Randeep Singh @ Rana vs The State Of Haryana on 22 November, 2024

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Bench: Abhay S Oka

2024 INSC 887

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 297 OF 2024

RANDEEP SINGH @ RANA & ANR. … APPELLANTS

versus

STATE OF HARYANA & ORS. … RESPONDENTS

JUDGMENT

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. The present appellants accused were charged for committing the offences punishable under Sections 364, 302, 201, 212 and 120-B of the Indian Penal Code, 1860 (for short, 'the IPC'). There were eight accused persons. The respondent nos.2 to 6 and one Bhim Sain @ Kaka Ganth were the other accused. All of them were convicted by the Sessions Court for the offences punishable under Sections 364, 302 and 120-B of the IPC and sentenced to undergo life imprisonment. They were also convicted for the offence punishable under Section 201 of the IPC and sentenced to undergo rigorous imprisonment for 3 years. All of them preferred appeals to the High Court. By the impugned judgment, the High Court confirmed the appellants' conviction. But other accused were acquitted.

2. The deceased-Gurpal Singh was the father of the complainant-Jagpreet Singh (PW-8). The case of the prosecution is that on 8th July 2013, the deceased left his house in his Ford Fiesta car. The deceased had gone to meet his sister-Paramjeet Kaur (PW-26). He had visited PW-26 at about 06:30 pm. After meeting PW-26, when the deceased was returning to his house and had reached the main gate of Prabhu Prem Puram Ashram, a few unknown persons travelling in a white car stopped the car of the deceased and abducted him. He was put in the car brought by the accused. The accused persons also took away the car of the deceased. After conducting a search, PW-8 could not

locate his father, and therefore, a First Information Report was lodged at his instance. On 9th July 2013, the torso with other body parts of the deceased was recovered from a canal. The prosecution examined twenty-nine witnesses.

SUBMISSIONS

3. Mr Vinay Navare, the learned senior counsel appearing for the appellants, pointed out that the prosecution relied upon the CCTV footage of the cameras installed in the branch of Bank of Baroda near the place where the offence was allegedly committed. He submitted that apart from the fact that the certificate under Section 65B of the Indian Evidence Act, 1872 (for short, 'the Evidence Act') was not produced, the evidence of Mr Rajesh Gaba, Senior Manager, Bank of Baroda (PW-1) and Mr Jeewan Sonkhla, CCTV Engineer (PW-24) does not prove that the CD produced on record contained what is recorded in the CCTV cameras installed by the Bank. He submitted that though the prosecution claims that PW-26 is an eyewitness, the material part of her evidence is an omission.

Moreover, the husband of PW-26, who was stated to be an eyewitness, has not been examined. He also invited our attention to the manner in which the evidence of PW-27 [Investigating Officer] was recorded by incorporating the incriminating portion of the statements of the present appellants in the alleged memorandum under Section 27 of the Evidence Act. He submitted that except for the evidence of the discovery of the car and the weapon used by the accused at the instance of the accused, there is no other legal evidence on record. He submitted that only based on discovery/disclosure statements, the accused cannot be convicted.

4. The learned counsel appearing for the first respondent, the State of Haryana, submitted that there is no reason to discredit the testimony of PW-26, who is a natural eyewitness. He pointed out that she had identified the accused in court. It was submitted that the circumstantial evidence proves the appellants' guilt even otherwise. He submitted that the CCTV footage also proves the complicity of the accused. He submitted that this case is of a very brutal and gruesome offence, and, therefore, no interference should be made with concurrent judgments of conviction.

CONSIDERATION EVIDENCE OF EYEWITNESS (PW-26)

5. PW-26 is the only alleged eyewitness examined by the prosecution. She deposed that on 8th July 2013 at about 06:45 pm, the deceased, who was her brother, had come to her house. At around 07:15 pm, he left her home. Her brother had parked his car in the open plot in front of her house. While the deceased was leaving the house, she, along with her husband, went to see off the deceased. She stated that the deceased sat in his car and left towards Prabhu Prem Puram Ashram. She claimed that she and her husband went towards that side. She noticed that a white Maruti car chased the car of the deceased, and after crossing the car of the deceased, it stopped in front of his car. She stated that seven to eight boys came out of that Maruti car and cordoned off the car of the deceased. When she swiftly walked towards that direction, she heard cries from her brother to save him. She stated that these boys forcibly threw her brother in the car. Some boys sat in her brother's car and ran away. She stated that two boys on a motorcycle came, lifted her brother's turban, and left the spot.

6. In her examination-in-chief, PW-26 did not state that she knew the accused earlier. She described the accused as 'seven to eight boys'. She did not depose that a test identification parade was conducted. Moreover, she did not identify the accused in the examination-in-chief by ascribing specific roles to them. She stated in the examination-in-chief that "accused are present in the Court through video conferencing". She did not identify the accused who picked up her brother and the accused who sat in her brother's car. She did not identify the boys who came on the motorcycle.

7. When she was confronted with her statement (Exhibit D6) recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC'), she admitted that the following facts which she stated before the Court were not mentioned in her statement recorded by the Police:

> i. The deceased had parked his car in the open plot in front of her house;
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> ii. She, along with her husband, had gone out to see off the deceased;
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> iii. She, along with her husband, went towards Prabhu Prem Puram Ashram, in which direction the deceased left;
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> iv. She saw a Maruti car of white colour that chased her brother's car and, after crossing her brother's car, stopped the car;
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> v. She saw seven to eight boys coming out of the Maruti car who cordoned off her brother's car, and she heard cries of "bachao bachao" from her brother; and vi. The boys threw the deceased in the car, and some of them sat in the car of the deceased and ran away.
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> Therefore, the material part of the testimony of PW-26 (the so- called eyewitness) is full of omissions. These omissions are very significant and relevant as they relate to the most crucial part of the prosecution's case. Hence, these omissions amount to contradictions in view of the explanation to Section 162 of the CrPC. Moreover, the identification of the accused by PW-26 is very doubtful in the absence of the test identification parade.
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> For all the reasons recorded above, the evidence of PW-26 will have to be kept out of consideration.

8. PW-26's husband, who, according to her, was an eyewitness, was not examined by the Police. She admitted that her husband had accompanied her to the Police Station. She stated that she was not aware whether the Police recorded her husband's statement. In her cross-examination recorded on 13th May 2016, she admitted that her husband was present in the Court. Therefore, an adverse inference will have to be drawn against the prosecution for withholding evidence of an eyewitness. Then, what remains is the circumstantial evidence.

CIRCUMSTANTIAL EVIDENCE

9. We come to the evidence of PW-1. He was the Manager of the Bank of Baroda, Kala Amb branch. The prosecution relied upon the CCTV footage recorded on the camera installed by the Bank outside its premises. The prosecution contends that the white car and the accused were seen in the footage. PW-1 stated that based on the application made by the Police, he got a CD prepared from the CCTV footage of 8th July 2013 and produced the same before the Investigating Officer. In the cross-examination, he admitted that he had no personal knowledge about the contents of the CD and he had not personally seen the CCTV footage. He stated that he had not appended his signature on the parcel of the CD handed over to the Police. He accepted that even the stamp of the Bank was not put on the CD.

10. PW-24 claims to be a CCTV engineer. He stated that Balaji Digital Security Advisor, where he worked as an engineer, had a contract with the Bank. He claimed that he prepared a CD from the security system of the Bank of Baroda as per the request made by the Police. He accepted that he did not put his identification on the CD or make any markings on the CD. He admitted that editing could be made of the CCTV footage on the CD and that the CD could be tampered with. He also did not depose that he had seen the CCTV footage before downloading on the CD. Thus, neither PW-1 nor PW-24 had CD did not bear any marking or sign from either of the witnesses. Most importantly, the prosecution failed to produce the certificate under Section 65B of the Evidence Act concerning the CD. Therefore, the evidence in the form of the CD will have to be kept out of consideration as it is not admissible in evidence.

11. There is one more crucial aspect. Assuming that the CCTV footage was admissible, the learned trial Judge and the Judges of the High Court did not see the CCTV footage. Still, the Courts relied upon it.

12. In the case of Sharad Birdhichand Sarda v. State of Maharashtra1, which is a locus classicus on circumstantial evidence, this Court laid down five principles. Paragraph 153 reads thus:

> "153. A close analysis of this decision would show that the following conditions (1984) 4 SCC 116 must be fulfilled before a case against an accused can be said to be fully established:
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> (1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v.

State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p.

1047] "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions." (2) the facts so established should be consistent

only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty, (3) the circumstances should be of a conclusive nature and tendency, (4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused." (emphasis added) CCTV footage is one of the circumstances in the chain of circumstances relied upon by the prosecution. Even if one of the circumstances forming part of the chain is not proved, the prosecution case cannot be held as established.

13. Now, what remains is the evidence of recovery of the parts of the dead body of the deceased. It must be noted here that the recovery of the torso and other body parts was made on 9th July 2013. The recovery cannot be said to be at the instance of the accused. The reason is PW-27 stated that he received an information that one dead body was found without head, hands and legs near village Dhalla. This information was given to him on telephone by MHC, Police Station at Mahesh Nagar. The evidence of recovery at the instance of the accused is of the Maruti car used in the offence, the weapon used in the offence and recovery of articles of the deceased such as a driving licence. After disbelieving the testimony of PW-26, who claims to be an eyewitness, after discarding the evidence of the CD of the alleged CCTV footage and after finding that another eyewitness, though available, has not been examined, it is not possible to sustain the conviction of the accused only based on the evidence of recovery. Moreover, all the circumstances forming part of the chain have not been proved.

RELIANCE ON INADMISSIBLE EVIDENCE

14. The evidence of PW-27 is relevant for different reasons. It is material to state how his evidence has been recorded. In the examination-in-chief, he has stated thus:

> ".. .. .. I interrogated accused Randeep Rana and Rajesh @ Don. Both the accused persons admitted about the crime (objected to). Thereafter, they both brought to the police station and were lodged in the lock-up.
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> On 10.7.2013, I interrogated accused Randeep @ Rana and Rajesh @ Don while in police custody one by one, who suffered disclosure statements Ex.P55 and Ex.P56 respectively. Said statements were signed by the respective accused and were witnessed by ASI Dharamvir and HC Sultan Singh. Accused Randeep @ Rana while admitting his involvement in the present case, had disclosed that about 13-14 years back his uncle was murdered by the family member of complainant. Due to that revenge they have hatched a conspiracy and after making planning with co- accused had abducted Gurpal and committed his murder that he could identify the place from where Gurpal was abducted, where he was murdered and where his body was thrown. He had also disclosed that Kaka @ Kanch in whose office the murder of Gurpal was committed was having the knowledge about all the conspiracy as he was the party of the conspiracy. He also disclosed that accused Chaman was also present in the said

office. He also disclosed about the role played by accused Naini, Prabhjot, Rajesh @ Don, Vicky @ Kali, Parveen @ Kala, Mohit @ Kaga in the commission of crime of murder of Gurpal (object to being inadmissible) Similarly, accused Rajesh @ Don admitting his involvement in the commission of crime of the present case, has disclosed about the conspiracy of committing murder of Gurpal and he also disclosed about the vehicle used in the crime. He had also disclosed that Kaka @ Kanch in whose office the murder of Gurpal was committed was having the knowledge about all the conspiracy as he was the party of the conspiracy and that accused Chaman Lal was also present in the said office. He also disclosed about the role played by accused Naini, Prabhjot, Randeep Rana, Vicky @ Kali, Parveen @ Kala, Mohit @ Kaga in the commission of crime of murder of Gurpal. The accused also disclosed about the place where they had left the car of Gurpal. He also offered to get the aforesaid place of occurrence identified. The aforesaid disclosure statements of the accused were reduced into writing as per their version, which were attested by ASI Dharamvir and HC Sultan Singh as witnesses (objected to being inadmissible).

.. ..” (emphasis added)

15. Sections 25 to 27 of the Evidence Act read thus:

“25. Confession to police-officer not to be proved.–– No confession made to a police-officer , shall be proved as against a person accused of any offence.

26. Confession by accused while in custody of police not to be proved against him.–– No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation.––In this section “Magistrate” does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 (10 of 1882).

27. How much of information received from accused may be proved.–– Provided that, when any fact is deposed to as discovered inconsequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

16. A perusal of the deposition of PW-27, which we have quoted above, shows that he attempted to prove the confessions allegedly made by the accused to a police officer when they were in Police custody. There is a complete prohibition on even proving such confessions. The learned Trial Judge has completely lost sight of Sections 25 and 26 of the Evidence Act and has allowed PW-27 to prove the confessions allegedly made by the accused while they were in police custody. PW-27 stated that

the appellant "suffered disclosure statement at Exhibits 'P55' and 'P56' respectively". Obviously, he is referring to disclosure of the information under Section 27 of the Evidence Act. The law on disclosure under Section 27 is well settled right from the classic decision of the Privy Council in the case of Pulukuri Kotayya & Ors. v. King- Emperor2. In the case of K. Chinnaswamy Reddy v. State of A.P.3, this Court relied upon the decision of the Privy Council and in paragraph 9 held thus:

> "9. Let us then turn to the question whether the statement of the appellant to the effect that "he had hidden them (the ornaments)" and "would point out the place" where they were, is wholly admissible in evidence under Section 27 or only that part of it is admissible where he stated that he would point out the place but not that part where he stated that he had hidden the ornaments. The Sessions Judge in this connection relied on Pulukuri Kotayya v. King-Emperor [(1946) 74 IA 65] where a part of the statement leading to the recovery of a knife in a murder case was held inadmissible by the Judicial Committee. In that case the Judicial Committee considered 1946 SCC OnLine PC 47 : AIR 1947 PC 67 1962 SCC OnLine SC 32 Section 27 of the Indian Evidence Act, which is in these terms:
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> "Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved." This section is an exception to Sections 25 and 26, which prohibit the proof of a confession made to a police officer or a confession made while a person is in police custody, unless it is made in immediate presence of a Magistrate. Section 27 allows that part of the statement made by the accused to the police "whether it amounts to a confession or not" which relates distinctly to the fact thereby discovered to be proved. Thus even a confessional statement before the police which distinctly relates to the discovery of a fact may be proved under Section 27. The Judicial Committee had in that case to consider how much of the information given by the accused to the police would be admissible under Section 27 and laid stress on the words "so much of such information...as relates distinctly to the fact thereby discovered" in that connection. It held that the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. It was further pointed out that "the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact". It was further observed that— "Information as to past user, or the past history of the object produced is not related to its discovery in the setting in which it is discovered." This was exemplified further by the Judicial Committee by observing— "Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. If however to the statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to the

discovery of the knife in the house of the informant." (emphasis added) Section 27 is an exception to Sections 25 and 26. It permits certain parts of the statement made by the accused to a police officer while in custody to be proved. Under Section 27, only that part of the statement made by the accused is admissible, which distinctly relates to the discovery. It becomes admissible when a fact is discovered as a consequence of the information received from the accused. What is admissible is only such information furnished by the accused as relates distinctly to the facts thereby discovered. No other part is admissible. By Exhibits 'P55' and 'P56', it is alleged that the accused showed the places where the deceased was abducted, where he was murdered and where his body was thrown. In this case, even the inadmissible part of the statement under Section 27 of the Evidence Act has been incorporated in the examination-in- chief of PW-27. The learned trial judge should not have recorded an inadmissible confession in the deposition. A confessional statement made by the accused to a police officer while in custody is not admissible in the evidence except to the extent to which Section 27 is applicable. If such inadmissible confessions are made part of the depositions of the prosecution witnesses, then there is every possibility that the Trial Courts may get influenced by it.

THE GRAVITY OF THE OFFENCE

17. It is true that this is a case of a brutal murder. The brutality of the offence does not dispense with the legal requirement of proof beyond a reasonable doubt. In this case, there is no legal evidence to prove the involvement of the accused. The Courts can convict an accused only if his guilt is proved beyond a reasonable doubt on the basis of legally admissible evidence. There cannot be a moral conviction. We are tempted to quote what this Court observed in paragraph 24 of its decision in the case of Subhash Chand v. State of Rajasthan4. It reads as follows:

"24. Thus, none of the pieces of evidence relied on as incriminating, by the trial court and the High Court, can be treated as incriminating pieces of circumstantial evidence against the accused. Though the offence is gruesome and revolts the human conscience but an accused can be convicted only on legal evidence and if only a chain of circumstantial evidence has been so forged as to rule out the possibility of any other reasonable hypothesis excepting the guilt of the accused. In Shankarlal Gyarasilal Dixit case [(1981) 2 SCC 35: 1981 SCC (Cri) 315: AIR 1981 SC 765] this Court cautioned — "human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions" (SCC p. 44, para 33). This Court has held time and again that between may be true and must be true there is a long distance to travel which must be covered by clear, cogent and unimpeachable evidence by the prosecution before an accused is condemned a convict." (emphasis added)
CONCLUSION AND OPERATIVE PART

18. The appellants' guilt has not been established beyond a reasonable doubt. Accordingly, we allow the appeal. We quash and set aside the judgments dated 14th February 2017 and 17th February 2017 passed by the learned Additional Sessions (2002) 1 SCC 702 Judge, Ambala in Sessions Case no.16

of 2013, as well as the impugned judgment dated 10th February 2020 passed in Criminal Appeal Nos.D-335-DB and D-398-DB of 2017 (O&M) by the High Court of Punjab and Haryana at Chandigarh and acquit the appellants. The impugned judgments have already been set aside as far as the other accused are concerned. That part is not disturbed. If appellants are in prison, they shall be immediately set at liberty unless required in connection with any other offence.

…….J. (Abhay S Oka) ……J. (Ahsanuddin Amanullah) .....J. (Augustine George Masih) New Delhi;

November 22, 2024.