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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 157/2003

HARBIR SINGH

..... Appellant

Through: Mr. M.L. Yadav, Advocate

versus

STATE OF DELHI

..... Respondent

Through Mr. Hirein Sharma, APP

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE VINOD GOEL

JUDGMENT

07.09.2018

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Dr. S. Muralidhar, J.:

1. This appeal is directed against the judgment dated 29th January 2003 passed by the learned Additional Sessions Judge, New Delhi in SC No.15/1992 arising out of FIR No.330/1991 convicting the Appellant for the offence under Section 302/34 IPC and the order on sentence dated 15th February 2003 whereby he was sentenced to imprisonment for life along with payment of fine of Rs.25000/-, and in default of payment of fine, to undergo further rigorous imprisonment for two years.

2. It should be mentioned at the outset that the Appellant was sent up for trial along with three other co-accused, viz. Suresh Chand, Dulare Singh, and Pawan Kumar, all of whom were acquitted of the aforementioned offence by the same impugned judgment of the trial Court.

3. It also requires to be noticed that during the pendency of the present appeal, the sentence of the Appellant was suspended by an order dated 5th May 2005 passed by this Court.

Charge

4. The charge against the Appellant and the three co-accused was that on the intervening night of 5th/6th October 1991, near the Dr. Verma Farm, Jaunpur, New Delhi, they murdered Sunehari and her daughter Rama thereby committing the offence punishable under Section 302/34 IPC.

The dead bodies

5. The criminal justice process was activated when DD No.73B was recorded at PS Mehrauli at around 4:10 am on 6th October 1991 to the effect that the dead bodies of two ladies were lying near the Verma Farm at Jaunpur. SI Raj Singh (PW-3) then forwarded this report to SI Raghunath Singh (PW-10) who in turn proceeded to the spot with ASI Ram Kumar and Ct. Umar Mohammad.

6. Upon reaching there, PW-10 met Mohar Singh (PW-6) who was the *chowkidar* of the Dr. Verma Farm House. His statement (Ex.PW/6/A) was recorded on the basis of which a *rukka* (Ex.PW-10/A) was prepared and sent to the PS through Ct. Hans Raj (PW-8) for registration of the FIR. In the meanwhile, senior police officials reached there. A rough site plan of the spot (Ex.PW-10/B) was prepared on the instructions of PW-6.

7. PW-6 also identified the dead bodies of the two deceased. He told PW-10 that Sunehari was the mother-in-law of the Appellant and that Rama was his wife. Inquest proceedings were conducted by PW-10. He lifted the blood stained stones, blood stained earth from two places, and blood stained broken glass bangles from the scene of incident. From the open land of the

Dr. Verma Farm House, PW-10 lifted a blue v-shaped Hawaii *chappal*, a broken ballpoint pen having blood stains on it, blood stained earth, one broken bulb and its glass pieces. Parcels were made of these articles which were then sealed.

Arrests, disclosures and recoveries

8. On 8th October 1991, PW-10 along with SI Raj Singh (PW-3) and Station House Officer Inspector Bhim Singh (PW-11) arrested both the present Appellant and his brother Suresh, on the pointing out of PW-6 from their own house where they were living as tenants. Both of their disclosure statements were recorded. Allegedly, PW-10 recovered from Suresh a *kurta* and a *pyjama* and took them into possession.

9. On 9th October 1991, accused Dulare was arrested from Beena Bagh, New Delhi by the Inspector Bhim Singh (PW-11) in the presence of PW-10. Dulare (A-3) got recovered one pair of trousers and one shirt which were taken into possession. On 12th October 1991, accused Pawan Kumar was arrested from his house at Village Chhawla. He too got recovered a *kurta* and a *pyjama* which were taken into possession.

10. The post mortem examinations of both deceased confirmed that their deaths were due to strangulation and were homicidal. Dr. G. Bomgen (PW-12) who conducted the post mortem examination and prepared the post mortem report confirmed this. There was hardly any cross-examination of PW-12.

Trial

11. After completion of the investigation, the charge sheet was filed and charges as indicated hereinbefore were framed against the Appellant and the three co-accused. 13 witnesses were examined for the prosecution. Relevant

to the present appeal, when the incriminating circumstances were put to him under Section 313 Cr PC, the Appellant denied each of them. He did not dispute his relationship with Rama and that he had child with her but he disputed having married her. He recognised Chanchal as being a son born to him and deceased Rama. He also recognised Sunehari as the mother of Rama. He denied any *kurta* and *pyjama* being recovered from his residence. Specific to the depositions of PW-6 and Het Ram (PW-7), The Appellant's response was as under:

“Ans: PW6 and 7 have deposed falsely against me. This incident is over a jhuggi situated in Jonapur. I was keeping physical relations with Roma and my wife Urmila was aware of these physical relations with Roma. in fact I had been providing financial assistance to Roma but Mohar Singh wanted to sell that jhuggi and to earn money for himself, but Sunehri had refused to dispose of that jhuggi. This is how Mohar Singh and Het Ram had deposed against me.”

12. The Appellant was asked about FIR No.300/1991 having been registered against him under Section 365 IPC at PS Mehrauli on 5th September 1991 and whether that could be the motive for his committing the crime. He answered as under:

“It is false and incorrect that Rama and Sunehri had been threatening me to implicate me falsely in that case, but rather I was maintaining very good relations with Rama and Sunehri.”

13. When asked what else he wanted to say, he answered as under:

“Ans: In fact after I had been apprehended by police on 8.10.91 morning, police demanded money from me, so as to release me of this murder case. Police in fact had released me from custody after 8.10.91 and directed me to arrange money by 1-2 days. I searched money source but could not arrange Rs.50.000/- which police demanded. I told police that since I was innocent I had not been able to arrange money for which police falsely implicated me in this case. Police also told me that if Mohar Singh obliged him by illegal gratification, they will implicate me and if I obliged him with illegal gratification, they will

implicate Mohar Singh in this case. Since I did not oblige the police with the money, they implicated me in this case.”

14. The Appellant added:

“I also suspect that Mohar Singh was keeping physical relations with Sunehri and wanted to sell their jhuggi also. May be Het Ram may be maintaining relations with Roma.”

Defence witness

15. The Appellant also examined his own wife Urmila as DW-1. She admitted that the Appellant had illicit relations with Rama also known as Kallo. She further stated that 10-12 years ago, Rama had come to her house and told him that PW-6 had been creating trouble for her and she had specifically come to seek the help of the present Appellant, who incidentally was not present at the home at that time. Rama had expressed apprehension and had stated that PW-6 had invited some people in the evening and therefore she did not want to stay at the Dr. Verma Farm House.

16. According to DW-1, after Rama had left, the present Appellant returned home by 6 pm and DW-1 narrated the entire incident to him. Rama however did not return that evening and according to DW-1, the present Appellant remained in the house from 6 pm on 5th October 1991 till the next morning of 6th October 1991. According to DW-1, the relationship between the Appellant and Rama continued to be cordial and there were no disputes between them.

17. The next morning, i.e. 6th October 1991, the police had come to their house and informed them that a robbery had taken place in Jaunpur. The police asked the Appellant and DW-1 to accompany them. The police also handed over Chanchal, who had been born to the Appellant and Rama, to DW-1. In her cross-examination by the APP, DW-1 confirmed that she was presently also residing with the Appellant and she had come with him to

make a statement and that she did not go to the police to give a complaint. She denied the suggestion that she was speaking falsely only to save the Appellant.

The trial Court judgment

18. In the impugned judgment, the trial Court came to the following conclusions:

- (i) Dheeraj examined as PW-1 and Umed Singh examined as PW-2 turned hostile and failed to support the prosecution.
- (ii) PW-12, Dr. G. Bomgen who conducted the post mortem confirmed the homicidal deaths of both deceased.
- (iii) FIR No.300/1991 had been lodged by one Shyam Kumar complaining that his wife Renu (Meena) had gone missing since 5th September 1991 and he suspected the Appellant to be the person behind the disappearance of the said Renu. This indicated a possible motive with the Appellant suspecting that the two deceased were behind the filing of the said complaint.
- (iv) PW-6 had supported the prosecution as far as the role of the Appellant was concerned. However, this was disbelieved by the trial Court as far as the other three accused were concerned.
- (v) As far as PW-7 was concerned, since he was silent on the presence of the other co-accused, his evidence was appreciated only vis-a-vis the role of the present Appellant. The only incriminating evidence vis-a-vis the other co-accused was the CFSL report confirming the presence of A-group blood on clothes of the co-accused which match the blood group of the deceased. Yet that by itself was considered insufficient to bring home the guilt of the three co-accused.

19. Since the Appellant was named in the FIR filed by Shyam Sunder (FIR No.300/1991) the trial Court posed the question:

“Why not to accept evidence of PW-6 that accused Harbir reached Dr. Verma’s farm house on the night of this incident and told PW-6 that the victim ladies wanted to implicate him falsely in a case of kidnapping of a woman and he had arrived there to do away with those ladies.”

20. Further, it was opined that PW-6 did not have any animosity or grudge against the Appellant for him to falsely implicate the Appellant. The evidence of PW-6 supported by PW-7 was credible particularly about the motive as to why the Appellant wanted to do away with Rama and her mother. The evidence of PW-6 was believable. There was indeed a delay in recording the FIR and sending the special report to the Magistrate but when examined in the facts and circumstances, the said lapse was not serious enough to discredit the entire case of the prosecution.

21. For the aforementioned reasons, while acquitting the three of the accused the trial Court convicted the Appellant and sentenced him in the manner indicated hereinbefore.

22. This Court has heard the submissions of Mr. M.L. Yadav, learned counsel appearing for the Appellant, and Mr. Hirein Sharma, learned APP for the State.

Evidence of PW-6

23. The key witness for the prosecution case is PW-6 who incidentally was also picked up by the police and taken to the police station along with the present the Appellant. Both of them remained in the police station for about three days after which PW-6 was allowed to go whereas the Appellant was arrayed as an accused in the case.

24. The Court finds that PW-6 is in fact not a reliable witness and he has been economical with the truth. PW-6 does not lend assurance as to his truthfulness and reliability which are the two crucial elements before the evidence of a witness can be accepted.

25. There are numerous other improvements made by PW-6 while deposing in the trial. He did not mention to the police in the first instance that he had a torch with which it would have been possible for him to make out in the dark who the co-accused were. PW-6 also appears to be privy to the transactions involving the Appellant and Sunehari and Rama. The answers elicited from PW-6 in the cross-examination clearly point to the lack of credibility of the witness both in terms of truthfulness concerning facts as well as on the aspect of reliability.

26. It appears to the Court that PW-6 could equally be a part of a larger racket which may or may not have included the deceased but clearly they knew each other very well and their respective lines of business.

27. The Court finds no clinching evidence as such which would indicate clearly that the circumstances unearthed and sought to be proved by the prosecution form a complete chain and that each link in the chain of circumstances has been proved beyond all reasonable doubt. The law in this regard is fairly well settled. In *Trimukh Maroti Kalan v. State of Maharashtra (2006) 10 SCC 681*, the Supreme Court held:

“The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the

accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.”

28. That high threshold does not appear to have been met in the present case although it is a case of double murder. The Court is unable to base its decision regarding the guilt of the Appellant solely on the evidence of PW-6.

29. In fact, if the three co-accused are removed from the scene, the story of the prosecution would have to be re-visited. The entire theory of there being four accused - three of whom have actively assisted in the murdering of the two deceased - would have to entirely change in view of their acquittals. This is not one of those cases where even if the co-accused are acquitted, the others can be convicted on the basis of the same evidence.

30. In ***Kulwinder Singh v. State of Punjab (2007) 10 SCC 455*** the Supreme Court held that “the maxim “*falsus in uno, falsus in omnibus*” does not apply to criminal cases in India. A witness can be partly truthful and partly false.” Likewise in ***Ramesh Harijan v. State of U.P. (2012) 5 SCC 777***, it was opined:

“....it is the duty of the court to separate grain from chaff. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim *falsus in uno falsus in omnibus* has no application in India and the witness cannot be branded as a liar. In case this maxim is applied in all the cases it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of credence, and merely because in some respects the court considers the same to be insufficient or unworthy of reliance, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well.”

31. However, in the instant case, the evidence against the Appellant appears to be inextricably linked to the evidence against the co-accused. It is, therefore, not possible in the circumstances to accept the proposition that on the same evidence, the co-accused would get acquitted while the Appellant would be convicted. This incongruity has not been able to be properly explained by the prosecution.

32. For the aforementioned reasons, this Court is of the view that the Appellant should be granted the benefit of doubt. The prosecution has failed to prove the charges against him beyond reasonable doubt.

33. Consequently, the appeal is allowed and the impugned order of the trial Court on conviction and order of sentence are set aside. The Appellant is acquitted of the offence under Section 302/34 IPC. His bail and surety bonds stand discharged. He will fulfil the requirement of Section 437A Cr PC to the satisfaction of the trial Court at the earliest. The trial court record be returned forthwith together with a certified copy of this judgment.

S. MURALIDHAR, J.

VINOD GOEL, J.

SEPTEMBER 07, 2018

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