

CASE NO.:
Appeal (crl.) 922 of 2006

PETITIONER:
Hatti Singh

RESPONDENT:
State of Haryana

DATE OF JUDGMENT: 17/04/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

Deceased was owner of two Maruti vans. The same were used to be plied on hire. On or about 11.07.1995, he brought the vehicle bearing Registration No. DDA 3665 at the taxi stand of Hansi. It was hired by someone. He did not return thereafter. A search was made but he could not be traced. On or about 22.07.1995, Rajbir (PW-9) received an information that one Maruti van had been seen abandoned and recovered by the police. He went to the Police Station, Narnaud. It was identified to be the same vehicle which was owned by the deceased. Stains of blood were also noticed inside the Maruti van. A First Information Report was lodged by him on the same day, whereupon a case under Section 364 IPC was instituted. On the next day i.e. on 24.07.1995, a dead body was recovered from a canal. The dead body was in such a condition that it did not bear any mark of identification. An inquest was conducted. The dead body was identified by Jai Singh (PW-13) and Satbir Singh on the basis of identification of the clothes found on the person of the deceased, which were said to have been stitched by the said Satbir Singh. He had, however, not been examined. A statement was made by Ram Kishan (PW-10) before the police on 25.07.1995 alleging that the appellant and his three associates had hired the taxi of the deceased. On the next day, i.e. on 26.07.1995, Balwan Singh (PW-11) made a statement before the Investigating Officer, alleging that he was given a lift by the deceased in the said Maruti van upto Village Mundhal, in which the accused persons were also travelling.

Appellant was arrested on 29.07.1995. On his personal search, a purse belonging to the deceased was recovered. A pistol and two cartridges were also said to have been recovered. One electricity bill of the deceased as also his photograph were also allegedly recovered. He allegedly made a confession leading to recovery of the number plate of the vehicle from a well. Suresh, another accused, was also arrested and one ring of silver on which the word 'Umed' was inscribed was recovered from him.

There appears to be some controversy as to whether a pistol was also recovered from him or not. He also made a confessional statement. Appellant also made a confessional statement. Another accused Charanjit was also arrested and a watch of HMT make was recovered from him, which was also identified by Rajbir (PW-9) to be belonging to the deceased.

Upon completion of the investigation, charges under Sections 364/302/ 201 read with Section 34 IPC were framed against the appellant and the other accused persons.

The prosecution in support of its case examined as many as 20 witnesses. Whereas, other accused persons, namely, Naresh, Charanjit and Suresh were given the benefit of doubt, the appellant was convicted for the offences punishable under Sections 364/302 and 201 IPC and Section 25 of

the Arms Act. He was sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/-, for the offence punishable under Section 302 IPC, in default whereof to undergo rigorous imprisonment for a period of one year. He was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 5,000/- for commission of the offence punishable under Section 201 IPC, in default whereof to undergo rigorous imprisonment for a period of six months. He was sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine of Rs. 10,000/- for the offence punishable under Section 364 IPC, in default whereof to undergo rigorous imprisonment a period of one year,. He was also sentenced to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.5,000/- for the offence punishable under Section 25 of the Arms Act, in default whereof to undergo rigorous imprisonment for a period of 6 months,. All the sentences, however, were directed to run concurrently. An appeal preferred by the appellant herein thereagainst was dismissed by the High Court.

All the four accused were charged for commission of the same offences. The distinctive features for singling out the appellant in recording a judgment of conviction against him, while acquitting the other three accused persons, appear to be :

- (i) Recovery of pistol and cartridges as also some belongings of the deceased including his photograph and the electricity bill;
- (ii) Confession of the appellant that he had thrown the number plate of the vehicle bearing Registration No. DDA 3665 in a well and consequent recovery thereof.

Mr. Prem Malhotra, learned counsel appearing on behalf of the appellant would, in support of the appeal, submit :

- (1) The learned Trial Judge as also the High Court committed a serious error in passing the impugned judgment insofar as they failed to take into consideration the fact that recovery of the articles at the behest of the appellant was not free from doubt.
- (2) The Trial Court having disbelieved the testimony of Balwan Singh (PW-11) being wholly unreliable, there was nothing to connect the appellant with the crime on the basis of the statements of PW-10 also, whose evidence was also not free from doubt.
- (3) Identification of the dead body itself is doubtful as the colours of the clothes, on the basis whereof it was identified, as disclosed in the First Information Report, and the evidence of the Investigating Officer in his inquest report, are different.

The learned counsel appearing on behalf of the State, on the other hand, would submit that as from the evidence of PW-10, it would appear that the deceased was last seen with the appellant as also in view of recovery of articles belonging to the deceased and the number plate of the vehicle from him, all the links in the chain to point out the guilt only to the accused, must be held to have been completed.. Strong reliance, in this behalf, has been placed on State of Rajasthan v. Kashi Ram [2006 (11) SCALE 440].

The entire prosecution case apart from the recovery is based on the evidences of the complainant (PW-9), Ram Kishan (PW-10) and Balwan Singh (PW-11). As the testimony of Balwan Singh has been found to be unreliable by the learned Trial Judge, we need not take the same into consideration.

Before, however, we examine the testimonies of some of the prosecution witnesses, we may notice certain special features of this case.

The dead body was recovered after 14 days. It was not in an identifiable condition.

The dead body was said to have been identified by Jai Singh (PW-13). He stated that the clothes seemed to be of Umed Singh. He was, thus, not definite thereabout. He even could not state the direction of flow of water of the canal. It is of some significance that according to him the dead body was touching both sides of bank of the canal, which appears to be improbable.

According to Santa Singh (PW-18), who is an Assistant Sub Inspector, the dead body was identified by Rajbir (PW-9) and two others. He did not disclose as to who the other two persons were.

Dr. Basant Lal Sirohiwal (PW-12), who conducted the post-mortem examination on the dead body of Umed Singh, in his deposition stated :

"\005The dead body was emitting foul smell. Height of the dead body on articulation was about 168 cms. The body was partially skeletinisised form. Maggots were crawling all over the body. Water weeds were present at places. Skull bones were exposed. Facial bones were exposed. Short bones of hand was exposed. Ribs were exposed along with sternum. Thoracic viscera was missing. Limb bones of lower extremities in the region of tibia fibula were exposed. The left foot was attached only with the tag of soft tissues. Right foot was missing. Stump of penis was identifiable. Public hairs were 3 to 4 cms and black in colour."

The dead body was identified before the Autopsy Surgeon by Satbir Singh son of Dalip Singh and Ram Chander son of Shree Ram. In the First Information Report, the clothes, which were worn by the deceased, as disclosed by PW-9 Rajbir, was said to be of blue colour with white stripes. The clothes were identified on the basis of the fact that the same had been tailored by Satbir Singh. He was one of the brothers of the deceased. He had not been examined for reasons best known to the prosecution. The identifiable tailoring mark on the basis whereof, the clothes were said to have been identified had also not been proved. In the First Information Report, the description of the deceased was given as under :

"Wheatish colour, stout body, height approximately 5'-6", aged 35 years, wearing pants and shirt of blue colour with white stripes and he is sporting small beard\005"

However, in the inquest report, the shirt found on the dead body was said to be of cream colour. In the post-mortem report, the colour of the shirt was said to be bluish brown lying separately with the body and torn at places. It is, therefore, difficult to agree with the findings of the learned Trial Judge and the High Court in regard to the identification of the dead body with reference to the clothes found on the dead body.

The learned Trial Judge relied upon the recovery of a pistol from the appellant. A pistol was said to have been recovered also from Naresh, as would appear from the statement of the first informant PW-9 himself. Only one pistol was recovered. Why recovery of the pistol from Naresh has been disbelieved while accepting recovery thereof from the appellant has not been explained.

Even in regard to the arrest of the accused, there exist some discrepancies insofar as whereas according to PW-9, it was the police party, who had arrested them; according to A.S.I. Prem Chand (PW-17), while they were going to Village Hansi on receipt of a secret information, Rajbir and Balwan Singh met them at the taxi stand and later on the accused were found in the village.

Ishwar Singh (PW-16) is also a Police Officer. According to him,

names of the arrested accused persons were Naresh, Ranjit, Ranbir and another whose name was not known to him. Before the Trial Court he wrongly identified Charanjit as Ranjit and Suresh as Naresh.

As noticed hereinbefore, PW-9 spoke of recovery of the pistol from Naresh, but according to Nihal Singh (PW-20), it was recovered from the appellant. In regard to the recovery of purse, it is significant to notice a court question put to PW-9, which is in the following terms :

"As per your statement only Naresh and Charanjit were taken into custody at Anaj Mandi. How the purse was taken from the possession of Hatti accused in your presence.

Ans. : Hatti was arrested later on and the purse was taken into possession from him in my absence. Nothing was recovered from Hatti in my presence\005"

No explanation in this behalf is available on record.

The informant himself was declared hostile. PW-9 accepted that he had appeared as a witness against Hatti in the court in connection with the murder of one Kishan driver. He had also given evidence in that case regarding arrest and recoveries of articles from Naresh and Charanjit. Ram Kishan (PW-10) also told about recovery of a pistol from the appellant alone and a silver ring from Naresh. They do not say that two different pistols were recovered from the appellant and Naresh separately. One of the witnesses must have been telling lie before the court. If recovery from Naresh has not been believed, on identical evidence it is difficult to accept the case of the prosecution with regard to the appellant.

According to PW-10, he went to Haridwar on 12.07.1995 and came back on 24.07.1995. He was not even informed about the fact that the deceased was missing. His statement, as noticed hereinbefore, was recorded only on 25.07.1995. He allegedly made a statement to the effect that the appellant and his associates were known to him. After he made the said statement, he was taken to the Village Bass. The accused having not been found there and having been told that they were at Badchhaper. He went there and Police arrested both Hatti and Naresh together. Therefore, the arrest of the said accused must have taken place on 25.07.1995. The Investigating Officer, however, stated that they were arrested on 29.07.1995. It is, therefore, difficult to accept that he is a reliable witness or the theory that the deceased was last seen with the appellant had been established.

The testimonies of PW-11, as noticed hereinbefore, had not been relied upon by the learned Trial Judge.

It may be true that there had been some recoveries from the appellant including a purse and an electricity bill; but then a ring was also recovered from Naresh. He has been acquitted. A watch was recovered from another accused. The only distinctive features to hold the appellant guilty of commission of the offences, while acquitting the other three are only 'last seen' and a confession leading to recovery of number plate of the vehicle. Other accused were also last seen with the deceased, if PW-10 is to be believed.

The evidence of last seen by itself apart from having not been proved in this case cannot be of much significance. It may provide for a link in the chain. But unless the time gap between the deceased of having been last seen in the company of the accused persons and the murder is proximate, it is difficult to prove the guilt of the accused only on that basis.

In Ramreddy Rajesh Khanna Reddy and Another v. State of Andhra Pradesh [(2006) 10 SCC 172], this Court noticed :

"27. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case courts should look for some corroboration.

28. In State of U.P. v. Satish [(2005) 3 SCC 114], this Court observed:

"22. The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses PWs 3 and 5, in addition to the evidence of PW 2."

[See also Bodh Raj @ Bodha & Ors. Vs. State of Jammu & Kashmir AIR 2002 SC 3164.]"

[See also State of Goa v. Sanjay Thakran and Anr. JT 2007 (5) SC 146]

There cannot be any doubt that conviction can be based on circumstantial evidence, but therefor the prosecution must establish that the chain of circumstances only consistently point to the guilt of the accused and is inconsistent with his innocence. Circumstances, as is well known, from which an inference of guilt is sought to be drawn are required to be cogently and firmly established. They have to be taken into consideration cumulatively. They must be able to conclude that within all human probability the accused committed the crime. [See Geejaganda Somaiah v. State of Karnataka - AIR 2007 SCW 1681].

Reliance has been placed by the learned counsel for the State on a decision of this Court in Kashi Ram (supra), wherein it was held that the incriminating circumstances must form a complete chain and must be consistent with no other hypothesis except the guilt of the accused.

Therein, this Court was dealing with a case where the accused had killed his wife and two daughters. As in the aforementioned situation, when the deceased were last seen the respondent therein, Section 106 of the Indian Evidence Act was held to be applicable. As in a case of that nature, probability of a wife being murdered by an outsider may ordinarily be ruled out, failure to offer an explanation by the husband in the aforementioned situation would itself be a circumstance which may be taken into consideration therefore. [See also Raj Kumar Prasad Tamarkar v. State of Bihar & Another \026 2007 (1) SCALE 19 \026 Para 24 & 25].

The said decision, in our opinion, is not applicable to the fact of the instant case.

The learned counsel for the State would submit that recovery of the articles would raise a presumption under Section 114 of the Indian Evidence Act. Application of such a presumption is limited. A presumption may be in respect of commission of theft or receipt of stolen property; if a person is found to be in possession of the property belonging to the deceased, but on such presumption alone, the appellant could not have been convicted for commission of murder particularly when on the same evidence other persons had been given benefit of doubt.

Having regard to the peculiar facts and circumstances of the case, we are inclined to extend the same benefit to the appellant herein.

The impugned judgment of the High Court, therefore, cannot be sustained, which is set aside accordingly. The appeal is allowed. The appellant shall be released forthwith, if not required in any other case.