2022 LiveLaw (SC) 228

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

UDAY UMESH LALIT, J; S. RAVINDRA BHAT, J; PAMIDIGHANTAM SRI NARASIMHA, J.

CRIMINAL APPEAL NO. 753 OF 2021; February 24, 2022

TULESH KUMAR SAHU *VERSUS* **STATE OF CHHATTISGARH**

Criminal Trial - Murder - Where, however, the only evidence against an accused person is the recovery of stolen property and although the circumstances may indicate that the theft and the murder must have been committed at the same time, it is not safe to draw the inference that the person in possession of the stolen property was the murdered. Suspicion cannot take the place of proof. *[Referred to Sonu alias Sunil vs. State of Madhya Pradesh 2020 SCC Online SC 473]*

For Appellant(s) Mr. Lakshmeesh S Kamat, Adv Mr. Hasan Murtaza, Adv Mr. Ankur Kashyap, Adv. Mr. Parijat Kishore Adv, Mr. Rahul Shyam Bhandari Adv, Mr. Konark Tyagi Adv, Mr. Abhay Singh Adv, Ms. Nancy Shamim Adv Mr. Kaustubh Shukla, AOR

For Respondent(s) Mr. Prasenjit Keswani, Adv. Mr. Mahesh Kumar, Adv. Mr. Nikhilesh Kumar, Adv. Mr. Upmanyu Tiwari, Adv. Ms. Devika Khanna, Adv. Mrs. V.D. Khanna, Adv. Mr. Vmz Chambers, AOR

J U D G M E N T

Uday Umesh Lalit, J.

1. This appeal by special leave by original accused No.1 is directed against the judgment and order dated 23.10.2018 passed by the High Court of Chhatisgarh at Bilaspur in Criminal Appeal No. 265 of 2013.

2. Seven persons including the appellant were tried in the Court of Additional Sessions Judge, Keraghar, District Rajnandgaon, Chhattisgarh in Case Crime No.01/2011 in respect of offences punishable under Sections 460, 396 and 302 of the IPC and Section 25 of the Arms Act, 1959.

3. According to the prosecution: -

(a) In the intervening night of 31.08.2010 and 01.09.2010, a dacoity took place in the house of the deceased Bhanwarlal; that his son Lal Chand- PW-1 came to know about the dacoity in the morning when he found that his father Bhanwarlal and daughter Ashita were lying dead. The witness also noticed that articles kept in the room were lying scattered and certain gold and silver ornaments were missing. As a result of reporting made by said witness vide Exhibit P-1, the crime was registered and the investigation was undertaken. The reporting was against unknown persons.

(b) On 2nd of September, 2010, the appellant was arrested and after his arrest he made a statement in terms of Section 27 of the Indian Evidence Act which led to the

recovery of a packet containing gold and silver ornaments which was hidden in a drain.

(c) The Test Identification of the ornaments was thereafter conducted by PW-20 Tehsildar R.P. Achala, during the process of which some of the witnesses identified certain items of jewellery and stated that those items were pledged by them with the deceased Bhanwarlal.

4. After completion of investigation, seven persons as stated above were tried before the Trial Court. The evidence led by the prosecution comprised of the recovered articles pursuant to the statement attributed to the present appellant, recovery of weapon attributed to a co-accused and chance finger prints which were found at the site in question, which were stated to be that of co-accused Madanlal Sahu (Original Accused No.2). The prosecution did not allege that the incident was witnessed by any person. The case thus, depended purely on circumstantial evidence.

5. After considering material evidence on record, the Trial Court by its judgment 3 and order dated 28.09.2012 accepted the case of the prosecution and convicted all the accused under Section 396 and 460 of the IPC. It also convicted accused Madan Lal, Puran Sahoo, Shiv Narayan, Chandra Kumar and Rajesh Rawal (A-2 to A-5 and A-7 respectively) under the provisions of Section 25 of the Arms Act. The Trial Court proceeded to impose the sentence of life imprisonment on two counts under Sections 396 and 460 of the IPC and those who were convicted under the Arms Act were awarded sentence of one-year rigorous imprisonment.

6. The convicted accused being aggrieved preferred individual appeals in the High Court. The appeals preferred by Shesh Narayan (A-4) Rajesh Rawat (A-7), Madanlal Sahu (A-2) Puran Sahu (A-3) and Niranjan Yadav (A-6) came up before the High Court and by its judgment and order dated 22.10.2019, all the accused except Madan Lal Sahoo were acquitted of the charges levelled against them. However, accused Madan Lal was found to be guilty under Sections 302, 392 read with Section 34 of the IPC and also under Section 25 of the Arms Act.

7. Later, Criminal Appeal No.265 of 2013 preferred by the present appellant and co-accused Chandra Kumar (A-5) came up before the High Court. While allowing the appeal preferred by Chandra Kumar (A-5), the appeal preferred by the appellant was dismissed and his conviction was altered to one under Section 302 read with Section 34 IPC, Section 392 read with 34 IPC and Section 25 of the Arms Act.

8. In this appeal, we have heard Mr. Kaustubh Shukla, learned Advocate appearing for the appellant and Mr. Sourav Roy, learned Advocate appearing for the State.

9. Mr. Shukla submits that going by the material on record, the only piece of evidence which can at best be put against the appellant is the recovery of ornaments pursuant to his alleged statement under Section 27 of the Indian Evidence Act. It is submitted

that Bhanwarlal was not a licenced pawn broker nor was there any register maintained by him which could otherwise have given a clue or lead to reach the persons who had pledged the ornaments. In the absence of any register, the evidence coming from the witnesses alleging that they had pledged certain items of jewellery with Bhawarlal was extremely weak piece of evidence to sustain any conviction against the appellant. Reliance is placed on the judgments rendered in ***Ashish Jain vs. Makrand Singh and Others*, (2019) 3 SCC 770** and ***Sonu alias Sunil vs. State of Madhya Pradesh*, *2020 SCC Online SC 473***.

10. In Ashish Jain, in more or less similar circumstances, even when a register was produced on record, in the absence of conclusive evidence that the register was maintained by the deceased, benefit of doubt was given to the accused. The relevant discussion on the point in para No.28 is to the following effect.

"28. We find substance in the argument of the learned Amicus Curiae that this identification was not done in accordance with due procedure. It is evident from the testimony of several of the examined pledgors, such as PWs 15, 16 and 28, that the identification procedure was conducted without mixing the recovered jewellery with similar or identical ornaments. Additionally, there is nothing on record to show the identity of the pledgors and to prove that the identified ornaments were pledged by them to the deceased Premchand, except for the account books maintained by the deceased Premchand for his business, but these cannot be relied upon. This is because these account books were seized by the police from the possession of Shailendra Kumar Jain, PW 11, who is the son-in-law of the deceased. Incidentally, he also runs a similar money-lending business as a pawn broker in another town. No valid reason is accredited to the recovery of deceased Premchand's alleged account books from the possession of his son-inlaw. Moreover, these account books were returned to him without any prayer for the same and without following any procedure. Later, it was found that there were additional entries made in the account book after the date of the incident. Moreover, none of the witnesses have spoken about the particular entry relating to them in the account books. No signature of any witness is identified and marked in the account books. In other words, none of the witnesses have deposed about any relevant entry found in the account books with reference to their respective gold/silver articles."

11. The observations in Ashish Jain were relied upon in the decision in Sonu alias Sunil, and it was found that it would not be safe to uphold the conviction on the basis of material produced by the prosecution. This Court also relied upon the decisions in ***Sunder Lal alia Sundera vs. State of Madhya Pradesh, AIR 1954 SC 28 and Sanwant Khan vs. State of Rajasthan, AIR 1956 SC 54***. The relevant discussion found in paragraphs 27, 28 and 33 of the judgment is:-

"27. The scope of this provision has been considered by this Court on various occasions. In Sunder Lal alias Sundera v. State of Madhya Pradesh, both the accused and deceased were seen together. After the alleged murder, the accused went with the article belonging to the deceased for pledging/selling it. In the circumstances, the Court took the view that the ornaments were established to be the ornaments worn by the deceased. No explanation was forthcoming how the accused came to be in

possession on the very same day on which the alleged murder was committed. On this, the Court took the view that the conviction under Section 302 of the IPC, based on the circumstances, was correct.

28. On the other hand, in Sanwant Khan v. State of Rajasthan, one Mahant Ganesh Das, who was a wealthy person, used to live in a temple of Shri Gopalji along with another person. Both of them were found dead. The house had been ransacked and boxes and almirah opened. It was not known at the time who committed the offence. Investigation resulted in arrest of the appellant, and on the same day, he produced a gold khanti from his bara, where it was found buried in the ground. Another accused produced a silver plate. The Court found that there was no direct evidence. There were certain circumstances which were rejected by the Sessions Judge and the solitary circumstance was the recovery of the two articles. In these circumstances, the Court held, inter alia, as follows:

"Be that as it may, in the absence of any direct or circumstantial evidence whatsoever, from the solitary circumstance of the unexplained recovery of the two articles from the houses of the two appellants the only inference that can be raised in view of illustration A to S.114 of the Evidence Act is that they are either receivers of stolen property or were the persons who committed the theft, but it does not necessarily indicate that the theft and the murders took place at one and the same time.

** ** **

Here, there is no evidence, direct or circumstantial, that the robbery and murder formed parts of one transaction. It is not even known at what time of the night these events took place. It was only late next morning that it was discovered that the Mahant and Ganpatia had been murdered and looted. In our Judgment, Beaumonth, C.J., and Sen J. in - Bhikha Gobar v. Emperor, AIR 1943 Bom. 458 (B) rightly held that the mere fact that an accused produced shortly after the murder ornaments which were on the murdered person is not enough to justify the inference that the accused must have committed the murder.

** ** **

In our judgment no hard and fast rule can be laid down as to what inference should be drawn from a certain circumstance. Where, however, the only evidence against an accused person is the recovery of stolen property and although the circumstances may indicate that the theft and the murder must have been committed at the same time, it is not safe to draw the inference that the person in possession of the stolen property was the murdered. Suspicion cannot take the place of proof. "

(Emphasis supplied)

33. In the case of recovery of an article from an accused person when he stands accused of committing offences other than theft also, (in this instance murder), what are the tests:

i. The first thing to be established is that the theft and murder forms part of one transaction. The circumstances may indicate 7 that the theft and murder must have been committed at the same time. But it is not safe to draw the inference that the person in possession of the stolen property was the murderer [Sanwant Khan (supra)];

ii. The nature of the stolen article;

iii. The manner of its acquisition by the owner;

iv. The nature of evidence about its identification;

v. The manner in which it was dealt with by the accused;

vi. The place and the circumstances of its recovery;

vii. The length of the intervening period;

viii. Ability or otherwise of the accused to explain its possession [See ***Baiju v. State of Madhya Pradesh***, ***(1978) 1 SCC 588***]."

12. The only material which may possibly be taken against the appellant is, thus extremely weak. There is no other material on record which could even remotely be taken against the appellant. On the strength of the law declared by this Court, the appellant is, therefore, entitled to benefit of doubt.

13. We, therefore, allow this appeal, set aside the order passed by Courts below convicting and sentencing the appellant as stated above and acquit him of all the charges levelled against him.

14. Before we part, it must be noted that it was the case of the prosecution that seven named persons had committed dacoity in the instant case. Five out of those seven persons were acquitted by the High Court. As a result of the decision of the High Court only two persons, namely the appellant and Madanlal Sahu (A-2) remained in the array of the convicted accused. Going by the very nature of the charge of dacoity, said two persons could not have been convicted under Section 392 read with 34 of the Indian Penal Code. Since we have acquitted the appellant, we say nothing further.

15. The appellant be set at liberty forthwith unless his custody is required in connection with any other case.