
Before V.K. Bali & Nirmal Singh, JJ

RAJ KUMAR & ANOTHER,—Appellant

versus

STATE OF HARYANA,—Respondent

Crl. A. NO. 228/DB OF 2002

4th February, 2005

Indian Penal Code, 1860—Ss. 364/302/201 & 34—Conviction of appellants for abduction and murder of a person—Case of prosecution based on circumstantial evidence—Version given by the complainant self-contradictory—Motive—In murder case motive plays a vital role—When there is no motive then the link in the chain is missing—Prosecution failing to prove motive on the part of the appellants—Trial Court failing to appreciate the evidence—Findings of trial Court based on surmises & conjectures—Appeal allowed, judgment of conviction and order of sentence set aside.

Held, that in a murder case, which is based on circumstantial evidence, motive plays a vital role. The Court is to take into consideration the motive for committing the crimes. When there is no motive, then the link in the chain is missing. When the prosecution fails to prove the motive on the part of the accused, its case becomes doubtful. Not only this, the prosecution has to prove each and every circumstance beyond reasonable doubt that accused was the person who committed the offence and none else. The Court is not to base its findings on surmises and conjectures.

(Para 20)

Further held, that the learned trial Court was palpably erroneous in appreciating the evidence and based its findings on surmises and conjectures. Therefore, there is every doubt of false implication of appellants in the crime.

(Para 21)

None for the appellants.

Sanjay Vashisht, Sr. DAG, Haryana, for the respondents.

JUDGMENT

NIRMAL SINGH, J.

(1) This appeal has been filed by the appellants Raj Kumar and Banke Lal against the judgement and order dated 19th/20th September, 2001 passed by learned Additional Sessions Judge, Panipat,—*vide* which the appellants were convicted and sentenced as under :—

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| Raj Kumar & Banke Lal | U/s 364/ 34 IPC | to undergo RI for ten years each and to pay a fine of Rs. 5000 each. In default of payment of fine, they were ordered to further undergo RI for one year each. |
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| | U/s 302 34 IPC | to undergo imprisonment for life each and to pay a fine of Rs. 5000 each. In default of payment of fine, they were ordered to further undergo RI for one year each. |
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| | U/s 201 34 IPC | to undergo RI for three years each and to pay a fine of Rs. 2000 each. In default of payment of fine, they were ordered to further undergo RI for six months each. |
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(2) All the sentences were ordered to run concurrently.

(3) The prosecution story in brief is that Ram Naresh, complainant was residing in Des Raj Colony, Panipat, for 8/10 years. His brother Ashok was residing with him for the last 8—10 days and was in search of a job. On 25th July, 1999, Raj Kumar and Banke Lal came to the house of Ram Naresh and took Ashok with them on the pretext of getting him some work. However, Ashok did not return home. When it was enquired from Raj Kumar and Banke Lal, they could not give any satisfactory reply. It was alleged by complainant Ram Naresh that 2/3 years ago, his uncle Boharan Singh, his father Jamna Sahai and others had fight with Banke and his cousin brother Kanwar Pal, in which Kanwar Pal was murdered and his father, uncle etc. were challaned by the police and a case is still pending in the police station. On this account, complainant Ram Naresh has the suspicion

that to take revenge, Raj Kumar and Banke Lal might have murdered his brother or had concealed him with intention to kill him. On the basis of statement Ex. PC, case was registered against the accused. During the course of investigation, the accused were arrested and on interrogation they suffered disclosure statements on the basis of which they got recovered the head and trunk of the body of Ashok, Knife, brick, rope, wearing clothes, chappal etc. which were taken into police possession. Raj Kumar had further disclosed that he first served liquor to Ashok and then he caught hold of him from legs while Banke put a rope around his neck and strangulated him to death and thereafter Banke severed his head with a knife. The weapon of offence, rope brick were sent to the Forensic Science Laboratory for Chemical Examination.

(4) After completion of investigation, accused were charged under sections 364/302/201 read with section 34 IPC, to which they pleaded not guilty and claimed trial.

(5) To prove the case, the prosecution examined PW1 Gaje Singh, Patwari, PW2 Constable Ranbir Singh, PW3 Sub Inspector Krishan Lal, PW4 Naresh Kumar, PW5 Head Constable Sumer Chand, PW6 Constable Rajinder Singh, PW7 Ram Naresh, PW8 Raghbir Singh, PW9 Algu, PW10, SI Raghbir Singh, PW11 Rajinder Singh and PW12 Dr. S. K. Dhattewal.

(6) The accused were examined under Section 313 Cr. P.C. to explain the incriminating circumstance appearing in the prosecution evidence. They pleaded innocence and alleged false implication.

(7) On the basis of prosecution evidence, the learned trial Court come to the conclusion that the prosecution has established beyond shadow of doubt that the appellants were the persons who had abducted Ashok Kumar and then murdered him and accordingly convicted and sentenced them *vide* judgement and order dated 19th/20th September, 2001 as stated in Paragraph 1 of the judgement, against which the present appeal has been filed.

(8) None has put in appearance on behalf of the appellants. However, with the assistance of the learned Sr. Deputy Advocate General, Haryana, we have minutely examined the record.

(9) After examining the record, we are of the firm view that the link in the chain of the circumstances is missing and the appellants have been roped in this case falsely.

(10) The first circumstance upon which the prosecution has relied upon is that the deceased, Ashok, who was brother of PW7 complainant Ram Naresh, was last seen by him in the company of the appellants. He deposed that about 10 or 12 days prior to the incident, Ashok had come to him. In the day time, he used to go outside in search of work and at night, he used to stay with him.

(11) On 25th July, 1999, Raj Kumar and Banke Lal, appellants, had taken his brother from the house on the pretext that they would help him in searching the job. Ashok went with them in the evening at about 5-6 P.M. However, he did not return till night. He enquired from the appellants about the whereabouts of his brother but they did not give any satisfactory reply. He searched for his brother for 2-3 days but could not trace him. 3-4 years ago, there was a quarrel between father and uncle of the complainant with Banke and his cousin Kanwar Pal and in that quarrel, Kanwar Pal was murdered by his father, uncle and others, who were accordingly challaned. PW7 Ram Naresh further deposed that he reported the matter to the police on 28th July, 1999 vide statement. Ex. PC, and told the police that he had suspicion that the appellants had murdered his brother, Ashok. He further deposed that appellant Raj Kumar was apprehended near Devi Mandir in his presence as well as in the presence of PW8 Raghbir. He also deposed that Raj Kumar made a disclosure statement, Ex. PF, that head and neck portion of deceased Ashok were thrown by him and Banke Lal, appellant, in the pond near across the railway line and the remaining portion of the body was thrown and hidden in the bushes in Sector 6 and his clothes were also concealed in the bushes. The disclosure statement, Ex. PF, suffered by appellant Raj Kumar was signed by him, and complainant Ram Naresh and PW8 Raghbir attested the same. In pursuance of that statement, Raj Kumar got recovered the head of Ashok from the specified place.

(12) This version given by the complainant Ram Naresh is self contradictory. In his cross-examination, he deposed that he was alone occupant of the room alongwith his family and at the time only children were there. He subsequently deposed that his brother had left the room at 8 A.M. whereas in the examination in chief, he stated

that Ashok was taken by the appellants in the evening on the pretext of helping him in getting the job. He also deposed that the police met him at 5 P.M. and at that time he was alone. On the way, Raghbir met them and he disclosed the room of Banke Lal and Raj Kumar, appellants, to the police but at the same breath, he stated that he was not on visiting terms to the room of the appellants. He had deposed that Raghbir had told him that he had seen Ashok and the appellants together near the room of Raghbir. Raghbir is the uncle of the complainant being a co-villager but Raghbir deposed that he never saw the appellants in the company of Ashok. Raghbir also deposed that at about 6 A.M., the clothes were found near the railway line. As per PW7 Ram Naresh, on the disclosure statement of Raj Kumar, appellant, Ex. PF, head and neck of deceased Ashok were recovered from the place of disclosure in the evening at 6 P.M. and the proceedings had taken place at about 6.45 P.M. PW8 Raghbir had specifically denied that recovery was effected in the evening and stated that the recovery was effected in the morning time. PW8 Raghbir had also deposed that proceedings were conducted in the police post where his signatures were obtained. From the evidence of PW7 Ram Naresh and PW8 Raghbir, it is established that the deceased was not taken away by the appellants in the presence of complainant Ram Naresh in the evening time. The prosecution, to connect the appellant with the crime, has introduced the theory of last seen but miserably failed to do so. Otherwise also, the story put forth by the prosecution that Ashok was taken away by the appellants does not appeal to reason.

(13) As per Ram Naresh, 3-4 years prior to the occurrence, there was quarrel and in that quarrel cousin of Banke Lal, namely, Kanwar Pal was murdered by his father, uncle and five others who were challenged and a murder case is pending against his father. When a murder case was pending between the parties, then neither Ashok would accompany the appellants nor the appellants would render any help to him for getting the job. If in the presence of Ram Naresh, the appellants had come to his house for taking away Ashok, then he must have intervened and had desisted the deceased from accompanying them as their father was facing the murder trial for murder of Kanwar Lal who is Banke Lal's cousin.

(14) The case of the prosecution becomes doubtful on other score also. As per PW7 Ram Naresh on 27th July, 1999 Banke Lal and Raj Kumar had taken away Ashok but he did not return on that

night. Thereafter, he himself searched him for some time and ultimately reported the matter to the police on 28th July, 1999. If the appellants had taken away Ashok with them, then Ram Naresh must have reported the matter in the same night or in the next morning to the police as they were not in good terms with the appellants.

(15) As it has been noticed above, PW8 Raghbir has specifically deposed that dead body was recovered in the morning. If the dead body of Ashok was recovered in the morning and it was in the knowledge of all and sundry including the police, then the alleged disclosure statement suffered by Raj Kumar is padding to connect the appellants with the crime. PW8 Raghbir, is not the partyman of the appellants nor a friend, rather from the evidence on record, it establishes that he was friendly with the complainant Ram Naresh being his uncle from the brother-hood.

(16) One of the circumstance relied upon by the prosecution is that appellant Banke Lal suffered a disclosure statement Ex. PJ and has got recovered the knife Ex. P/42, which has been used in the commission of crime. To prove the statement of Banke Lal, PW10 Raghbir Singh SI deposed that on 31st August, 1999, PW9 Algu and Subhash informed him that appellant Banke Lal was coming from the side of Fatehpuri Chowk and was going to G.T. Road. Banke Lal was apprehended and was interrogated. On interrogation, he made a disclosure statement, Ex. PJ, that he had kept concealed the knife, Ex-P42, under the tree in the open space. The said statement was thumb marked by the appellants and attested by Algu and Subhash, Banke Lal, appellant, got recovered a knife, which was hidden near the tree. The post mortem was conducted by PW12 Dr. S. K. Dhatteerwal on the dead body of Ashok. He found the following injury on his person :—

“There was decapitation at level of 4th cervical vertebrae with evidence of sharp cut at body of C4 with infiltration of blood and skin shows clean cut margins and deep tissues show ecchymosis.”

(17) As per the opinion of the doctor, the cause of death was decapitation by heavy sharp cutting weapon and time since death was about four days. He also deposed that if the knife is put on the neck, then some heavy pressure was put on the knife, the same would

result into a clean cut in the neck. We have examined the knife Ex. P42 in the Court. As per the sketch, Ex.PK. its wooden handle is 12 cms. while the blade is 13-1/2 cms. It is a very light weight knife. After examining the knife, we are of the considered view that even if heavy pressure is put on the knife. Ex. P42, it would not be able to cut the blood vessels. The opinion given by PW 12 Dr. S.K. Datterwal that if some heavy pressure is put on the knife, which was on the neck, it would result into clean cut of the neck is not probable. It seems that the neck of Ashok Kumar had been chopped of with some heavy weapon like gandasa, sword etc, and not with the knife Ex. P 42.

(18) The case of the prosecution has also becomes doubtful as the alleged disclosure statement made by appellant Raj Kumar is contrary to the medical evidence given by PW12 Dr. S.K. Datterwal. As per the disclosure statement of Raj Kumar, firstly he and Banke Lal served liquor to Ashok and then Raj Kumar caught hold of him from legs while Banke put a rope around his neck and strangulated him to death and thereafter Banke servered his head with the knife.

(19) In the case of death by strangulation, the death is usually due to asphyxia and there must be some ligature marks on the neck of the deceased and there must be fracture and dislocation of the first and second cervical vertebrae together with the usual cord-mark. Even the lungs and brain must be congested. The cartilages of the larynx or the rings of the trachea may be fractured. When considerable force is used. But in the opinion of Dr. S.K. Datterwal, death in the case was not due to asphyxia nor the rings of the trachea were fractured, rather PW12 Dr. Datterwal has given a specific opinion that cause of death was decapitation by heavy sharp cutting weapon.

(20) In a murder case, which is based on circumstantial evidence, motive plays a vital role. The Court is to take into consideration the motive for committing the crime. When there is no motive, then the link in the chain is missing. When the prosecution fails to prove the motive on the part of the accused, its case becomes doubtful. Not only this, the prosecution has to prove each and every circumstance beyond reasonable doubt that acused was the person who committed the offence and none else. The Court is not to base its findings on surmises and conjecture.

(21) In the instant case, the learned trial court was palpably erroneous in appreciating the evidence and based its findings on surmises and conjectures. Therefore, there is every doubt of false implication of appellants Raj Kumar and Banke Lal in the crime.

(22) For the reasons mentioned above, the appeal is accepted and the judgment of conviction and order of sentence recorded by the learned Additional Sessions Judge, Panipat, dated 19th/20th September, 2001 is set aside. The appellants be set at liberty forthwith, if not required in any other case.

R.N.R.