

REPORTABLEIN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTIONCRIMINAL APPEAL NO. 337/2008

VIJAY SHANKAR

....Appellant

Versus

STATE OF HARYANA

...Respondent

J U D G M E N T**R. BANUMATHI, J.**

In this appeal the appellant questions the correctness of his conviction under Section 302 IPC and Section 449 IPC and the sentence of life imprisonment awarded to him as confirmed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No.87-DB/1999 dated 05.04.2006.

2. Case of prosecution is that deceased-Satish Kumar, brother of Sukhbir Singh (PW-10), was working as a Sub-Inspector in Delhi Police. Sukhbir Singh and deceased-Satish Kumar owned agricultural lands and also a poultry farm in village Dujana. To celebrate the festival of Holi, on 16.03.1995, deceased-Satish Kumar along with his family went to the village. His wife and children had gone to village Dujana and Satish

Kumar stayed in poultry farm. Both the brothers celebrated the Holi by playing fireworks and they continued talking up to 2.00 a.m., Sukhbir Singh returned back to his house in the village leaving Satish Kumar in the poultry farm. The following morning i.e. on 17.03.1995, Kishore (PW-19) saw Satish Kumar lying injured on the floor and he informed the same to PW-10. Sukhbir Singh (PW-10) immediately rushed to the farm and took his brother in a maruti car to the Medical College and Hospital, Rohtak for treatment and the incident was communicated to the police. When the police party from Jhajjar Police Station went to the hospital to record the statement of Satish Kumar, Dr. K.S. Bhatia (PW-6) opined that Satish Kumar was not in a position to give a statement. Police then recorded the statement of Sukhbir Singh (PW-10) who stated that the appellant-accused resident of village Dujana came to their farm the previous night at about 10.00/11.00 p.m. under the influence of liquor and abused his brother Satish Kumar raising objection for not allowing him to park his cycle and not allowing him to take liquor at their farm and that accused-Vijay Shankar threatened them saying that he would not let them celebrate Holi. Based on the statement of Sukhbir Singh, FIR No.60/1995 of Jhajjar Police Station, was registered under Section 307 IPC. Dog squad was brought and

the sniffer dog followed the trail to the '*baithak*' of the appellant. Vidya Rattan (PW-11) resident of village Dujana informed the police that during the intervening night of 16.03.1995/17.03.1995, when he had gone in search of his lost buffalo, at about 2.30 a.m., he had seen the accused coming out of the room of Satish Kumar. On 19.03.1995, the appellant is said to have made an extra-judicial confession to Budh Ram (PW-12), a Member of Gram Panchayat of village Dujana. Injured Satish Kumar succumbed to injuries on 20.03.1995. After his death, FIR was altered to Section 302 IPC. Dr. Subhash Juneja (PW-13) conducted post-mortem on the body of Satish Kumar and opined that the death was due to multiple injuries with its complications which were sufficient in the ordinary course of nature to cause death. The accused was arrested on 19.03.1995 and based on his statement, clothes of the accused and knife were recovered and were sent to forensic science laboratory. After due investigation, chargesheet was filed against the appellant under Sections 302 and 449 IPC.

3. To substantiate the charges, the prosecution has examined twenty witnesses and from the side of defence one witness was examined. Upon consideration of evidence, the Sessions Court held that the prosecution has established the

guilt of the accused beyond reasonable doubt and convicted the appellant under Section 302 IPC and sentenced him to undergo imprisonment for life and imposed fine of Rs.2,000/- with default clause. The appellant was also convicted under Section 449 IPC and was sentenced to undergo rigorous imprisonment for ten years and imposed a fine of Rs.1,000/- with default clause. Aggrieved by the verdict of conviction, the appellant filed appeal before the High Court which by the impugned judgment confirmed the conviction and sentence of imprisonment, correctness of which is challenged in this appeal.

4. Learned counsel for the appellant contended that there is no direct evidence involving the appellant in respect of the commission of the offence punishable under Section 302 IPC and Section 449 IPC. It was submitted that the accused was convicted even when the circumstances have not been proved by the prosecution beyond reasonable doubt. It was contended that the courts below erred in placing reliance upon evidence of Vidya Rattan (PW-11), who is said to have gone towards village Budha in search of a lost buffalo alone in the mid-night which is quite unbelievable and the courts below committed serious error in accepting PW-11's evidence so far as the circumstance of last seen together. Learned counsel for the appellant urged that the

recovery of clothes and bloodstained knife does not in any way connect the accused with the crime.

5. Per contra, learned counsel for the respondent contended that there was sufficient light on the spot and the witness has properly recognized the accused and the evidence of PW-11 is reliable and trustworthy and rightly accepted by the courts below. It was submitted that the circumstantial evidence relied upon by the prosecution, namely, motive, last seen theory, extra-judicial confession and recovery have been proved by cogent evidence and the courts below rightly convicted the appellant-accused and the conviction does not warrant any interference.

6. We have carefully considered the rival contentions and perused the evidence and the impugned judgment.

7. There is no eye-witness to the occurrence and the entire case is based upon circumstantial evidence. The normal principle is that 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 these 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 of any hypothesis other than that of the guilt of the accused and inconsistent with their innocence vide *Sharad Birdhichand Sarda vs. State of Maharashtra*, (1984) 4 SCC 116. The same view was reiterated in *Bablu Alias Mubarik Hussain vs. State of Rajasthan*, (2007) 2 SCC Cr1. 590.

8. Prosecution mainly based its case on the circumstances:- (i) motive; (ii) last seen theory; (iii) extra-judicial confession; (iv) trail of dog-squad leading to *Baithak* of the accused and (v) recovery of bloodstained clothes and knife. In the light of the above principles, let us examine whether the prosecution has proved the circumstances by convincing evidence and whether those circumstances unerringly point towards the guilt of the accused.

9. **Motive:-** So far as the motive is concerned, Sukhbir Singh (PW-10), brother of the deceased stated that the appellant-Vijay Shankar used to park his cycle on their farm and his brother Satish Kumar had rebuked him about fifteen days prior to the occurrence for parking his cycle. PW-10 further stated that on the intervening night of 16.03.1995/17.03.1995, the appellant came to the farm in an inebriated condition and

stated that since Satish and Sukhbir are not allowing him to park his cycle and are not allowing him to take liquor in their farm, he will not let them to celebrate Holi. The appellant is the neighbour of PW-10 and the deceased-Satish Kumar. Allegation of previous enmity between the appellant and the deceased family has not been proved. Excepting PW-10, no other independent witness was examined to prove that Satish Kumar had rebuked the appellant and serious doubts arise as to the motive suggested and the alleged previous enmity.

10. As per the version of PW-10, on 16.03.1995, his brother Satish Kumar came to the farm for celebrating the festival of Holi and his children went to the house in village Dujana while Satish Kumar stayed back at the farm and that they celebrated Holi festival by cracking fireworks and continued talking up to wee hours of 17.03.1995 and thereafter he left for his home while Satish Kumar continued to be in the poultry farm. There were three servants in the poultry farm; two were sleeping in the adjoining room where Satish Kumar was sleeping and the third servant was sleeping in the truck parked at some distance from the farm. None of the farm servants were examined and this again raises doubts about the evidence of PW-10 and the motive suggested.

11. In each and every case, it is not incumbent on the prosecution to prove the motive for the crime. Often, motive is indicated to heighten the probability of the offence that the accused was impelled by that motive to commit the offence. Proof of motive only adds to the weight and value of evidence adduced by the prosecution. If the prosecution is able to prove its case on motive, it will be a corroborative piece of evidence. But even if the prosecution has not been able to prove its case on motive that will not be a ground to throw the prosecution case nor does it corrode the credibility of prosecution case. Absence of proof of motive only demands careful scrutiny of evidence adduced by the prosecution. In the present case, absence of convincing evidence as to motive makes the court to be circumspect in the matter of assessment of evidence and this aspect was not kept in view by the High Court and the trial court.

12. **Last Seen Theory :-** The trial court as well as the High Court based the conviction of the appellant mainly on the last seen theory relying on the evidence of Vidya Rattan (PW-11) who allegedly saw the appellant on the intervening night of 16.03.1995/17.03.1995 coming out of the room of Satish Kumar. In his evidence, PW-11 stated that on the intervening night of 16.03.1995/17.03.1995 his buffalo was missing from his

farmhouse and therefore he went towards village Budha in search of his buffalo. PW-11 stated that it was moonlit night and at about 2.30 a.m., when he reached Dujana bus stop, he saw the appellant-Vijay Shankar coming out of the room of Satish Kumar and he could identify the accused in the bulb light which was in the courtyard of the room. PW-11 further stated that thereafter he went to village Dieghal in search of his buffalo. PW-11 further stated that when he came to Dujana at 3.00 p.m., he saw the crowd of people at the bus stand and he came to know that on the previous night someone has murdered Satish Kumar by causing knife injuries and after 10/15 minutes police came to the spot and PW-11 informed the police what he saw the previous night. Prosecution strongly relied upon the evidence of PW-11 to bring home the guilt that the accused was last seen with the deceased.

13. Evidence of PW-11 is assailed contending that PW-11 is not a reliable witness and that he being the owner of sixty acres of land and also owning a petrol pump, it is quite unbelievable that he went in the midnight from one village to another in search of buffalo. Learned counsel for the appellant placed reliance on the Modis' Medical Jurisprudence and Toxicology 19th Edn. Para (2) at page No.61 contending that

according to Tidy, “*the best known person cannot be recognized in the clearest moonlight beyond a distance of seventeen yards....*” and it is quite improbable that PW-11 could see the accused-appellant so clearly from such a long distance.

14. As the prosecution case mainly revolves around the evidence of PW-11, it is necessary to carefully consider whether the High Court and the trial court have properly appreciated the evidence of PW-11 and whether the courts below were right in accepting the prosecution case based on evidence of PW-11. PW-11 is a resident of village Dieghal. If we look at the economic position of PW-11, admittedly he owns sixty acres of land and also a petrol pump. It is quite improbable to believe that he was going alone from village Dujana to Dieghal which is at a distance of ten kilometers in the midnight in search of his buffalo. Trial court and the High Court erred in holding that the evidence of PW-11 cannot be brushed away as even a rich man may take the theft of petty items seriously and may take every effort to search the same. It is quite unnatural that in the midnight PW-11 went alone without informing anyone nor taking anyone with him. Further as pointed out by Sukhbir Singh (PW-10) the distance of the room where Satish Kumar was sleeping and the road leading to village Dujana is three killas i.e. three acres on the

northern side and the southern and western side of the room, their fields are situated and as per the version of Vidya Rattan (PW-11) he had identified the appellant from a distance of twenty five feet in the moonlight and also in the light of a electric bulb fixed in the courtyard of the room. It is quite improbable that in the night from such a long distance PW-11 was able to identify the accused.

15. If the prosecution establishes the last seen theory, an inference can be drawn against the accused which may lead to the finding of his guilt. Considering the evidence of PW-11 and the improbabilities, evidence of PW-11 neither inspires confidence nor does it lead to a conclusion that the appellant was last seen with the deceased. As noticed earlier, PW-10 and Satish Kumar had three servants; two were sleeping in the adjoining room where deceased-Satish Kumar was sleeping and the third one was sleeping in the truck parked at some distance from the farm. From the post-mortem certificate Ex.PS, it is seen that the deceased has sustained number of injuries on the neck, chest and upper arm. From the post-mortem certificate it is also seen that deceased-Satish Kumar was well-built and nourished. Probably, deceased might have resisted and raised alarm, it is quite improbable that the farm servants never heard the noise

and that none of the servants came to the rescue of deceased-Satish Kumar which again raises serious doubts about the prosecution case.

16. **Extra-judicial confession:-** Yet another circumstance relied upon by the prosecution is the extra-judicial confession allegedly made by the appellant to Budh Ram (PW-12). PW-12 has stated that he was a member of Gram Panchayat Dujana and on 19.03.1995, Vijay Shankar-appellant came to his residence where Har Sarup Numberdar was also present. PW-12 stated that Vijay Shankar gave an extra-judicial confession of inflicting injuries to deceased-Satish Kumar and requested PW-12 to save him. When PW-12 was only a member of Gram Panchayat and not a person of influence with the police, it is doubtful that the appellant-Vijay Shankar had approached him making extra-judicial confession and requested him to save him. At this juncture, suggestion put to PW-10 during his cross-examination is relevant to be noted. In the cross-examination of PW-10, it was suggested to him that he has let out his shop to Budh Ram Gujar, brother of Badlu, on the condition that Budh Ram Gujar will depose in the case and therefore PW-12 cannot be said to be an independent witness.

17. Principles in respect of evidentiary value and reliability

of extra-judicial confession have been summarized by this Court in *Sahadevan & Anr. vs. State of Tamil Nadu*, (2012) 6 SCC 403, which reads as under:-

- “i. The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution;
- ii. It should be made voluntarily and should be truthful;
- iii. It should inspire confidence;
- iv. An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence;
- v. For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities;
- vi. Such statement essentially has to be proved like any other fact and in accordance with law.”

Extra-judicial confession is a weak piece of evidence and the courts are to view it with greater care and caution. For an extra-judicial confession to form the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities. In the case on hand, extra-judicial confession allegedly made to PW-12 does not inspire confidence and cannot form the basis for the conviction.

18. **Recovery:-** According to the prosecution, after the alleged confession, Budh Ram (PW-12) and Har Sarup produced the appellant before the investigating officer and Dalip Singh

(PW-20) arrested the appellant on 19.03.1995. His confession led to the recovery of bloodstained clothes from the box lying in the house of the appellant and also knife from the field. Bloodstained clothes and also the knife were sent to the Forensic Science Laboratory and human blood was detected in the bloodstained clothes of the appellant. So far as the bloodstained clothes and knife, the material was disintegrated. As discussed earlier, extra-judicial confession made to Budh Ram (PW-12) is highly doubtful and in these circumstances, much weight cannot be attached to the alleged recovery of bloodstained clothes and the knife.

19. Considering the totality of the facts and evidence, in our view, the circumstances relied upon by the prosecution are not established by convincing evidence and they do not form a complete chain pointing to the guilt of the appellant. Ordinarily, in exercise of its jurisdiction under Article 136 of the Constitution of India, the Supreme Court does not enter into re-appreciation of evidence. When ordinarily the Supreme Court would refrain from re-examining the evidence, the Supreme Court will certainly interfere when evidence adduced by the prosecution falls short of reliability and unsafe to base conviction. The conviction recorded by the courts below is not

supported by credible evidence and the prosecution has failed to establish the guilt of the accused beyond reasonable doubt and benefit of doubt is to be given to the appellant.

20. In the result, the judgment of the High Court is set aside and this appeal is allowed. The appellant is acquitted of the charges. The appellant is on bail and his bail bonds shall stand discharged.

.....J.
(V. GOPALA GOWDA)

.....J.
(R. BANUMATHI)

New Delhi;
August 4, 2015

ITEM No. 1A
(For Judgment)

Court No. 2

SECTION

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 337 of 2008

VIJAY SHANKAR

Appellant(s)

VERSUS

STATE OF HARYANA

Respondent(s)

Date : 04.08.2015 This appeal was called on for judgment today.

For Appellant(s) Mr. J.B.Mudgal, Adv.
Mr. Jatinder Singh, Adv.
Mr. R.C.Kaushik, Adv.

For Respondent(s) Mr. Arun Kumar, AAG,
Mr. Sanjay Kumar Visen, adv.

Hon'ble Mrs. Justice R.B.Banumathi pronounced Judgment of the Bench comprising Hon'ble Mr. Justice V.Gopala Gowda and Hon'ble Mrs. Justice R.Banumathi.

The judgment of the High Court is set aside and the appeal is allowed in terms of the signed reportable judgment. The appellant is acquitted of the charges. The appellant is on bail and his bail bonds shall stand discharged.

(Shashi Sareen)
Court Master

(Veena Khera)
Court Master

(Signed reportable judgment is placed on the file)