(2011) 2 ACR 1333

Allahabad High Court

Case No: Criminal Miscellaneous Case No. 333 of 2010

State of U.P.		APPELLANT
	Vs	
Mohan		RESPONDENT

Date of Decision: Nov. 30, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 313, 378(3)
- Penal Code, 1860 (IPC) - Section 304, 328

Citation: (2011) 2 ACR 1333

Hon'ble Judges: Vedpal, J; Rajiv Sharma, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Rajiv Sharma and Vedpal, JJ.
This is an application u/s 378(3), Code of Criminal Procedure by the State seeking leave to appeal against judgment and order dated 12.7.2010, passed by Shri Mahendra Singh, A.S.J./F.T.C. Court No. 5 Sitapur in S.T. No. 1054/08, State v. Mohan, u/s 328/304, I.P.C, Police Station Kairabad, district Sitapur acquitting accused Mohan to the charge of the offence punishable under Sections 328 and 304, I.P.C.

2. The application has been moved on the ground that the opposite party Mohan was tried before Additional Session"s Judge/F.T.C. Court No. 5, Sitapur in S.T. No. 1054/08 to the charge of the offence punishable under -Section 328/304, I.P.C.

3. The prosecution case in brief was that Mohan, son of Bharat came at the house of Murli complainant on 9.11.2007 at about 7 p.m. and took his son Kamlesh with him in presence of Putti Lal. When Kamlesh did not return, the complainant Murli asked his son Laxmi Narain and one other Prahlad to call Kamlesh from the house of Mohan. When Laxmi Narain and Prahlad reached at the house of Mohan, they saw that Mohan is serving wine to Kamlesh inside his house and they asked Kamlesh to leave the house but

Mohan opposed and asked Laxmi Narain to leave his house. On drinking, condition of Kamlesh deteriorated and several persons assembled there. Murli also reached there and took his son Kamlesh to District Hospital for treatment where he died on 10.11.2007 at about 3 a.m.

4. The autopsy of the dead body of Kamlesh was conducted on 10.11.2007. On the basis of an application u/s 156(3), Code of Criminal Procedure a case for the offence punishable u/s 304/328, I.P.C. was registered against the accused. On post-mortem examination, the cause of death could not be ascertained, hence viscera was preserved and on its analysis, it was found that the death of Kamlesh had occurred due to consumption of poison with liquor. The police after completing investigation, submitted charge-sheet against accused Mohan.

5. The accused Mohan was charged for having committed an offence punishable under Sections 328 and 304, I.P.C. He denied the charge levelled against him and claimed to be tried.

6. The prosecution in order to prove its case, has examined Shri Murli as P.W. 1, Shri Laxmi Narain as P.W. 2, Shri Aditya Nath as P.W. 3, Shri Dinesh as P.W. 4, S.I. Shri R.P. Premi as P.W. 5, S.I. Shri Ram Sharan Yadav as P.W. 6 and Shri Hukum Singh, S.I. as P.W. 7. No other witness was testified by the prosecution.

7. The accused in his statement u/s 313, Code of Criminal Procedure denied the prosecution allegations levelled against him and stated that he has been falsely implicated in the case on account of enmity. Accused also testified Shri Shiv Ram as D.W. 1 in his defence.

8. Learned court below after going through the evidence on record held that prosecution has failed to prove its case against accused beyond reasonable doubts and acquitted accused. Feeling aggrieved with the said judgment and order the State has filed this appeal with this application seeking leave to appeal.

9. We have heard learned A.G.A. in depth who took us through the evidence of the case and judgment recorded by the trial court.

10. Assailing the impugned judgment and order, learned A.G.A. contended that prosecution had proved its case against accused beyond all reasonable doubts and the contradictions were minors, and evidence of witness should not be discarded by the trial court. It is further contended that delay in lodging the F.I.R. was not sufficient to disbelieve the prosecution version and relationship of the witnesses with the deceased was not sufficient to discard their testimony. He further contended that chain of the circumstances was complete in itself and as such charge levelled against accused was proved and by holding it otherwise the learned trial court committed illegality and as such leave to appeal should be granted by admitting the appeal.

11. We have carefully considered the evidence adduced by the prosecution in support of its case and the impugned judgment and order.

12. It reveals from the perusal of the record that the complainant had admitted that before moving an application on 29.11.2007 u/s 156(3). Code of Criminal Procedure before the Magistrate on the basis of which the case was registered against accused, he had sent an application through speed post to Superintendent of Police on 13.11.2007.

13. It also reveals from the record that the basic version as was narrated by the prosecution in its application dated 13.11.2007 was completely changed in the application u/s 156(3), Code of Criminal Procedure sent to Magistrate on 29.11.2007.

14. It further reveals that when accused Mohan allegedly took Kamlesh with him from the house of Murli, one Putti Lal was also present there but he was neither produced by the prosecution nor any reasonable explanation was given for his non-production. It further reveals that one Prahlad was with Laxmi Narain, P.W. 2 who is said to have reached at the house of accused to call Kamlesh but he too was also not produced. It is thus clear that there were two independent witnesses of the incident but they were not produced by the prosecution in support of its case. The witnesses who have been produced by the prosecution on the factum of the incident are P.W. 1 Murli and P.W. 2 Laxmi Narain who are father and sons inter se and are related to the deceased.

15. P.W. 1 Murli is only a witness of last seen. He too had not seen accused serving liquor with poisonous substance to the deceased. P.W. 2 Laxmi Narain had also not supported the prosecution version on this count. His testimony on this factum is self contradictory. Sometimes he states that the liquor was being taken inside the house of Mohan and sometimes he states that liquor was being taken outside the house at hand pump. Learned court below had recorded reasons to disbelieve the prosecution version. The prosecution version is full of several doubts and by holding that prosecution has not been able to prove its case against the accused beyond reasonable doubt, the learned trial court did not commit any mistake. It is settled law that if two conclusions can be possible on the basis of the evidence on record, the finding recorded by the trial court cannot be interfered with while granting leave to appeal to the prosecution. In the instant case, the basic version of the prosecution taken in the application dated 13.11.2007 was changed in the application u/s 156(3), Code of Criminal Procedure on the basis of which F.I.R. was registered. Independent witnesses were withheld without assigning any reason. The chain of circumstances against accused was incomplete and the statement of witnesses which were produced was contradictory with each other on important facts and circumstances. In a case of circumstantial evidence motive plays an important role in determining the guilt of accused. In Pannayar Vs. State of T. Nadu by Inspector of Police, Hon''ble Supreme Court examined the importance of motive in a case depending on circumstantial evidence and observed that absence of motive is a factor that weighs in favour of the accused.

16. In the instant case, there is not a whisper of the motive for accused for the commission of the offence in question. This important link of circumstantial evidence is also missing in the present case. The appreciation of evidence and finding recorded by the trial court also do not suffer from any patent error or perversity which may justify any interference.

17. In view of above, there appears no ground to interfere in the judgment and order of the learned trial court and as such the application seeking leave to appeal is liable to be rejected. The permission to leave is therefore refused and application for leave to appeal is hereby rejected.