

2022 SCeJ 980

Supreme Court of India

JUSTICE UDAY UMESH LALIT, JUSTICE S. RAVINDRA BHAT, JUSTICE PAMIDIGHANTAM SRI
NARASIMHA

NANDU SINGH v. STATE OF MADHYA PRADESH (NOW CHHATTISGARH)

CRIMINAL APPEAL NO.285 OF 2022

25th February 2022

Indian Penal Code, 1860 - S.201, S.302 - Prosecution had not alleged any motive on part of the appellant to commit murder of the deceased - Though in a case of direct evidence, motive would not be relevant, in a case of circumstantial evidence, motive plays an important link to complete the chain of circumstances - Even on the issue of "last seen", the evidence of PW-8 did not give any particulars nor did it establish any proximity in terms of time - Further, even after the deceased had gone missing, no suspicion was entertained at any juncture against the appellant and his name came to the surface only after the crime was converted to one under Section 302 of the IPC - The circumstances on record do not make a complete chain to dispel any hypothesis of innocence of the appellant - The prosecution having failed to establish through clear, cogent and consistent evidence, the chain of events, on the basis of which the guilt of the appellant could be established, the courts below were not right in accepting the case of prosecution and convicting the appellant. *Anwar Ali v. State of Himachal Pradesh, (2020) 10 SCC 166, Shivaji Chintappa Patil v. State of Maharashtra, (2021) 5SCC 626, relied.*

Cases Cited :

1. Para 11: *Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80*
2. Para 11: *Babu v. State of Kerala, (2010) 9 SCC 189, SCC pp. 200-01*
3. Para 11: *State of U.P. v. Kishanpal, (2008) 16 SCC 73*
4. Para 11: *Pannayar v. State of T.N., (2009) 9 SCC 152*
5. Para 11: *Anwar Ali v. State of Himachal Pradesh, (2020) 10 SCC 166*
6. Para 12: *Shivaji Chintappa Patil v. State of Maharashtra, (2021) 5SCC 626*

Petitioner Counsel: MINAKSHI VIJ, Respondent Counsel: GAUTAM NARAYAN, Asmita Singh

JUDGEMENT

Uday Umesh Lalit, J. - Leave granted.

2. This appeal challenges the judgment and order dated 09-05-2014 passed by the High Court of Chhatisgarh at Bilaspur in Criminal Appeal No. 650/1999.

3. On the reporting made by PW-2 Thuran Singh, father of one Shiv Kumar Khairwar that his son had gone to a Paddy Milling Centre at about 3.00 p.m. on 13.01.1997 and had since then been missing, a crime against unknown persons was registered. After the body of said Shiv Kumar Khairwar was recovered from a pond on 17.01.1997, the crime was converted to one under Section 302 of the Indian Penal Code, 1860 ('the IPC', for short).

4. The appellant came to be arrested in said crime on 20.01.1997 and soon after his arrest, certain recoveries on the strength of his statement were stated to have been effected.

5. Leaving aside the recoveries, the prosecution principally relied upon the testimony of following witnesses:

(A) PW-3 Birja Singh, younger brother of the deceased, was a student of Vth class when he was examined. The witness stated that on the relevant day he had gone along with the deceased on a bicycle for milling of paddy; and that after the paddy was milled at the place one Ullekh Prasad, he went home with the milled paddy, while the deceased remained at the place of Ullekh Prasad.

(B) PW-8 Ullekh Prasad in his examination in Chief stated as under:

“1. The incident had occurred about one and quarter year back. Shiv Kumar , Birja Singh and Bisan Singh had come to my mill for the purpose of grinding the paddy. After grinding one gunny bag paddy I had allowed him to go. Birja and Bisan Singh went with the rice bag. At the hotel of Laxman, Shiv Kumar ate the snacks. After sometimes I saw that Shiv Kumar had gone with Nandu.”

(C) PW-19 Rajkeshwar in his examination-in-chief stated that he had lent his bicycle to the deceased but the bicycle was not returned.

Neither Bisan Singh nor anyone from the hotel of Laxman was examined.

Recoveries comprised of a key of bicycle, the weapon of offence as well as blood-stained clothes of the deceased and the appellant.

6. Relying on the evidence led by the Prosecution, the Trial Court convicted the appellant under Sections 302 and 201 of the IPC and awarded him life sentence under the first count and imprisonment for seven years under the second count.

7. The appellant being aggrieved, filed Criminal Appeal No.650 of 1999 in the High Court, which came to be dismissed by the judgment and order presently under challenge.

8. Ms. Minakshi Vij, learned advocate whose services have been engaged by the Supreme Court Legal Services Committee to appear on behalf of the appellant submits as under:-

(i) In a case based on circumstantial evidence, the prosecution had not alleged any motive on part of the appellant to commit murder of the deceased.

(ii) The only circumstance which was projected by the prosecution was the fact that at the place of Ullekh Prasad, the appellant was seen alongwith the deceased.

(iii) Based on the slender thread of evidence of “last seen”, the entire case was built by the Prosecution.

(iv) The recoveries as alleged by the prosecution were effected seven days after the incident.

9. Mr. Gautam Narayan, learned advocate appearing for the State submits that the concurrent view taken by both the Courts below was based on the evidence on record and that the recoveries at the instance of the appellant conclusively established his culpability.

10. In a case based on substantial evidence, motive assumes great significance. It is not as if motive alone becomes the crucial link in the case to be established by the prosecution and in its absence the case of Prosecution must be discarded. But, at the same time, complete absence of motive assumes a different complexion and such absence definitely weighs in favour of the accused.

11. In *Anwar Ali v. State of Himachal Pradesh*, (2020) 10 SCC 166, this Court made the

legal position clear in following words:-

24. Now so far as the submission on behalf of the accused that in the present case the prosecution has failed to establish and prove the motive and therefore the accused deserves acquittal is concerned, it is true that the absence of proving the motive cannot be a ground to reject the prosecution case. It is also true and as held by this Court in *Suresh Chandra Bahri v. State of Bihar*, 1995 Supp (1) SCC 80 that if motive is proved that would supply a link in the chain of circumstantial evidence but the absence thereof cannot be a ground to reject the prosecution case. However, at the same time, as observed by this Court in *Babu*, absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. In paras 25 and 26, it is observed and held as under : (Babu case *Babu v. State of Kerala*, (2010) 9 SCC 189, SCC pp. 200-01)

“25. In *State of U.P. v. Kishanpal*, (2008) 16 SCC 73, this Court examined the importance of motive in cases of circumstantial evidence and observed : (SCC pp. 87-88, paras 38-39)

‘38. ... the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime.

39. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction.’

26. This Court has also held that the absence of motive in a case depending on circumstantial evidence is a factor that weighs in favour of the accused. (Vide *Pannayar v. State of T.N.*, (2009) 9 SCC 152)”

12. In the subsequent decision in *Shivaji Chintappa Patil v. State of Maharashtra*, (2021) 5SCC 626, this Court relied upon the decision in *Anwar Ali* and observed as under:-

“27. Though in a case of direct evidence, motive would not be relevant, in a case of circumstantial evidence, motive plays an important link to complete the chain of circumstances. The motive... ..”

13. In the instant case even on the issue of “last seen”, the evidence of PW-8- Ullekh Prasad did not give any particulars nor did it establish any proximity in terms of time. Further, even after the deceased had gone missing, no suspicion was entertained at any juncture against the appellant and his name came to the surface only after the crime was converted to one under Section 302 of the IPC.

14. The circumstances on record do not make a complete chain to dispel any hypothesis of innocence of the appellant. The prosecution having failed to establish through clear, cogent and consistent evidence, the chain of events, on the basis of which the guilt of the appellant could be established, the courts below were not right in accepting the case of prosecution and convicting the appellant.

15. We, therefore, accept the appeal; set aside the orders passed by the courts below and acquit the appellant of the charges levelled against him. The appellant be set at liberty forthwith unless his custody is required in connection with any other crime.