Amrinder Kumar and Another Vs State of Punjab

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 13, 2010

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 313
Penal Code, 1860 (IPC) â€" Section 302, 34

Citation: (2011) 1 RCR(Criminal) 690

Hon'ble Judges: Ranjan Gogoi, J; Rajan Gupta, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Ranjan Gogoi, J.
Heard.

2. This appeal is directed against the judgment of conviction dated 5th July, 2007 and the order of sentence of the same date, passed by the

learned Sessions Judge, Ludhiana in Sessions Case No. 42 of 2005. By aforesaid judgment and order of sentence, the accused/Appellants have

been convicted u/s 302 read with Section 34 IPC and have been sentenced to undergo rigorous imprisonment for life and also to pay a fine of Rs.

5000/- each, in default to suffer R.I. for six months more.

3. The short case of the prosecution is that one Gurdeep Singh (PW1) made a statement Ex.PA/1 to the effect that on 1st June, 2005 at about

8.00 A.M., he had gone to his fields and while taking out the key to the pump room the same had fallen down in the tubewell. According to PW1,

when he descended into the well to take out the key he saw the dead-body of a young man in the well. PW1 informed the matter to one Jagjit

Singh who is the son of the Sarpanch. Thereafter, along with Jagjit Singh, PW1 went to the police outpost where the aforesaid statement of

Gurdeep Singh (PW1) was recorded by ASI Manjit Singh (PW8). Thereafter, PW8 made an endorsement on the said statement and sent the

same to the police station at Shimlapuri on the basis of which the formal FIR (Ex.PA/2) was recorded. Thereafter, the dead-body was extricated

from the well and the same was photographed. According to the prosecution, inquest was held and the dead-body was sent to the Civil Hospital,

Ludhiana for postmortem examination. Post-mortem was performed by one Dr. U.S. Sooch (PW4). Thereafter, according to the prosecution, on

12th June, 2005 one Manoj Kumar (PW2) came to the police station and identified the clothes of the deceased to be those belonging to his

brother. Further more, according to the prosecution, on 20th June, 2005, the two accused/Appellants were arrested and on personal search of the

accused, Bikram Parshad, a mobile phone was recovered from his pocket which belonged to the deceased. It is also the case of the prosecution

that the accused Amrinder Kumar made a disclosure statement on the basis of which a rope was recovered on 23rd June, 2005. On the

conclusion of the investigation and after recording the statements of the witnesses and also on receipt of the postmortem report, charge-sheet was

submitted against the accused u/s 302 read with Section 34 IPC. The offence being exclusively triable by the court of Sessions, the case was

committed to the court of learned Sessions Judge, Ludhiana for trial. In the trial court, charge u/s 302/34 IPC was framed against the

accused/Appellants to which they pleaded not guilty and claimed to be tried.

4. In the course of trial, fourteen witnesses were examined by the prosecution and one by the defence. The statements of both the accused were

recorded in terms of Section 313 Code of Criminal Procedure. Thereafter, at the conclusion of the trial the accused/Appellants have been

convicted and sentenced, as aforesaid, giving rise to the present appeal.

5. Of the fourteen witnesses examined by the prosecution it would be necessary for the court to notice in some details the evidence tendered by

PW2 (Manoj Kumar), brother of the deceased, PW4 (Dr. U.S. Sooch) who conducted the postmortem examination and PW5 (Sanoj Kumar),

brother-in-law of PW2 Manoj Kumar.

6. PW2 Manoj Kumar in his deposition has stated that the deceased was engaged in the business of printing and the accused Bikram Parshad,

who was his first cousin, was residing with the deceased. According to PW2, there was some animosity between the parties as accused Bikram

Parshad had demanded a larger share of the business. PW2 has deposed that there used to frequent quarrels between the two and in fact, on 30th

May, 2005, he had called accused Bikram Parshad and his brother, the deceased, to his house at about 4.30 P.M. The accused Bikram Parshad

was accompanied by co-accused Amrinder Kumar. According to PW2, in a meeting held, he had tried to persuade the accused Bikram Parshad

and the deceased to work in a congenial and harmonious atmosphere and that the accused Bikram Parshad left his place promising not to quarrel

in the future. PW2 has further deposed that on 6th June, 2005 he went to the house of his brother i.e. the deceased and when he reached the place

though he found both the accused present there, his brother was nowhere to be seen. On being asked, the accused persons, according to PW2,

told him that the deceased had been missing since the time they had left the house of PW2 on 30th May, 2005. Thereafter, PW2 went to the

police station Shimlapuri and submitted a report with regard to the whereabouts of his brother.

7. PW2 has further deposed that on 12th June, 2005, he came to know that a dead-body of an unknown person was lying in the police station,

Shimlapuri. He, therefore, went to the police station and on seeing the clothes of the dead-body and photographs of the same he identified the

photographs and the clothes to be that of his brother, the deceased. He also identified the mobile phone exhibited as Ex.P1 to be belonging to his

brother as well as the clothes shown to him.

8. PW4 Dr. U.S. Sooch had conducted autopsy of the deceased at about 4.30 P.M. of 1st June, 2005. The injuries found on the dead-body by

PW4 are as follows:

1. Ligature mark, well defined, 1-1/2 broad on the front and upper part of the neck going light upward and laterally on both sides of the neck. The

ligature mark were two in number on the both lateral sides and back of the neck. The ligature mark was placed almost horizontal. The ligature was

deep and furrowed. The underneath skin was parchment type and on dissection subcutaneous echymosis was present and the underneath muscles

were contused. The hyoid bone was fractured and thyroid cartilage was ruptured.

2. Two abraded contusions 2"" x 1-3/4"" on the fore head.

3. Red contusion 1-3/4" x 1/2"" on the middle of the nose. The underneath bone was fractured and clotted blood was present in the nostrils.

4. Marked swelling of both lips with laceration and contusions on its inner side.

5. Red contusion 3"" x 2"" on both the cheeks with marked swelling on both sides of the face.

6. Red contusion 2-1/2"" x 1-1/2"" on the left supra clavicular area.

7. Two red contusions 2" x 1"" on the left clavicular area.

8. Red contusion 8"" x 5"" and 2-1/2"" x 2"" on the left front of the chest.

9. Multiple abrasions 3/4"" x 1/2"" on the lower front of right arm.

10. Red contusion 3"" x 2"" on the right palm.

11. Red contusion 2"" x 1-1/2"" on the left palm.

12. Four abrasions 1-3/4""x 1/2"" on the front of right chin.

13. Two abraded contusions 4"" x 1/2"" on the right scapular area.

14. Three abrasions 2"" x 1"" on the mid line of the vertebral column.

15. Multiple abrasions on the back of left handed.

16. Multiple abrasions on the back of right hand and with marked swelling and the fifth metacarpal bone was fractured.

9. According to PW4, on exploration of the chest of the deceased he had found multiple fracture of ribs with laceration of lung and plurea and the

chest cavity contained 150 cc blood. According to PW4, the cause of death was asphyxia as a result of strangulation and the probable time

between the injuries and the death was immediate and the time between the death and postmortem examination was about two days.

10. PW5 Sanoj Kumar is the brother-in-law of PW2 Manoj Kumar. According to this witness, on 30th May, 2005 at about 7.00 P.M. when he

was on the road and he had reached the octroi post, he saw the deceased and the two accused talking to each other. PW5 had specifically

deposed that all three were on a bicycle which was pedalled by Bikram Parshad. Thereafter, on 15th June, 2005, he went to meet his brother-in-

law i.e. Manoj Kumar PW2. He disclosed to PW2 that on 30th May, 2005, he had seen the accused alongwith the deceased.

11. On the basis of the aforesaid evidence, the learned trial court came to the conclusion that though there were no eye-witnesses in the case, the

prosecution has succeeded in establishing certain highly incriminating circumstances against the accused. According to the learned trial court, the

two accused/Appellants and the deceased were last seen together in the company of each other at about 7.00 P.M. of 30th May, 2005. The

opinion of the doctor, who had performed the postmortem, to the effect that death was two days prior to the postmortem examination, which was

conducted at 4.45 P.M. of 1st June, 2005 was also taken note of. The learned trial court also came to the conclusion that the business rivalry

between the accused Bikram Parshad and the deceased could be the motive for the crime. Learned trial court also took into account the recovery

of the rope at the instance of accused Amrinder Kumar and the fact that in the opinion of PW4 the cause of death was asphyxia as a result of

strangulation. The possession of the mobile phone of the deceased by the accused Bikram Parshad was taken by the learned trial court to be

another incriminating circumstance. Piecing together all the aforesaid circumstances, the learned trial court thought it proper to come to the

conclusion that the proved circumstances established the guilt of the accused/Appellants beyond all reasonable doubt.

12. The principles of law governing proof by means of circumstantial evidence are well settled and would not require any reiteration except to say

that not only circumstances relied upon by the prosecution must be proved by the cogent and reliable evidence but the same must exclude all other

hypothesis except that it is the accused and nobody else who had committed the crime. Only if such a satisfaction can be reached by the court on

the materials of a given case, conviction on the basis of circumstantial evidence should be made.

13. The fact that the accused and the deceased were last seen in the company of each other is, indeed, a highly incriminating circumstance against

the accused. However, time and again, it has been emphasized that such a circumstance, by itself, will not be sufficient to prove the guilt of the

accused. Some more positive evidence must be forthcoming. In the present case, the learned trial court has relied on the materials brought by the

prosecution to prove the animosity and rivalry between the accused Bikram Parshad and the deceased over the share of business as proof of

motive for the crime alleged. Motive, more often than not, cannot be proved by direct evidence and it is only by a process of inference that a

conclusion with regard to motive can be reached by the court. Therefore, in our system of criminal jurisprudence motive for a crime, though not

discarded, has taken a back seat. The problem would surface in the present case also as the court has been called upon to infer and draw a

conclusion as to whether rivalry and animosity over a share in the business between accused Bikram Parshad and the deceased could be a

sufficient basis for arriving at the conclusion that the accused had a motive to commit the murder alleged. Having regard to the facts surrounding the

present case and the different and uncertain course of the human conduct, we are of the view that it would be highly unsafe to come at any

conclusion adverse to the accused/Appellants on the facts that are available on record.

14. This will bring the court to the issue with regard to the recovery of the rope and the mobile phone of the deceased. The recovery of the rope at

the instance of the accused Amrinder Kumar, by itself, will not be an incriminating circumstance unless there is some evidence to indicate that the

rope recovered had been used in the crime committed. No such evidence is forthcoming. The recovery of the mobile phone rests on an equally

uncertain basis inasmuch as the identification of the mobile phone was made by PW2 not by reference to any special features of the phone but

merely because the deceased was using a mobile phone of the same kind and make. If the prosecution wanted to establish that the mobile phone

found in the possession of the accused belonged to the deceased it was always open to the prosecution to lead more positive evidence particularly

with regard to the previous use of the phone. No such evidence had been led.

15. Learned State Counsel has pointed out that the conduct of the accused/Appellants in not reporting the absence of the deceased from the

house, though the accused Bikram Parshad used to reside with the deceased in the same house, is another incriminating circumstance against the

accused which should be relied upon by us. On due consideration of the contention advanced, we are of the view that the aforesaid facts, deposed

to by PW2, cannot give rise to any irreversible conclusion with regard to the guilt of the accused. Human responses vary from person to person

and such responses should not be put into strait-jacket compartments to draw any particular inference(s).

16. On the basis of the discussions that have preceded only one circumstance appears to have been established by the prosecution, namely, that

the accused and the deceased were last seen in the company of each other at about 7.00 P.M. on 30th May, 2005. As we have already indicated

the said circumstance, by itself, would not be a safe basis to reach to any conclusion with regard to the culpability of the accused for the alleged

crime. We are, therefore, inclined to take the view that the prosecution in the present case has failed to prove the case against the

accused/Appellants beyond all reasonable doubt and that the accused are entitled to the benefit of the doubts that we are inclined to entertain.

17. We, therefore, set-aside the judgment of conviction and the order of sentence dated 5th July, 2007, passed by the learned Sessions Judge,

Ludhiana in Sessions Case No. 42/2005 and acquit the accused/Appellants on the benefit of doubt. The appeal consequently is allowed. The

accused/Appellants be set at liberty forthwith.