

NON-REPORTABLE
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISIDITION
CRIMINAL APPEAL NO(s). 2059 OF 2013

STATE OF RAJASTHAN

....Appellant(s)

VERSUS

**MAHESH KUMAR @ MAHESH
DHAULPURIA & ANR.**

....Respondent(s)

WITH

CRIMINAL APPEAL NO(s). 2060 OF 2013

J U D G M E N T

Rastogi, J.

1. These appeals have been filed by the prosecution assailing the judgment of the High Court of Rajasthan dated 3rd January, 2012 acquitting the respondents charged for the offences under Sections 302, 201 read with Section 34 IPC.

2. As per case of the prosecution, on 19th October, 2002 in the morning at 12.30 p.m., the informant Abdul Haq gave a written

report that in the intervening night of 18th and 19th October, 2002, while he was sleeping in his railway quarter situated at Borkheda Culvert near the railway line, Kota at about 12.05 a.m., one Madan Bheel and Parmanand Bheel came to his quarter and woke him up and stated that the dead body of one unknown person was lying beneath the culvert at 916/8.10 km of the railway line, Kota (Rajasthan). Thereupon, he reached there and saw that dead body had injuries on its head, mouth and face. On inquiry, Smt. Saroti Bai Bheel disclosed that sometime before she woke up for urinating, she saw two-three persons coming by an auto rikshaw, who had placed the said body on the railway line and had gone away. One person who was standing there revealed that the said dead body was of Bajranglal, retired Constable. From the facts of the report made by informant Abdul Haq, the Police Station Incharge reached at the spot and found an offence under Sections 302, 201 read with Section 34 IPC. This report was sent with Shri Fazlur Rehman, Head Constable for registering a case to Police Station Nayapura, Kota.

3. Crime No. 679/02 was registered by the Head Constable and First Information Report was sent to the Police Station In-

charge. Thereafter, the investigation was done and charge-sheet was submitted against the respondents Mahesh Kumar, Dinu @ Deendayal and Bhaiya @ Devkaran in the Court of Magistrate. Learned Magistrate handed over the case to the Sessions Court, Kota from where it was transferred to the Court of Additional Sessions Judge, No. 2, Fast Track, Kota.

4. The prosecution in support thereof produced 25 witnesses and got exhibited Exhibit P-1 to P-45 in its documentary evidence. Thereafter, the statements of the respondents were recorded under Section 313 of Code of Criminal Procedure, 1973. In defence, DW-1 Rajendra Singh was produced and the statements of prosecution witnesses Pratap and Bhupendra recorded under Section 161 of Code of Criminal Procedure, 1973 were relied as Exhibit D-1 and D-2.

5. The learned Sessions Judge, based on the material available on record, held all the respondents guilty under Sections 302, 201 read with Section 34 IPC and sentenced them to undergo imprisonment for life along with fine, which came to be challenged by the respondents in Appeal under Section 374 of

the Code of Criminal Procedure, 1973 before the Division Bench of the High Court of Rajasthan, Jaipur Bench, Jaipur.

6. On appraisal of the records, the High Court in its impugned judgment dated 3rd January, 2012 recorded a finding that the chain of circumstantial evidence produced by the prosecution is very doubtful, contradictory and not reliable at all. At the same time, it was also observed that most of the prosecution witnesses were declared hostile and many important and relevant witnesses without any reason has not been produced by the prosecution.

7. Dayaram and Gulab, who identified the dead body of the deceased Bajranglal and who lifted the dead body from the railway track and kept in side have not been produced. The Samdhi of deceased Bajranglal and Brijgopal, father of PW-5 Rajeshbai were not produced. That apart, the witnesses alleging the reason for murder Surendrasingh, Ramgopal, Ramswarup, Girraj Gupta, Premchand and Shyambabu were not produced. The motive of the incident which is allegedly the illicit relation of Sulochana and respondent-Mahesh, the said Sulochana has not been produced as prosecution witness. The witnesses of Memos

Exhibit P-13, P-15, P-41, etc. Dilipsingh have not been produced. Witness Hemraj of Memos Exhibit P-30, P-35 and P-36 and witnesses Manoj, Vijay of Memo Exhibit P-41 have not been produced. Fazlur Rahman, Police Head Constable who took the written report Exhibit P-24 and gone to the Police Station and on his written report, FIR was registered, has not been produced. The aunt of Ramesh who along with PW-2 Narendra is alleged to have gone to Rajesh has not been produced. The witness of Exhibit P-20 Bharatram, Rais Mohammad, Surendrasingh and Brijgopal have not been produced. The witness Balak @ Mansingh and Imam of the Memo of Arrest of the accused Exhibit P-26, P-27, P-28 and P-32 have not been produced.

8. It has further been observed that the prosecution failed to tender any justification that all the three respondents were arrested on 19th October, 2002 at 11.30 p.m. but why proceedings of the recoveries were undertaken after gap of 3 to 10 days, i.e., on 23rd, 25th, 26th and 29th October, 2002. It has also been pointed out by the High Court that the Investigating Officer in his statement has recorded that no blood marks were found in the auto, which could not establish that the auto as

alleged was carrying the body of deceased to the railway line. PW-1 Madan Bheel and PW-4 Parmanand Bheel were declared hostile and PW-5 Smt. Rajeshbai, daughter-in-law of the deceased, in cross-examination, deposed that whatever she had told earlier with respect to the incident was hearsay and has not supported the prosecution.

9. It reveals from the record that most of the prosecution witnesses have been declared hostile and the statement of witnesses produced suffer from serious material contradictions. In the light of statements of prosecution witnesses suffering from material deficiencies, the High Court arrived at the conclusion that the circumstantial evidence produced by the prosecution appears to be doubtful, contradictory and is not safe to rely upon and acquitted the respondents from charge under Section 302, 201 IPC and released them from judicial custody under its impugned judgment dated 3rd January, 2012.

10. It is well settled that in the cases of circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all

the facts so established should be consistent only with the hypothesis of guilt of the accused. The circumstances should be of a conclusive nature and should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a complete chain of evidence as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused and none else.

11. The enunciation of law pertaining to circumstantial evidence, its relevance and decisiveness, as a proof of charge of a criminal offence, is amongst others traceable decision of this Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra** 1984(4) SCC 116. The relevant excerpts from para 153 of the decision is assuredly apposite:-

“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 & Anr. Vs. State of Maharashtra*** [(1973) 2 SCC 793 where the observations were made:

“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.”

(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.”

12. It has been further relied by this Court in ***Sujit Biswas Vs.***

State of Assam 2013(12) SCC 406 and ***Raja alias Rajinder Vs.***

State of Haryana 2015(11) SCC 43 and has been propounded

that while scrutinising the circumstantial evidence, it is the duty

of the Court to evaluate it to ensure the chain of events clearly

established and completely to rule out any reasonable likelihood

of innocence of the accused. It is true that the underlying principle whether the chain is complete or not, indeed would depend on the facts of each case emanating from the evidence and there cannot be a straitjacket formula which can be laid down for the purpose. It is always to be kept in mind that the circumstances adduced when considered collectively, must lead only to the conclusion that there cannot be a person other than the accused who alone is the perpetrator of the crime alleged and the circumstances must establish the conclusive nature consistent only with the hypothesis of the guilt of the accused.

13. On analysis of the overall fact situation, we find that the High Court in its impugned judgment has elaborately considered the circumstantial evidence which has been adduced by the prosecution and arrived to the conclusion that many important and relevant witnesses have not been produced by the prosecution on which a detailed reference has been made in para 23 of the impugned judgment which we consider it appropriate to quote:-

“23. It has also to be mentioned that in the case many important and relevant witnesses the prosecution has not produced. As has been mentioned

above that the dead body of the deceased at which place has been found, that the person who identified it has the dead body of Bajranglal there has not been produced. Dayaram and Gulab who lifted the dead body from the railway track and kept in side those Dayaram and Gulab also have not been produced. According to P.W.5 Rajeshbhai Rameshchand to her and her father gave information of the death of her father-in-law Bajranglal, this Ramesh has not been produced. The Samdhi of deceased Bajranglal and Brijgopal, father of P.W. 5 Rajeshbai have not been produced who are also the witnesses of Exhibit P.20, P.21 and P.25 Memos. According to prosecution the witnesses alleging the reason for murder Surendrasingh, Ramgopal, Ramswarup, Girraj Gupta, Premchand and Shyambabu have not been produced. The owner of the Auto Rickshaw Sobhagsingh has not been produced. The motive of the incident, which relation of Sulochana and Mahesh has been alleged that Sulochana has not been produced. The witnesses of Memos Exhibit P.13, P.15, P.41 etc. Dilipsingh has not been produced. Witness Hemraj of Memos Exhibit P.30, P.35 and P.36 an witness Manoj Vijay of Memo Exhibit P.41 have not been produced. That Fazlur Rahman Police Head Constable also has not been produced who taking written report Exhibit P.24 had gone to the police station and on this getting written the F.I.R. Exhibit P.44 and taking that had come back to S.H.O. at the site. P.W.2 Narendra taking with him the aunt of Ramesh is alleged to have gone to Rajesh. This aunt of Ramesh has not been produced. Witness Madrasi, Bhoorsingh, Shambhusingh Kaushi etc. shown in the site plan Exhibit P.25 the dead body lying have not been produced. The witness of Exhibit P.20 Bharatram, Rais Mohammad, Surendrasingh and Brijgopal have not been produced. The witness Balak @ Mansingh and Imam of the Memo of arrest of the accused Exhibit P.26, P.27, P.28 and P.32 have not been produced.”

14. After hearing learned counsel for the parties and after perusal of the impugned judgment and material of the case on record, we are of the considered view that the prosecution has

failed to complete the chain of events leaving any reasonable ground for the conclusion consistent with all human probability that the act must have been done only by the respondents.

15. We find no error being committed by the High Court in arriving to the conclusion as aforesaid noticed by us in the impugned judgment dated 3rd January, 2012.

16. Consequently, both the appeals are wholly devoid of merit and accordingly dismissed.

17. Pending application(s), if any, also stand disposed of.

.....J.
(INDIRA BANERJEE)

.....J.
(AJAY RASTOGI)

New Delhi
July 16, 2019