

Mahipal Singh @APPELLANT@Hash State of Rajasthan & Ors

Court: Rajasthan High Court (Jaipur Bench)

Date of Decision: Aug. 7, 2018

Acts Referred: Indian Penal Code, 1860 â€” Section 201, 302
Code of Criminal Procedure, 1973 â€” Section 161, 313, 437A
Indian Evidence Act, 1872 â€” Section 27

Hon'ble Judges: Mohammad Rafiq, J; Goverdhan Bardhar, J

Bench: Division Bench

Advocate: Vijay Choudhary, Prahlad Sharma, Khem Singh Rajawat, Nipun Beniwal

Final Decision: Allowed

Judgement

These two appeals are directed against judgment and order dated 06.08.2016 passed by the Court of Additional District and Sessions Judge,

Sambharlake, District Jaipur whereby the accused-appellants have been convicted for offence under Sections 302 and 201 and sentenced for offence

under Section 302 IPC to life imprisonment with fine of Rs. 5,000/-, in default of payment of fine, to further undergo imprisonment for three months;

for offence under Section 201 IPC to simple imprisonment for five years with fine of Rs. 3,000/-, in default of payment of fine to further undergo

imprisonment for two months. Both the sentences were ordered to run concurrently.Ã

Facts of the case are that one Kana Ram submitted written report (Exhibit P-1) on 29.05.2010 at 12.45 P.M. at Police Station, Phagi stating therein

that his brother Jagdish had gone to Jaipur for study and residing there for last 15-20 years.Ã Later, he started taxi driving for last five years.Ã

Jagdish had telephonic talk with him (informant) about 10 days ago.Ã When his son tried to talk Jagdish for last 4-5 days, his cell phone was found

switched off.Ã On the previous day, i.e. 28.05.2010, he learnt that dead body of a person has been found in the area of Phagi Police Station.Ã They

reached Police Station, Phagi, saw photographs of the deceased and identified that it was Jagdish.Ã They even went to mortuary in SMS Hospital,

Jaipur and found that it was indeed his dead body.Ã Some unknown persons after committing murder of his brother had thrown his dead body in

Phagi area and action be taken against the culprits.Ã On the basis of aforesaid written report, FIR No. 165/2010 (Exhibit P-26) was registered at

Police Station, Phagi for offence under Sections 302 and 201 IPC and commenced investigation. After completion of investigation, charge sheet

was filed against the accused-appellants for the aforementioned offences, which case on committal was made over to the Court of Additional District

and Sessions Judge, Sambhar Lake, Jaipur. The trial court framed charges against the accusedappellants for offence under Sections 302 and 201

IPC, which they denied and claimed to be tried. The prosecution in support of its case produced 18 witnesses and exhibited 49 documents.

Thereafter, the accused-appellants were examined under Section 313 Cr.P.C. wherein they alleged false implication. In defence, two witnesses

were produced and two documents were exhibited. On completion of trial, the trial court vide judgment and order dated 06.08.2016 convicted and

sentenced the accused-appellants in the manner indicated above. Hence, these appeals.

We have heard Mr. Vijay Choudhary, learned counsel appearing on behalf of the accused-appellant Sanjay @ Baloo; Mr. Prahlad Sharma, learned

counsel appearing on behalf of the accused-appellant Mahipal Singh and Mrs. Sonia Shandilya, learned Public Prosecutor as also examined the

material on record.

Mr. Vijay Choudhary, learned counsel appearing on behalf of accused-appellant Sanjay @ Baloo has argued that the trial court has erred in law in

convicting the accused-appellant. Even though case of the prosecution is entirely founded on circumstantial evidence, but the incriminating

circumstances sought to be proved against the accused-appellants when joined, do not make a complete chain to rule out every single hypothesis

compatible with his innocence. It is argued that there are material contradictions in the testimony of prosecution witnesses. Alleged agreement to

sell (Exhibit P-42A), said to has been executed by the appellant Sanjay in favour of the deceased in fact is a forged document. It is mentioned in the

agreement to sell that the vehicle i.e. Loading Pick Up No. RJ-14/1G/9713 was registered in the name of Sharad Prabhakar (P.W.18) and not in the

name of appellant. The evidence suggests that the deceased was engaged in the work of buying and selling of vehicles. It cannot be therefore

believed that he would purchase vehicle from someone, through agreement to sell, who was not registered owner of the vehicle. There is no

evidence to prove that a sum of Rs. 1,60,000/- was actually paid by the accused-appellant to the deceased. There is no evidence to prove that from

where aforesaid amount was received by the deceased. Besides, there was also stipulation in the agreement that a sum of Rs. 40,000/would be paid in

eight equal installments of Rs. 5,000/- each, which had yet not become due. Therefore, there was no occasion for any dispute between the deceased

and the appellant.Ã, No witness has been produced to say that there was any dispute between the appellant and the deceased as to the possession of

the vehicle. The prosecution witnesses are completely silent on this aspect.Ã,

It is argued that it cannot be believed that the appellant would commit murder of someone for transaction of Rs. 1,60,000/-.Ã, There is no evidence

that the appellant was ever lastly seen in the company of the deceased.Ã, It is argued that no witness has come forward to say that the alleged

agreement to sell (Exhibit P-42) was attested in his presence. Statement of Mrs. Shimla Jain (P.W.15), Notary Public is not enough to convict the

appellant.Ã, She has not stated that agreement to sell was signed in her presence or any money was passed on in her presence.Ã, In cross-

examination, she failed to identify the accused-appellant. Learned counsel argued that the whole exercise was aimed at saving the real owner of the

vehicle, Sharad Prabhakar (P.W.18), who stated that he left for Kanpur on 14th May but thereafter, he altered this date to 5th of May, to attend a

weeding at Kanpur.Ã, It is argued that recovery of cable at the instance of accused-appellant vide Exhibit P-20 has been made from the open

place.Ã, Attesting witness of recovery Ashok (P.W.14) has turned hostile and another witness Ramphool (P.W.9) cannot be believed for such

recovery as in the cross-examination he admitted that he was frequent visitor to the police station. Learned counsel submitted that none of aforesaid

articles was found to be blood stained. Alleged recovery of the diary of the deceased from the house of the accusedappellant vide Exhibit P-15 is fake

one and has been purposely inserted to creat evidence.Ã, It is argued that the recovery of two stamp papers, on which agreement was transcribed,

vide memo Exhibit P-14 has also been wrongly shown at the instance of accused-appellant. Attesting witness of this recovery are Raju Tiwari

(P.W.4) and Jhabar (P.W.5), who are none other than the employees of Sharad Prabhakar (P.W.18).Ã, The vehicle in dispute was very much lying in

the factory itself. Therefore it cannot be believed that the appellant having received huge amount of Rs. 1,60,000/-, yet the deceased would not have

insisted on giving possession of the vehicle.

It is contended that the trial court erred in law in not considering statements of Niranjana (D.W.1) and Rajesh (D.W.2), who have stated correct facts

that Jagdish in fact was engaged in the trade of purchasing/buying of old vehicles and that several persons used to frequently quarrel with him for not

paying their money in time. Therefore, there is every possibility that any other person was responsible for his death.Ã, It is argued that the appellant in

his examination under Section 313 Cr.P.C. specifically stated that he had no pickup vehicle.Ã, He had not executed any agreement for sale of any

vehicle to the deceased.Ã, It is argued that signature of appellant is not proved on the disputed agreement.Ã, The appellant is not known to the

accused-appellant Mahipal, nor he was associated with him.Ã, Bhanwar Lal (P.W.3), brother of the deceased in cross-examination failed to pin

pointedly say that as to when his brother Jagdish informed him about transaction of purchase of vehicle.Ã, Learned counsel referred to statement of

Dr. N.K. Goyal (P.W.8) and argued that he stated that as per post mortem report (Exhibit P-18), the kind of injuries the deceased sustained, could be

received if somebody hangs himself at a high place.Ã, It is therefore argued that investigating officer has not investigated the matter from the

perspective that since the dead body was found near a tree, there was also possibility of the deceased having committed suicide.Ã,

Mr. Prahlad Sharma, learned counsel appearing on behalf of the accused-appellant Mahipal argued that there is neither any evidence against the

appellant Mahipal, nor any motive on his part, which has been attributed to co-accused Sanjay @ Baloo.Ã, He has been made accused in the present

case only on the basis of alleged interrogation of co-accused Sanjay.Ã, It is argued that recoveries have wrongly been made from two pits vide Exhibit

P-19 and 20.Ã, While recovery of shirt and towel has been shown at the instance of accused-appellant Mahipal vide Exhibit P-19, recovery of cable

has been shown at the instance of co-accused Sanjay vide Exhibit P-20.Ã, Otherwise, there was no occasion for the investigating officer to segregate

recoveries of the articles found from two pits; one on the right side of the road and another on the left side of the road.Ã, In fact, these recoveries are

nothing but result of police padding.Ã, There is no evidence that the appellant was ever in any way associated with the execution of agreement to sell

between the deceased and co-accused Sanjay. There is no evidence of the fact that the appellant accompanied Sanjay to Notary Public for getting the

alleged agreement attested.Ã, The chain of circumstances sought to be proved against the accused-appellant is therefore having many missing links

and does not unerringly point towards the guilt of the accusedappellant Mahipal.Ã, It is therefore, prayed that appeal be allowed and the accused-

appellant Mahipal may be acquitted of the charges framed against him.Ã,

Mrs. Sonia Shandilya, learned Public Prosecutor opposed the appeals and referred to statements of prosecution witnesses, reference of which shall be

made by us at appropriate place.Ã,

Bhanwar Lal (P.W.3), real brother of the deceased has stated that Jagdish was his younger brother, who was residing at Jaipur for last 15-20 years.

He was unmarried.Ã, He used to frequently come to their home. He told him that he had purchased a pick up vehicle and got an agreement executed

in that behalf. He talked him around 15 days before the incident and informed about purchase of said vehicle in sale consideration of Rs. 2,00,000/-.

He also stated that a sum of Rs. 1,60,000/- had been paid and amount of Rs. 40,000/- had been kept pending. Deal was done with Sanjay. His

brother was murdered after three days of the execution of agreement. He has proved inquest report of the deceased (Exhibit P-2), recoveries of his

belongings (Exhibit P4) and site plan (Exhibit P-5). He also proved recovery of affidavit of the deceased (Exhibit P-7).

Shankar Lal (P.W.6), a teacher, who was resident of Village Jagannath, stated that he knew Jagdish, who was residing at Jaipur for last 15-20

years. He used to drive taxi. At times, he would visit his native village. Last time, when he came to his native village, he mentioned about

purchasing a pick up vehicle. This witness is also attested witness of inquest report (Exhibit P2). Kanaram (P.W.1) is yet another brother of the

deceased Jagdish. He has stated that he tried to contact on cell phone of Jagdish, but his cell phone was switched off. Then, they learnt from

Police Station Phagi about an unknown dead body. When they went there and saw the photographs, they identified the dead body to be of his brother

Jagdish. Dead body was found in Village Ramganj/Nawagaon in a nalah. They went to mortuary of S.M.S. Hospital, Jaipur where they found

dead body of Jagdish. Dead body was handed over to him vide memo (Exhibit P-3). He is attesting witness of recovery memo of pants, vest and

underwear of the deceased (Exhibit P-4) and site plan of the place from where dead body was found (Exhibit P-5). He is also attesting witness of

recovery of diary of the deceased (Exhibit P-6) in which he mentioned about purchase of the vehicle in dispute during his life time. Bhanwar Lal

(P.W.3) and Ramkumar Jat (P.W.17) are the attesting witnesses of said recovery who supported the same. Raju Tiwari (P.W.4) and Jhabar (P.W.5)

are attesting witnesses of recovery of pick up vehicle (Exhibit P-13) and two stamp papers at recovered the instance of Sanjay (Exhibit P-14), on

which agreement was transcribed. They are also attesting witnesses of recovery of note book (Exhibit P-16) and small diary of the deceased

(Exhibit P-15) recovered from possession of accused appellant Sanjay from his room. Gopal Lal (P.W.10) is attesting witness to site plan (Exhibit P-

10) and recovery memo of blood stained soil and simple soil (Exhibit P-11) and one lined paper and passport size photograph of an unknown person

lying near the dead body of the deceased (Exhibit P-12).

Shimla Jain (P.W.15), Notary Public, who attested the agreement to sell (Exhibit P-42), copy of which was Exhibit P-42A, has stated that Sanjay and

Jagdish both came to her on 19.05.2010 and got the agreement to sell attested. According to which, vehicle was agreed to be sold for sale

consideration of Rs. 2,00,000/-). She made entry of attestation of agreement in the Register which was Exhibit P-36. She stated that the persons

who brought agreement to her were not known to her, however, denied suggestion that the agreement was already signed. In fact, the agreement

was signed in her presence.

Sharad Prabhakar (P.W.18) had admitted that he gave reply to the notice of Police (Exhibit P-39) which contained his signature. In cross-

examination although he somewhat waived while stating that appellant came to him but in later part he stated that he was in India on 21.07.2010,

He went out of Rajasthan to Kanpur and stayed there for as long as nine days. It is wrong to suggest that he went to Kanpur on 14th, in fact he

went to Kanpur on 5th to attend a wedding. He admitted that the police came to his factory and it is, therefore, he gave written reply to the police

(Exhibit P-39). He admitted having given statement to the police under Section 161 Cr.P.C. (Exhibit D-3). In the reply (Exhibit P39), it was

mentioned that Sanjay was his distant nephew. He was driving his vehicle for last 18-20 months. Since there was not much work for him, he also

used to earn his livelihood by driving the said vehicle for gain in the local area. Neither he charged any amount from him for keeping the vehicle, nor

he paid any amount to him for driving his vehicle. He was responsible for maintenance of the vehicle. However, he was bearing expenses of tax,

insurance of the vehicle. He was still owner of the vehicle and he never sold the same to deceased. It was also mentioned therein that since

Sanjay was driver of his vehicle, he also used to stay in a room of his factory, for which he did not charge any rent from him. Since Sanjay was taking

the vehicle outside, he used to keep the complete original papers thereof.

Agreement to sell with admitted handwriting of accused Sanjay on two stamp papers along with specimen signatures of the accused Sanjay obtained

vide Exhibit P-43 to P-46 in the presence of gazetted officer and admitted signatures of the deceased on affidavit (Exhibit P-47) were sent to FSL.

According to FSL Report (Exhibit P-41), when these signatures were compared with admitted signatures of the deceased and the appellant Sanjay,

significant similarities were found in individual characteristics, general writing, habits, such as skill, line quality, pen pressure, movement, alignment,

speed, spacing, slant, relative size and proportion of letters etc. Even in the diary of the deceased recovered vide memo Exhibit P-8, a mention was

made about transaction of purchase of the vehicle by the deceased from Sanjay by the deceased in his hand writing. Diary (Exhibit P-15) was

recovered at the instance of the accused-appellant Sanjay pursuant to information given by him under Section 27 of the Indian Evidence Act from his

room.Ã, Hand writing in the diary was identified by Kanaram, brother of the deceased in his presence, memo of which was Exhibit P-6.Ã, Note book

of accused Sanjay containing his undisputed handwriting was also recovered from his room vide Exhibit P-16.Ã, While recovery of a cable wire has

been shown at the instance of the accused-appellant Sanjay from left side of the road about 100 meters away, at the same time, recovery of shirt of

the deceased and towel allegedly used in commission of offence were shown from another pit on left hand side of the road about 100 meters away.Ã,

This is the only evidence so far as accused Mahipal is concerned inasmuch as we do not find any evidence of motive on the part of Mahipal.Ã,

Therefore, it appears that these recoveries were made at the instance of accused-appellant Sanjay, but only to create evidence against Mahipal,

aforesaid recovery of shirt of the deceased and towel was shown at his instance.Ã, Vijay Sehara (P.W.13), Investigating Officer has proved all the

stages of the investigation.Ã, Dr. N.K. Goyal (P.W.8) has proved post mortem report of the deceased (Exhibit P-18), according to which cause of

death was asphyxia on account of strangulation.Ã, We are not inclined to uphold argument of the defence that the deceased might have committed

suicide.Ã,

In view of analysis of aforesaid evidence, it is clear that chain of circumstances qua accused-appellant Mahipal is having many missing links and the

same does not point towards his guilt and does not rule out every single hypothesis that may be compatible with his innocence. On the contrary, the

evidence in the present case reveals several incriminating circumstances against the accused-appellant Sanjay @ Baloo which when joined together

form a chain of circumstances against him, so complete as to rule out every other hypothesis that may be compatible with his innocence and unerringly

point towards his guilt that it must be he alone and none else, who has committed murder of Jagdish.

In view of above discussion, Criminal Appeal No. 1036/2016 filed by the accused-appellant Sanjay @ Baloo is dismissed.Ã, His conviction and

sentence is confirmed.Ã, Criminal Appeal No. 958/2016 filed by the accused-appellant Mahipal Singh is allowed and he is acquitted of the charge for

offence under Sections 302 and 201 IPC.Ã, He is on bail and need not surrender. His bail bonds stand discharged.Ã,

Keeping, however, in view the provisions of Section 437-A of the Code of Criminal Procedure, accused-appellant, Mahipal Singh is directed to

forthwith furnish a personal bond in the sum of Rs.20,000/- each, and a surety bond in the like amount, before the Deputy Registrar (Judicial) of this

Court, which shall be effective for a period of six months, undertaking that in the event of Special Leave Petition being filed against this judgment or

on grant of leave, the accused-appellant aforesaid, on receipt of notice thereof, shall appear before the Supreme Court.

Office is directed to place a copy of this judgment on record of connect appeal.Ã,

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