

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

: J U D G M E N T :

D.B. Criminal (Jail) Appeal No.853/2002.
(Narayan Vs. State of Rajasthan)

DATE OF JUDGMENT : January 31, 2007

P R E S E N THon'ble Mr. Justice N.N. Mathur
Hon'ble Mr. Justice Gopal Krishan VyasMr. Kalu Ram Bhati for the appellant.
Mr. O.P. Rathi, P.P. for the State .BY THE COURT : (Per Hon'ble Mr. Vyas, J.)

The instant jail appeal has been filed by the Narayan against the judgment and order of his conviction and sentence passed by the learned Addl. Sessions Judge (Fast Track), Udaipur (in short, hereinafter 'the trial Court') in Sessions Case No.75/2001 for commission of offences under Sections 302 and 210, I.P.C. For committing offence under Section 302, I.P.C. the appellant has been sentenced to undergo imprisonment for life with a fine of Rs.10,000/-, in default of payment of fine, to further undergo 6 months' rigorous imprisonment. For commission of offence under Section 201, I.P.C. he has been sentenced to suffer 7 years' rigorous imprisonment and pay a fine of Rs.10,000/-, in default of payment of fine, to further undergo 6 months' rigorous

imprisonment.

The prosecution case is, an unknown dead body was found in an iron barrel drum (कोठी) at bus-stand, Unjha. It is alleged that on 16.10.1995 at the bus-stand, Unjha some unknown person hired hand-cart of one Malla and instructed the cart man to carry the barrel drum to Railway Station and, in the meantime, he will reach there. But, the said unknown person did not reach at the railway-station and, ultimately, the cart owner Malla brought back the said barrel drum to bus-stand. It is said that in the evening the barrel drum began to give off bad smell and, therefore, information was given at the police post. The police opened the barrel drum and found therein the corpse of Mst. Hunji. whereabouts of the dead body was not known and a photo was published in the news-paper in pursuance of which P.W.-6 Babu Meena and P.W.-20 Chandulal came and identified the dead body as their sister Hunji's who was living with appellant Narayan as his wife at Kotara. The Unjha police registered the case and since information was given by way of statements of Babu Meena and Chandulal and other relatives of the deceased that the incident took place at Kotara, through the Superintendent of Police, the file of the case was sent for investigation to the Police Station, Kotara where regular FIR was registered at No.136/95 under Sections 302 and 201, I.P.C. Thereafter, the investigation commenced.

As per the prosecution story the deceased was

living with Narayan as his wife. P.W.-18 Balki, mother of deceased Hunji, stated that she had four sons and four daughters and Hunji went away with Narayan to live with him as his wife. Earlier they were living at Saroopganj but, at the time of the alleged incident, Hunji and Narayan were living at Kotara where Narayan was doing agriculture work. In the investigation, the police came to the conclusion that appellant Narayan and one Ranmaula committed offence under Sections 302 and 201, I.P.C.; but, Narayan was absconding and as such incomplete challan was filed. After trial, accused Ranmaula was acquitted of the charges levelled against him. On arrest of the present accused appellant, the police filed the complete challan against the appellant in the Court of Judl. Magistrate, Kotara on 14.03.2000 for offences under Section 302 and 201, read with Section 34, I.P.C. The case was committed to the Court of learned Sessions Judge, Udaipur from where it was transferred to the Court of Addl. Sessions Judge (Fast Track), Udaipur.

To prove its case, the prosecution adduced evidence of as many as 24 witnesses viz., P.W.-1 Jabbar Bhai, P.W.-2 Ramzan Bhai, P.W.-3 Dashrath, P.W.-4 Vasudeo photographer, P.W.-5 Alam Khan, jeep driver, P.W.-6 Babu Meena, P.W.-7 Jeetmal, P.W.-8 Nana, P.W.-9 Rahmatullah, P.W.-10 Sarfaraj, P.W.-11 Inayat Ali, P.W.-12 Mangilal, P.W.-13 Heera Lal, P.W.-14 Rajendra Singh, P.W.-15 Sukhlal, P.W.-16 Puranmal, P.W.-17 Phagna, P.W.-18 Balki, P.W.-19 Radha Bai, P.W.-20

Chandulal, P.W.-21 Shantilal, P.W.-22 Kantibhai, P.W.-23 Abdul Hamid and P.W.-24 Shambhu Dayal. The appellant in his statement under Section 313, Cr.P.C. denied the correctness of the prosecution evidence appearing against him and pleaded innocence. He stated, as in his own words,: "हूँजी अक्सर बीमार रहती थी जिससे वह मुझे छोड़ कर मीरादातार (ऊँझा) चली गई थी मीरादाता मंदिर में ही रहती थी तथा वंही मर गई मेरे को अखबार से सूचना मिली उसके पीयर वालों से मेरे अदावत रहती थी जिससे मेरे खिलाफ झूँठ केस दर्ज कराया". The learned trial court, after hearing the arguments, convicted and sentenced the appellant as noted above.

Assailing the conviction, learned amicus curiae Shri Kalu Ram Bhati vehemently contended that the prosecution has failed to prove its case beyond reasonable doubt. It is also contended that there is no direct evidence against the appellant to connect him with the alleged crime. It is also submitted that none of the circumstances relied on by the trial court is neither of conclusive nature, nor they form chain leading to the only conclusion that it was the appellant, and appellant who committed the murder of Smt. Hunji. It is also contended that the relatives of the deceased Hunji namely, P.W.-17 Phagna, brother of the deceased, P.W.-18 Smt. Balki, mother of the deceased, P.W.-19 Radha Bai, sister of the deceased, P.W.-20 Chandulal, brother of the deceased and P.W.-21 Shantilal, brother of the deceased, they have all, upon enquiry, stated at Kotara that Hunji had gone to Unjha

at Meeradatar Dargah for hajari (religious presence) and she was not living with him.

Per contra, the learned Public Prosecutor supported the impugned judgment and contended that there is sufficient and conclusive evidence which connects the appellant with the alleged crime. The learned Public Prosecutor has invited our attention to statement of P.W.-5 Alam Khan, driver of the jeep. He stated that appellant had hired the jeep for transporting certain luggage from his house to Unjha and he was paid six hundred rupees by the accused appellant. As per statement of P.W.-5 Alam Khan, the luggage was lying at the house of the appellant and alongwith the accused one Ranmaula was there, both of them put the luggage into the jeep which included two boxes, a locked iron barrel drum (कोठी) and some bags. After putting the luggage, both the accused and Ranmaula also sat in the jeep and they left for Unjha. Learned counsel for the state further contended that this witness identified the barrel drum in question rightly vide Ex.-P/2. According to him this is sufficient evidence for arriving at the finding of guilt against the accused. The learned Public Prosecutor also relied upon the statement of P.W.-24 Shambhu Dayal before whom at the identification parade the witness Alam Khan, P.W.-5 rightly identified the barrel drum. It is argued by the learned Public Prosecutor that this is a circumstantial evidence which directly connects the appellant with the crime. He

has, therefore, submitted that the appellant is guilty of the offences charged against him and he has been rightly convicted and sentenced by the learned trial Court.

In this case, it is very important to ascertain what kind of evidence is on record and whether the prosecution has proved its case by way of leading evidence either by direct evidence or circumstantial evidence. Obviously, there is no eye-witness before whom the incident took place, therefore, in the absence of direct evidence of eye-witness, the circumstantial evidence must be weighed to ascertain the factum probandum in the case. The fact may not be proved by direct evidence but when the circumstances bearing upon the fact are revealed in a case, such circumstances are sufficiently proximate to draw the ultimate conclusion of the fact in the case.

In the present case, the iron barrel drum containing the corpse of the deceased was transported from the house of the appellant to Unjha bus-stand in a jeep hired by the appellant. There is again evidence on record that this barrel drum was re-loaded in a hand-cart to be taken to the railway-station and when the hand-cart driver did not find anyone to receive the barrel drum at the railway-station he brought back the same to the bus-stand. These are two circumstances in the case which lead to the inference of commission of the crime at the hands of the accused. At the identification parade, the iron barrel drum in question

was rightly identified by the driver of the jeep Alam Khan and he has categorically deposed in his examination that the luggage which was put in the jeep included the said barrel drum.

We have carefully perused the statements of P.W.-5 Alam Khan and P.W.-24 Shambhu Dayal. P.W.-5 Alam Khan deposed in his examination in chief that, “.....मैं मुलजिम के घर गया वहां सामान पड़ा था व पास मैं रणमौला खड़ा था। वहां मैंने जीप खड़ी करदी। सामान मैं एक कोठी, दो पेटी थे व कोठी पर ताला लगा हुआ था।...” His cross-examination does not disclose any contradiction and rather the witness stated in his cross-examination that he only carried such passengers as he knew and would not take his jeep with strangers. In his re-examination, he again stated that, “जीप में कोठी एक व दो पेटी व थेले थे जो नारायण व रणमौला ने भरे थे व उतारे भी उन्होंने ही थे।” P.W.-24 Shambhu Dayal, who testifies the identification parade, clearly speaks that, “.....गवाह आलमखां व नाणा ने उक्त बरामदशुदा कोठी की मेरे समक्ष सही शिनाख्तगी की।”

There is nothing in the testimony of these witnesses tainted with alien factor to bring in a suggestion casting doubt upon the prosecution version of the case. Whether the ingredients for satisfying the test of evaluation of the circumstantial evidence are sufficiently existent in the present case from which inference of guilt drawn may cogently and firmly be established against the accused may further be

considered by examination of the oral evidence of other prosecution witnesses who are close relatives of the deceased and who have without any material contradiction deposed in common that they enquired of the accused about the whereabouts of the deceased and he informed them that Hunji (deceased) had gone to Unjha at Meeradatar Dargah for hajari. It is also deposed by P.W.-18 Smt. Balki, mother of the deceased that some days before her death deceased Hunji told her that Narayan was intriguing for bringing in another woman and wanted to do away with her. Thereafter, from the news-paper they knew the fact of death of Hunji. The possibility of the suggestion of anyone else than the accused committing the crime is dampened by the evidence on record about the accused and Ranmaula carrying the luggage including the iron barrel drum in question in a jeep from the house of the accused to Unjha bus-stand. It is further alleged by the prosecution that at the bus-stand some unknown person hired a hand-cart for carrying the iron barrel drum to the railway-station and when no one was there at the railway-station to receive the barrel drum the hand-cart driver brought back the barrel drum at the bus-stand. The chain of evidence is completely unbroken and there is sufficient circumstantial evidence on record to lead to the conclusion of the guilt of the accused. It is significant to note here that after commission of the crime the accused remained absconding for almost five years. This is a strong factum

probans in the case so proximate to the principal fact that indisputable link is established between the crime and the perpetrator.

Having, as above, once reached to the close proximity of the conclusion of guilt against the accused, we have further considered the evidence on record adduced by the prosecution of the sundry witnesses who have attested the investigative enquiry against the accused-appellant. These witnesses are P.W.-10 Sarfaraz Ahmed - witness to Ex.-P/30 and P.W.-11 Inayat Ali - witness to Ex.-P/47. Both these witnesses knew the accused appellant and co-accused Ranmaula (not before the Court). From their evidence, it does not appear that they are telling lie in any manner. P.W.-10 Sarfaraz Ahmed, during his examination, quoted Ranmaula as having informed the police about the place where he alongwith accused-appellant put the dead body of deceased Hunji in the barrel drum. It is yet another circumstance in the case that prosecution witnesses also indicated during their examination that about the time it had come to light that Narayan's wife Hunji has been murdered Narayan was preparing to make good his escape from the scene.

In the present case, the circumstances glaringly unravel linked chain of events that only supports the prosecution version. The absence of any direct evidence does not mar the conclusion of the trial Court as to finding of guilt because the circumstantial

evidence coming on record taken together invariably converges on the conclusion of the guilt of the accused. We may further observe that there is nothing on record either in the statement of the accused recorded under Section 313, Cr.P.C. or by way of any other evidence to indicate that the accused also made any attempt to search his wife but, on the contrary, after commission of the crime was made public the accused all along remained absconding until he was finally arrested almost after five years of the incident and thus any attempt at an inference deliberately conceived for innocence of the accused is immediately thwarted. This leaves no manner of doubt about the involvement of the accused in the incident.

It is obvious from the above that the prosecution has proved its case beyond reasonable doubt. As discussed above, the trial Court has rightly appreciated the evidence on record and nothing has come on record to indicate any possibility of a conclusion other than of the guilt of the accused. Therefore, the learned trial Judge has rightly observed that there is linked circumstantial evidence against the accused which can be relied upon in the absence of any direct evidence.

There is sufficient incriminating evidence on record and offences alleged are clearly made out against the accused appellant. Nothing has come on record to give rise to a hypothesis that the crime might have been committed by anyone else than the

accused and all the evidence singularly point to the conclusion arrived at by the learned trial Court.

As a result of the aforesaid discussion, we do not find any force in the appeal. The conviction of the accused-appellant and sentence awarded to him by the trial Court is maintained. The appeal is hereby dismissed.

(Gopal Krishan Vyas) J.

(N.N. Mathur) J.

Ojha, a.