of PW-2 and PW-4 has falsely implicated the appellant as an accused and these testimonies cannot be relied on as they were created as an afterthought after a delay of 2 days. Lastly, this being a case of circumstantial evidence, the chain of circumstances does not prove the guilt of the accused.

7. Learned counsel for the respondent contended that prosecution has successfully discharged its burden by placing reliance on last seen, extra-judicial confession made by the accused, injuries on the accused, absence of accused from his house at the time of occurrence and lack of an alibi to prove his presence elsewhere and the medical evidence. The counsel therefore contends that the High Court has rightly upheld the conviction of the accused keeping in view the aforesaid chain of circumstances which proves the guilt of the accused. Therefore, the counsel pleaded that the appeal of appellant being devoid of merits should be dismissed without any indulgence.

8. Heard the learned counsels on merits. Admittedly, since there is no direct evidence, the present case is based on circumstantial evidence. Therefore, it is pertinent to focus on facts leading to the completion of the chain of circumstances which proves the guilt of the accused.

9. The trial court began its analysis of the facts by laying emphasis on the proximity of the house of the deceased and the accused so as to prove that access was highly probable considering the fact that, the accused used to live in the floor beneath that of the deceased. Admittedly, on the date of incident, the deceased was alone in the house as her parents and siblings had left for their jobs and school at around 6:30 a.m. respectively. It is in this scenario that the evidence of Vinod Kumar (P.W.2) plays a vital role, as it proves that the accused was present at the scene of the offence. Vinod Kumar (P.W.2) clearly stated that he had visited the house of the complainant (P.W.1) and called out his name, although there was no response for the first time, the accused answered the second call and informed P.W.2 that there was no one available at home. Owing to the proximity of both the families, P.W.2 left for his hometown without any suspicion. It is in this context that the evidence of complainant (P.W.1) becomes relevant so as to analyse the conduct of the accused just after the incident. P.W.1 has stated that the accused and his father were missing from their residence since the time of the offence itself and that they had not even participated in the cremation ceremony of the deceased. It was only on 27.08.1993 that the accused was apprehended by the police with the help of the secret informer.

10. Further, both the trial Court and the High Court placed reliance on the injuries found on the face of the accused. It is pertinent to note that the accused failed to provide any explanation as to how he had incurred the aforesaid injuries. Further, the injuries on the body of the deceased also indicate signs of struggle. Furthermore, the post-mortem suggests that the death of deceased was not suicidal but rather she was hanged after she had lost consciousness. All the aforesaid circumstances further substantiate the voluntary extra-judicial confession of the accused made before P.W-4. Moreover, the fact of the commission of death by hanging corroborated by the Exhibit P-12, (Panchayatnama) which notes that the deceased was hanging from the roof with the help of a bed sheet. It is noted that the Exhibit P-12, (Panchayatnama) stands proved by the Sub-Inspector (P.W.8). The extra-judicial confession of the accused, therefore, finds independent reliable corroboration from the aforesaid circumstances. (See *Ram Singh v. State of U.P.*.) In light of the aforementioned chain of events, there exists sufficient evidence on record to connect the appellant with the death of the deceased, the motive of which is apparent.

11. In the absence of any existing enmity between the accused and the witnesses there exists no ground to question the veracity of the witnesses or to raise a ground of false implication. Therefore, considering the totality of the facts and circumstances, we conclude that the chain of events has been rightly analysed by both the courts below and the same leads towards proving the culpability of the accused. (See *Prakash v. State of Rajasthan*.)

12. Therefore, after perusal of the material on record we conclude that, the appeal preferred by the accused, being devoid of any merit is liable to be dismissed. In light of the same, we uphold the order of conviction passed by the High Court.

Judgment Referred.

¹(1967) Cri LJ 0009
²(2013) 4 SCC 0668