
(2015) 03 SC CK 0183

Supreme Court of India

Case No: Criminal Appeal No. 1311 of 2006

Nagraj

APPELLANT

Vs

State

RESPONDENT

Date of Decision: March 10, 2015

Acts Referred:

- Constitution of India, 1950 - Article 20(3)
- Criminal Procedure Code, 1973 (CrPC) - Section 313, 342, 342(2)
- Penal Code, 1860 (IPC) - Section 302, 304B

Citation: (2015) 2 JCC 1121

Hon'ble Judges: S.J. Mukhopadhaya, J; Vikramajit Sen, J

Bench: Division Bench

Advocate: Ritu Rastogi (A.C.), for the Appellant; M. Yogesh Kanna, Santha Kumaran and J. Janani, Advocates for the Respondent

Final Decision: Allowed

Judgement

Vikramajit Sen, J.

This Appeal by Special Leave is directed against the judgment of the High Court of Madras dated 5.10.2005 whereby the conviction of the Accused/Appellant Nagaraj Under Section 302 Indian Penal Code came to be affirmed. The Accused was sentenced to Life Imprisonment and was further directed to pay a fine of Rs. 1000/-, in default of which he would have to undergo rigorous imprisonment for three months. The sequence of events leading to the fateful incident, as presented by the prosecution is as follows. According to Mari Chetty PW3, the Accused and the Deceased came to his house in Bargur at 9.30 a.m. on 24.7.2000 to borrow money from him for the purposes of their textile business. This was the first time PW3 met the Accused; and the Deceased informed him that the Accused had joined him in business on the basis of commission. He and the Accused also informed PW3 that they were going to Bangalore and then to Salem for their business. Thereafter, according to Rajammal PW4, the mother of the Deceased, the

Accused and Deceased left Srinivasapuram for Salem at 2.00 p.m.; she has corroborated that the Accused was working in the textile business with the Deceased. The details of the travel plans given by her are contradictory, as in her cross-examination she mentioned that they were going to Bangalore before visiting Salem. She also stated that the Deceased informed her at the time of leaving, not that the Accused and the Deceased visited her before their departure. On 25.7.2000, at 9.00 a.m., the Accused and the Deceased visited Veeravel's shop in which Senthil PW2 was employed. The Deceased was the uncle of PW2. During a conversation with Veeravel, the Deceased told him that the Accused's name was Nagaraj, that he was from Bargur and he had joined the Accused in business on commission basis. At 9.30 a.m., the Accused and the Deceased arrived at Sampath Kumar Lodge. Kandasamy PW1, the room boy, has stated that the Accused entered the Lodge with another person and asked for a room. PW1 initially stated that they arrived with one textile bag/bundle, but in the cross-examination has said that the Accused and the Deceased had one bag each. Upon being allotted Room No. 115, the Accused signed the Lodge/Hotel Register and paid Rs. 100/- as advance. At 10.00 a.m., the Accused and the Deceased briefly visited Veeravel's shop again. PW2 heard them say that they had booked Room No. 115 at Sampath Kumar Lodge. According to PW1 they returned to the Hotel in about ten minutes and that at 11.00 a.m., he saw the Accused leaving the Hotel room. The Accused put two textile bags down and locked the door, and then told PW1 that he was going to sell the textile goods. He did not return the room key and he also did not return at night. On 27.7.2000, at about 1.00 p.m. PW1 noticed a bad odour coming from Room No. 115. He searched for a key with which to open the door but could not find one. The Manager, when informed, said that there is nothing they could do as there was no key. On 28.7.2000 at about 10.00 a.m. PW1 noticed that the odour had become worse. He informed the Manager, who this time around, gave him the master key. He entered the room, where he found nothing but he found the body of the Deceased in the bathroom. The body was decomposing, and there were injuries on the left portion of the head. PW1 informed the Manager about this, who informed the Salem Town Police Station. An FIR was lodged by the Manager at noon. According to the FIR, on being informed of the situation by PW1, the Manager had gone to the room and had then also seen the body of the Deceased. The FIR also stated that the Accused and the Deceased arrived at the Hotel with one textile bundle, and the Accused took one bundle with him when he left. The FIR specifically stated that there was no bag/bundle in the room when the Manager went in. The FIR also stated that at the time of signing the Register, the Deceased informed the Manager that they would be staying for one day only. At 12.30 p.m., the police arrived at the Hotel and conducted a search of the room. According to the cross-examination of PW1, a bag was found in the room and was recovered by the police, but this was not mentioned in the Observation Mahazdar or in the examination of PW10 who prepared the Observation Mahazdar. At 1.15 p.m., PW10 conducted his enquiry, during which he collected samples of blood-stained cement and cement mixture, and interrogated some witnesses. However, significantly, the Lodge Register and the Receipt Book were not taken custody of.

2. According to the Post Mortem report dated 29.7.2000, the Deceased had been dead for three to five days. PW7, who conducted the Post Mortem, has deposed that the Deceased appeared to have died of head injuries. The following injuries were found:--(i) lacerated injury over left parietal region; (ii) lacerated injury over left temporal region; (iii) contusion over the occipital region; (iv) fissured fracture over left parietal bone extending on to the left temporal bone.

3. It is only eighteen months later, on 29.11.2001, that the Accused surrendered before the Judicial Magistrate. It is not in dispute that in this long period the police had not taken any steps for his interrogation or his arrest. The police seemed to have sprung into action only when the Accused surrendered on his own. On being permitted by the Court PW11 took the Accused into police custody on 11.12.2001 and brought him to the Police Station, where- he was interrogated. According to PW11 and PW6, the Accused allegedly voluntarily confessed to killing the-Deceased with an iron rod, which he allegedly subsequently threw into a waste-water channel. The Accused took PW11 and the witnesses to the place where he had allegedly thrown the rod, but it was not found. The Accused was then taken to Sampath Kumar Lodge and shown to PW1, who thereupon identified him. The next day the Accused was remanded to judicial custody. The Charge Sheet dated 28.11.2002 charged the Accused of the commission of the murder of the Deceased Under Section 302 of the Indian Penal Code. The motive attributed for the murder was his previous enmity with the Deceased because of the non-payment of pending dues but there is no evidentiary foundation for arriving at this conclusion. The Accused pleaded not guilty.

4. When the Accused was questioned Under Section 313 Code of Criminal Procedure, he emphatically denied his complicity in the offence, and said that he had no connection with the Deceased and had never visited Sampath Kumar Lodge. According to his Section 313 statement and his written statement, he was in his home in Bargur, and the police started visiting his home and troubling him; he engaged an advocate and surrendered before the Court; he was taken into custody by PW11, and was "coerced" on 11.12.2011 and on 12.12.2011, was made to sign a paper; he has denied that he voluntarily confessed to the crime or that he accompanied the police to any place.

5. It is worth noting a number of inconsistencies in the case of the prosecution. Neither the Register nor the Receipt Book was produced by the prosecution as evidence. This is a serious lapse, as these documents would have been the best evidence to indicate that the Accused and the Deceased were at Sampath Kumar Lodge together. Further, no explanation has been given for their non-production. The High Court has held that the failure to produce these does not damage the case of the prosecution, as there is no reason to doubt the statement of PW1 according to which the Accused and the Deceased came to the Lodge and stayed in that particular room. However, the failure to produce them has resulted in the prosecution relying on circumstantial evidence instead of direct evidence, thus weakening its case.

6. The various witnesses have given contradictory statements regarding the number of bags with the Accused and the Deceased. It is not clear whether they brought one textile bag with them to Sampath Kumar Lodge or two. While PW1, in his deposition, stated that the Accused left with two textile bags, the Manager, in the FIR has only mentioned one. Further, PW1 in his cross-examination stated that one bag was found in the room at the time the police came to investigate, but nothing further is mentioned of this. We have already noted that PW1 has variously stated that the Accused had one bag, then two bags, and that he had left with one bag and then with two bags. But if one bag/bundle was found in the room by the Police, then there would have been three bags/bundles. There are inconsistencies in the cross-examination of PW1 regarding his duty timings. Although he initially stated that the duty timings of the room boys changed on alternate days, he later claimed that he was only on duty in the daytime and the night duty was allotted to another room boy.

7. No reason is given for the fact that Room No. 115 was not opened for three days, which is particularly curious given the Manager in his Complaint/FIR stated that the Deceased had said that they would be staying for one day and only a meagre deposit of Rs. 100 had allegedly been received. PW1 saw the Accused and the Deceased leave and enter the Hotel multiple times on the morning of the 25.7.2000, but thought nothing of the fact that there was subsequently no movement from the room or the fact that the Accused had left with the key and had not come back. They did not ask PW1 for drinking water again. Given that they had had to ask him for this on the first day, it would be the natural assumption that they would have to ask him to replenish it. Further, at the time of checking in, they had asked PW1 for a bed-sheet who had said that it was being washed and that he would provide it in the evening. PW1 should have been suspicious that there were no demands for either of these, particularly if he assumed that the Deceased was still in the room. There is also no explanation for the fact that no attempt was made to open the room for three days for the purposes of cleaning it. When PW1 first noticed the odour, the Manager informed him that there was nothing they could do about it since the key was not available. However the events of the next day reveal that the door could have been opened with a master key. The explanation of PW1 that he thought the smell was from a dead rat is not satisfactory. The natural reaction would have been to clean it, not to leave it to rot further. The Manager was not alive at the Trial and hence his Statement has not been subjected to the acid test of cross-examination; his Statement cannot be relied upon.

8. The room was finally opened by PW1, and was possibly investigated by the Manager, though the accounts regarding this are contradictory, before the police were finally called. There was, therefore, plenty of time for the crime scene to have been tampered with before the police arrived. There was also the possibility of other parties, including PW1 and/or the Manager to have perpetrated the murder. According to the cross examination of PW1, the adjacent room to Room No. 115 was also occupied, but this fact was not taken into consideration in the police investigation, and the inhabitants of the adjacent

room have not been questioned, even though their evidence may have been compelling.

9. No explanation has been given for the fact that the Accused was not arrested after the investigation commenced, despite the fact that seemingly the prosecution perceived that the finger of suspicion pointed at him and him alone. Notices requiring him to participate in the investigation are conspicuous by their absence, and that too for a long duration of eighteen months. In fact he was only taken into custody after he voluntarily surrendered. The High Court has held that he was absconding, but this is not borne out from the records as admittedly there was no warrant for his arrest on the record.

10. No suspicious or ulterior slant can be attributed to the Accused for surrendering before the Judicial Magistrate after one and a half years, particularly given that there were no outstanding warrants for his arrest or even for participating in the investigation. The statement of the Accused that he did so because he was being harassed by the police to turn himself in seems very credible to us. In that case, there is no explanation as to why the Police did not arrest him even though they were frequenting his home, and the prosecution's version is not dependent on his interrogation, save for the alleged confession.

11. No identification parade has been conducted. This aspect has no doubt been discussed in the impugned judgment; but it was held that there was no suspicion as to the complicity of the Accused, who was allegedly seen by several witnesses without any suggestion to them during the course of the cross examination that the Accused was not present at all. At least in the trial of capital offences, we think that a duty is cast on the Court to ensure that the Accused has adequate legal assistance. It is evident that in this case this is strikingly absent. Keeping in perspective that the identification was a year and a half after the witness allegedly last saw the Accused, an identification parade should have been properly conducted. Moreover, identification by the Manager was not possible, as he had died before the Trial commenced. The identification by PW3 and PW4 took place two and a half years after the incident, again without an identification parade, and eventually in the course of Court proceedings. Further, PW3 has admitted that he only met the Accused once, which was on 24.7.2000. There is clearly a very severe lapse on the part of the prosecution with no plausible and acceptable explanation forthcoming.

12. The conviction is predicated on circumstantial evidence alone. Fingerprints have not been lifted from the scene, the murder weapon has not been recovered, and any credible motive is absent. It cannot even be contended that the Accused was the last person to be seen with the Deceased since several persons including the Manager, PW1, and the guests in the adjoining rooms could have accessed the room where the Deceased was eventually found. While circumstantial evidence is sufficient to return a conviction, this is possible if it contains all the links that connect the Accused to the incident, and the inconsistencies are extremely trivial in character. Furthermore, motive assumes great significance where a conviction is sought to be predicated on circumstantial evidence alone, and its absence can tilt the scales in favour of the Accused where all links are not

avowedly present. We think that the High Court erred in concluding that the complicity of the Accused in the murder of the Deceased had been proved beyond reasonable doubt.

13. The Impugned judgment has found the answers of the Accused Under Section 313 Code of Criminal Procedure evasive and untrustworthy, and held this to be another factor indicating his guilt. Section 313 Code of Criminal Procedure is of seminal importance in our criminal law jurisdiction and, therefore, justifies reiteration and elucidation by this Court. We shall start, with profit, by reproducing extracts from 41st Report of the Law Commission made in the context of Section 342 of the old Code of Criminal Procedure which corresponds to this Section where the Commission observed, inter alia, thus:

"24.40. Section 342 is one of the most important sections in the Code. It requires that the Court must, at the close of prosecution evidence, examine the accused "for the purposes of enabling him to explain any circumstances appearing in the evidence against him." The section for a moment, brushes aside all counsel, all prosecutors, all witnesses, and all third persons. It seeks to establish a direct dialogue between the Court and the accused for the purpose of enabling the accused to give his explanation. For a while the section was misunderstood and regarded as authorizing an inquisitorial interrogation of the accused, which is not its object at all. The key to the section is contained in the first sixteen words of the section. Giving an opportunity to the accused to explain the circumstances appearing in the evidence is the only object of the examination. He may, if he chooses, keep his mouth shut or he may give a full explanation, or, he is so advised, he may explain only a part of the case against him.

* * * *

24.45 We have, after considering the various aspects of the matter as summarized above, come to the conclusion that Section 342 should not be deleted. In our opinion the stage has not yet come for its being removed from the statute book. With further increase in literacy and with better facilities for legal aid, it may be possible to take that step in the future."

(ii) "Clause 320 - The existing provision in Section 342(2) enabling a Court to draw an inference, whether adverse or not from an answer or a refusal to answer a question put to the accused during the examination, is being omitted as it may offend Article 20(3) of the Constitution"--S.O.R."

14. In the context of this aspect of the law it has been held by this Court in [Parsuram Pandey and Others Vs. The State of Bihar](#), AIR 2004 SC 5068 : (2004) 9 JT 348 : (2004) 8 SCALE 783 : (2004) 13 SCC 189 : (2004) AIRSCW 5779 that Section 313 Code of Criminal Procedure is imperative to enable an accused to explain away any incriminating circumstances proved by the prosecution. It is intended to benefit the accused, its corollary being to benefit the Court in reaching its final conclusion; its intention is not to nail the accused, but to comply with the most salutary and fundamental principle of

natural justice i.e. audi alteram partem, as explained in [Asraf Ali Vs. State of Assam](#), (2008) CLT 1053 : (2008) CriLJ 4338 : (2008) 13 JT 598 : (2008) 10 SCALE 278 . In [Sher Singh Vs. State of Haryana](#)(2015) 5 AD 608 : AIR 2015 SC 980 : (2015) CriLJ 1118 : (2015) 1 RCR(Criminal) 790 : (2015) 1 SCALE 250 : (2015) 3 SCC 724 : (2015) 1 SCJ 386 this Court has recently clarified that because of the language employed in Section 304B of the Indian Penal Code, which deals with dowry death, the burden of proving innocence shifts to the accused which is in stark contrast and dissonance to a person's right not to incriminate himself. It is only in the backdrop of Section 304B that an accused must furnish credible evidence which is indicative of his innocence, either Under Section 313 Code of Criminal Procedure or by examining himself in the witness box or through defence witnesses, as he may be best advised. Having made this clarification, refusal to answer any question put to the accused by the Court in relation to any evidence that may have been presented against him by the prosecution or the accused giving an evasive or unsatisfactory answer, would not justify the Court to return a finding of guilt on this score. Even if it is assumed that his statements do not inspire acceptance, it must not be lost sight of that the burden is cast on the prosecution to prove its case beyond reasonable doubt. Once this burden is met, the Statements Under Section 313 assume significance to the extent that the accused may cast some incredulity on the prosecution version. It is not the other way around; in our legal system the accused is not required to establish his innocence. We say this because we are unable to subscribe to the conclusion of the High Court that the substance of his examination Under Section 313 was indicative of his guilt. If no explanation is forthcoming, or is unsatisfactory in quality, the effect will be that the conclusion that may reasonably be arrived at would not be dislodged, and would, therefore, subject to the quality of the defence evidence, seal his guilt. Article 20(3) of the Constitution declares that no person accused, of any offence shall be compelled to be a witness against himself. In the case in hand, the High Court was not correct in drawing an adverse inference against the Accused because of what he has stated or what he has failed to state in his examination Under Section 313 Code of Criminal Procedure.

15. We also think that it was incumbent on the High Court to deal with the so-called confession in detail. It is far from unknown that confessions are extracted from an accused under myriad threats, including his own physical safety. We must hasten to clarify that a reading of the judgment does not immediately reveal whether the conviction of the Accused by the Courts below was predicated on his alleged Confession.

16. It is thus abundantly clear that the investigation conducted by the police was less than satisfactory, nay, it was non-existent. We are constrained to reiterate yet again that it is necessary to have a specialized section of the Police to investigate cases of heinous nature. Both the prosecution and the High Court took the deposition of PW1 to be unimpeachably true, ignoring the fact that he as well as the Manager had access to Room No. 115 for three days before the body of the Deceased was found, and during that time they made decisions which cannot but raise suspicion in the minds of any reasonable person. There is as much opportunity and as much motive for them to have committed

the crime as has been tenuously attributed to the Accused to have done so. To rely substantially on the statement of such witnesses is forensically unsafe, to say the least. Given the failure of the prosecution to prove the case beyond reasonable doubt, the benefit of the doubt would have to be bestowed on the Accused. The impugned judgment is set aside. The conviction of the Appellant is quashed.