INDRAJIT DAS

v.

THE STATE OF TRIPURA

(Criminal Appeal No.609 of 2015)

FEBRUARY 28, 2023

[B. R. GAVAI AND VIKRAM NATH*, JJ.]

Penal Code, 1860 : ss. 302/34, 201 – Murder – Circumstantial evidence – Information received from one of the prosecution witness that his nephew was missing since the previous evening – Victim had gone on his bike but did not return – On further investigation, his mother informed that the victim had gone out with two friends – Both the friends alleged to have confessed their crime before the investigating officer – One of them being juvenile, tried under Juvenile Act – As regards the other the trial court held that the prosecution had fully established his guilt beyond reasonable doubt, and convicted him – Said order upheld by the High Court – On appeal, held : Instant case is of circumstantial evidence as no one saw the commission of crime – Basic links in the chain of circumstances starts with motive, then move on to last seen theory, recovery, medical evidence, expert opinions if any and any other additional link which may be part of the chain of circumstances – Prosecution did not come forward with any motive whatsoever as to why the appellant and the juvenile would commit the said crime – Dead body not recovered – Only a limb was recovered but no DNA testing was carried out to establish that the limb was that of the victim – As such the entire case of the prosecution proceeds on presumption that the victim died – Mother of the victim was the main witness of the last seen – In her cross-examination she stated that no such statement was there, though she had told the Investigating Officer that she had seen the appellant and the juvenile at her gate – Recoveries have been from an open place – It was not a place which could be in the exclusive knowledge of the appellant – Conviction is based upon, apart from the prosecution witnesses, on the extra-judicial confession of the appellant and the juvenile – According to both the

* Author

confessions, the appellant as also juvenile were waiting at a culvert near the market where victim came on his bike and from there all three of them left on the bike – No corroborating evidence found to support the extra-judicial confession, rather the evidence led by prosecution is inconsistent with the same – Thus, major links of the chain of circumstances not proved by the prosecution evidence and as such it would be unjust to uphold the conviction of the appellant – Appellant entitled to benefit of doubt and is acquitted of all the charges – Evidence.

Evidence:

Circumstantial evidence – General principles – Discussed.

Circumstantial Evidence – Motive – Importance and role of, in case of direct and circumstantial evidence – Stated.

Sharad Birdhichand Sarda vs. State of Maharashtra **1984 (4) SCC 116 : [1985] 1 SCR 88;** *Sailendra Rajdev Pasvan and Others vs. State of Gujarat Etc.* **AIR 2020 SC 180 : [2019] 14 SCR 270;** *Kuna Alias Sanjaya Behera vs. State of Odisha* **(2018) 1 SCC 296 : [2017] 11 SCR 179;** *Ranganayaki vs. State by Inspector of Police* **(2004) 12 SCC 521 : [2004] 5 Suppl. SCR 452 – referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.609 of 2015.

From the Judgment and Order dated 09.10.2013 of the High Court of Tripura at Agartala in CRLA No.22 of 2011.

Ms. Madhumita Bhattacharjee, Ms. Urmila Kar Purkayastha, Ms. Srija Choudhury, Ms. Piyali Paul, Ms. Arushi Mishra, Advs. for the Appellant.

Shuvodeep Roy, Kabir Shankar Bose, Deepayan Dutta, Sai Shashank, Advs. for the Respondent.

The Judgment of the Court was delivered by

VIKRAM NATH, J.

1. The appellant has assailed the correctness of the judgment and order of the High Court of Tripura dated 9th October, 2013 dismissing the appeal of the appellant while confirming the conviction recorded by the Trial

Court under Section 302/34 of the Indian Penal Code[1] and 201 of IPC whereby he was awarded imprisonment for life and allied sentences to run concurrently.

2. The prosecution story begins with a telephone message by one Mantu Das (PW-40) informing the Police Station Kailashahar that huge quantity of blood had been seen on the Kailashahar-Kumarghat Road near Shantipur. The said telephone message was received by Bindhu Bhushan Das (PW-1) whereafter he along with Sub-Inspector Kajal Rudrapal proceeded for the said place, after making due entry in the G.D.Register.

3. At the spot, PW-1 not only noticed the blood on the road side but also found blood-stained v*ojali* (big knife), one *taga* (thread) and some broken pieces of glass which could be said to be of the rear-view mirror of a motor cycle. All these articles were taken into custody, sealed and recovery memo prepared. Further investigation was made which led to visible marks of dragging some heavy article in the jungle on the side of the road. These marks continued upto Manu River and thereafter vanished.

4. While the investigation was still being carried out, the Police Station received information from Arjun Das (PW-7) that his nephew Kaushik Sarkar was missing since the previous evening, i.e. 19.06.2007. The said information was to the effect that Kaushik Sarkar had gone out in the previous evening on his bike but had not returned. The Investigating Officer came to the residence of Kaushik Sarkar at village Mohanpur where he recorded the statement of his mother (PW-25). She informed that Kaushik Sarkar had gone out with two friends namely Indrajit Das (appellant) and one 'juvenile K'. Both these persons were called to the police station but they did not report. The Investigating Officer thereafter went to the house of the appellant.

5. According to the Investigating Officer, both the accused confessed before him that they had gone to Fatikroy and Kanchanbari area on the bike of the deceased Kaushik Sarkar. On the way they had purchased a bottle of alcohol and consumed it along with Babul Das. Thereafter, they started driving towards Kailashahar. At Shantipur, they got down to answer the call of nature. Kaushik was sitting on the motor cycle. At

1 in short 'IPC'

that stage, both the accused assaulted Kaushik Sarkar with the *vojalis.* They threw the helmet, purse and two *vojalis* in the nearby jungle and dragged the dead body and the motor cycle to the nearby river and threw them in the river. Then they swam across the river, went to the house of the appellant and burnt their blood-stained clothes.

6. The accused 'juvenile K' was tried under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. The present appellant was tried by the regular Sessions Court. Upon charge being framed and read out, he pleaded not guilty and claimed to be tried.

7. The prosecution examined as many as 40 witnesses and also led documentary evidence which was duly proved and exhibited. The Trial Court vide judgment dated 19.04.2011 recorded a finding that the prosecution had fully established the guilt of the appellant beyond reasonable doubt, and accordingly convicted him of the offences and sentenced him as recorded earlier.

8. The appellant preferred appeal before the High Court which has since been dismissed by the impugned judgment as the High Court was also of the view that the prosecution had been successful in proving the charges beyond reasonable doubt.

9. We have heard learned counsel for the parties and perused the material evidence on record.

10. The present one is a case of circumstantial evidence as no one has seen the commission of crime. The law in the case of circumstantial evidence is well settled. The leading case being **Sharad Birdhichand Sarda vs. State of Maharashtra**[2]**.** According to it, the circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; 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. The said principle set out in the case of **Sharad Birdhichand Sarda (supra) has been consistently followed by this Court. In a recent case – Sailendra Rajdev Pasvan and Others**

2 1984 (4) SCC 116

vs. State of Gujarat Etc.[3], this Court observed that in a case of circumstantial evidence, law postulates two-fold requirements. Firstly, that every link in the chain of circumstances necessary to establish the guilt of the accused must be established by the prosecution beyond reasonable doubt and secondly, all the circumstances must be consistent pointing out only towards the guilt of the accused. We need not burden this judgment by referring to other judgments as the above principles have been consistently followed and approved by this Court time and again.

11. In the above backdrop of the settled legal propositions, we proceed to deal with the facts, circumstances and evidence of the present case and find out as to whether each link of the chain of circumstances is fully established by the prosecution or not.

12. The basic links in the chain of circumstances starts with motive, then move on to last seen theory, recovery, medical evidence, expert opinions if any and any other additional link which may be part of the chain of circumstances.

13. First of all, we may record that the prosecution has not come forward with any motive whatsoever as to why the appellant along with the co-accused juvenile 'K' would commit the said crime. Even the Trial Court and the High Court in the absence of any evidence have not been able to record a finding on the motive for the commission of the crime.

14. The High Court dealt with the aspect of motive in solitary paragraph no.20, a perusal of which does not reflect that any motive was noticed but that 'juvenile K' was the mastermind behind the crime and that he had purchased the weapon of assault. This, by nowhere would constitute a motive.

15. In a case of circumstantial evidence, motive has an important role to play. Motive may also have a role to play even in a case of direct evidence but it carries much greater importance in a case of circumstantial evidence than a case of direct evidence. It is an important link in the chain of circumstances. Reference may be made to the following two judgments on the importance of motive in a case of circumstantial evidence:

3 AIR 2020 SC 180

(1) **KunaAlias Sanjaya Behera** vs. **State of Odisha**[4]**;** and

(2) **Ranganayaki** vs. **State by Inspector of Police**[5].

16. Next, in the present case, the dead body has not been recovered. Only a limb was recovered but no DNA testing was carried out to establish that the limb was that of the deceased Kaushik Sarkar. As such the entire case of the prosecution proceeds on presumption that Kaushik Sarkar has died. The principle of *corpus delicti* has judgments on both sides stating that conviction can be recorded in the absence of the recovery of the corpus and the other view that no conviction could be recorded in the absence of recovery of the corpus. The later view is for the reason that if subsequently the corpus appears as alive, someone may have been convicted and sentenced and suffered incarceration for no crime committed by him. We are not going into the law on the point. However, we have just recorded this fact and it may have some relevance or bearing while considering the other links of the chain of circumstances.

17. We now deal with the theory of last seen. In the first information given by Arjun Das (PW-7) in the morning to the police station, there is no mention that Kaushik left his house along with the appellant and 'juvenile K'. Arjun Das (PW-7) has only stated that his nephew Kaushik had left in the evening on the motor bike and had not returned. Although in his statement before the Trial Court he stated that Kaushik had gone with the appellant and juvenile 'K' but when confronted with his statement under Section 161 CrPC and also about the entry in the police records, he had no explanation for the same.

18. PW-25 is the main witness of the last seen. She is mother of Kaushik. She has stated that when she returned from the office around 5 PM on 19.06.2007, she saw Kaushik going out on the motor bike of his father. When she inquired from him, he said he was going to Fatikroy with the appellant and juvenile 'K'. She further stated that she followed her son upto the gate and saw the appellant and 'juvenile K' standing at the gate. This witness in her cross-examination when confronted with her statement under Section 161 CrPC said that no such statement is there, although

4 (2018) 1 SCC 296
5 (2004) 12 SCC 521

according to her, she had told the Investigating Officer that she had seen the appellant and 'juvenile K' at her gate.

19. The conviction is based upon, apart from the prosecution witnesses, on the extra-judicial confession of the appellant as also 'juvenile K'. According to both the confessions, the appellant as also 'juvenile K' were waiting at a culvert near the Fatikroy bazar where Kaushik Sarkar came on his bike at about half past 5. From there all three of them left on the bike. However, near the circuit house he stopped the bike and wanted to check whether his mother has come home from office. Both of them waited near the circuit house and Kaushik Sarkar after checking at home again came back to circuit house from where they left for Kumarghat. If the extra-judicial confession is to be accepted, the statement of last seen theory given by the mother (PW-25) becomes difficult to be given any credibility. However, even if we ignore the extra-judicial confession, the statement of PW-25 appears to be an improvement only to develop the last seen theory. Inasmuch as neither in the telephone call of Arjun Das (PW-7) recorded at the police station refers to Kaushik leaving in the evening along with the appellant and juvenile 'K' nor do the statements of PW-7 and PW-25 under Section 161 CrPC mention the name of the appellant and juvenile 'K' having been seen leaving with Kaushik from his residence. Two other witnesses were also examined in support of the last seen theory but they also do not inspire any confidence.

20. Insofar as the recoveries are concerned which again is an important link in the chain of circumstances, the recoveries have been from an open place. The dragging of some heavy object from the place where the blood-stains were noticed and *'vojali'* was recovered, up to the edge of the river and then recovering the motor bike from the place from the bed of the river just below where the dragging marks had come to an end is something quite normal and expected. It was not a place which could be in the exclusive knowledge of the appellant.

21. The extra-judicial confession is a weak piece of evidence and especially when it has been retracted during trial. It requires strong evidence to corroborate it and also it must be established that it was completely voluntary and truthful. In view of the discussion made above, we do not find any corroborating evidence to support the extra-judicial confession, rather the evidence led by prosecution is inconsistent with the same.

22. In view of the discussion made above, we find that the major links of the chain of circumstances have not been proved by the prosecution evidence and as such it would be unjust to uphold the conviction of the appellant. The appellant would be entitled to benefit of doubt. Accordingly, the appeal is allowed and the appellant is acquitted of all the charges. Appellant is in judicial custody. However, he was granted parole by the State. He shall be released forthwith.

23. Pending applications, if any, are disposed of.

Headnotes prepared by: Nidhi Jain (*Assisted by:* Tamana, LCRA)

Result of the case: Appeal allowed.