Ramesh Chand vs State Of Uttar Pradesh on 17 January, 1985

Equivalent citations: 1985 AIR 767, 1985 SCR (2) 573, AIR 1985 SUPREME COURT 766, 1985 (1) SCC 464, 1985 EASTCRIC 154, 1985 CRIAPPR(SC) 65, 1985 BBCJ 77, 1985 SCC(CRI) 100, 1985 IJR 92, (1985) SC CR R 256, 1985 CHANDLR(CIV&CRI) 483, (1985) 1 CRILC 394, (1985) 1 ALLCRILR 449, (1985) EASTCRIC 100, (1985) 1 RECCRIR 594, (1985) ALLCRIC 75, (1985) 1 CRIMES 336, (1985) 1 CURLJ(CCR) 710

Author: Misra Rangnath

Bench: Misra Rangnath, V.D. Tulzapurkar, V. Khalid

PETITIONER:
RAMESH CHAND

Vs.

RESPONDENT:
STATE OF UTTAR PRADESH

DATE OF JUDGMENT17/01/1985

BENCH:
MISRA RANGNATH
BENCH:
MISRA RANGNATH
TULZAPURKAR, V.D.
KHALID, V. (J)

CITATION:
1985 AIR 767 1985 SCR (2) 573
1985 SCC (1) 464 1985 SCALE (1)27

ACT:
Indian Evidence Act, 1872Circumstantial Evidence Requirments to be satisfied for basing conclusions on circumstantial evindence.
Constitution of India, 1950-Art 136-Scope of-Power of Supreme Court to reapreciate evidence-When can be exercised.

HEADNOTE:
The appellant was charged with the murder of one Om Prakash. The prosecution story was (i) that at about 10 p.m.

in the night, at a place where there was no light and which was about 2 furlongs away from the guard room at Hindon Bridge towards Ghaziabad, the appellant along with two others killed the deceased by stabbing with knife; (ii) that three police personnel posted at the guard room, one of whom had a torch, ran to the spot on being informed by some passerby and caught hold of the appellant who had a knife stained with blood; (iii) that the other two assailants managed to escape. The appellant pleaded (1) that he was a taxi driver in which the three passengers including the deceased were traveling; (2) that after crossing the Bridge the passengers started quarreling among themselves, with the result his attention was diverted resulting in a cyclist being dashed against (3) that when the car stopped the three passengers got down, went a little away from the road and started assaulting the deceased with a knife (4) that he went there to rescue the deceased and in that process his wearing apparel got blood soaked; (5) that the assailants ran away after assaulting the deceased; and (6) that no blood stained knife was received from him. Out of the six eye witnesses examined, four did not support the prosecution story and were declared hostile. One of the remaining two police witnesses denied the fact of seeing the appellant giving any knife blow while the other had made a firm statement that he did see the act of giving the knife blow.

The trial court convicted the appellant u/s. 302/34 IPC and sentenced him to imprisonment for life. In appeal, the High Court discarded the evidence in regard to the infliction of the blows, but, affirmed the conviction on circumstantial evidence which according to the High Court was: (I) an attempt by the appellant to escape and his arrest after a chase; (ii) he being found to be in possession of

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the blood stained knife; (iii) his clothes having become blood stained; (iv) if the appellant was trying to rescue the deceased, he would have received injuries in the scuffle; and (v) if the appellant had really tried to intervene in the way he claims, he being a well built man could have saved the life of the deceased.

Allowing the appeal by the appellant,

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HELD: (I) There is no evidence as to whether apart from the torchlight which the police witnesses focussed, if any other light was available. We agree with the trial Court as also the High Court that the two police witnesses were present at the spot and in the manner indicated by them. But the evidence regarding the directions to which the three persons ran away is discrepant. Chase by itself does not seem to be an important feature particularly when the total distance for which chase is said to have been made was about 22-25 feet. It is conceivable that he had not moved but the police witnesses ran to reach him because they were anxious

to catch hold of any one from the group who was available. [576H; 577 AB;]

(2) The appellant's stand that in the process of rescuing the deceased his wearing apparel were soaked with human blood is a sufficient explanation The fact that no injuries have been sustained by him while trying to rescue the deceased by itself is not an implicating circumstance because the assailants having no reason to injure him may not have assaulted him. By sheer chance as well the appellant may have escaped injuries. [577E; and G]

(3) The evidence regarding the appellant holding the knife in the dark night is not impressive and does not arouse confidence as it is against human conduct and no one would keep holding such an incriminating material as a blood stained knife. Moreover, there is no justification to discard the evidence of PW. 2, the cyclist who was injured by the appellant's car. [577E and 576G]

(4) In a case of circumstantial evidence law is well settled that the chain of circumstances must be complete and must clearly point to the guilt of the accused. Broad perspectives have to be kept in view. In the instant case, the circumstances do not really complete the chain so as to lead to the conclusion that the appellant and no other could have been the assailant. [576F and G]

(5) It is well established that the powers of Supreme Court under Article 136 of the Constitution are plenary and restrictions in the exercise, if any, are self-imposed. Ordinarily Supreme Court does not enter into re-appreciation of evidence but where evidence is placed and the conviction appears to the Court to be not justified in law, nothing stands in the way in directing reversal of conviction. [578F]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 575 of 1976.

From the Judgment and Order dated the 25th August, 1976 of the Allahabad High Court in Criminal Appeal No. 686 of 1972.

A.N. Mulla and ,S. K. Gambhir for the Appellant. Balveer Bhandari and H. M. Singh for the Respondent. The Judgment of tile Court was delivered by RANGANATH MISRA, J. This appeal is by special leave and is directed against the decision of the Allahabad High Court affirming the appellant's conviction under section '02 read with s 34 of the Indian Penal and sentence of imprisonment of life for that offence. Prosecution alleged that between 10 and 10.15 P.M. in the night of January 2, 1970, a little distance away from the Hindon Bridge towards Ghaziabad on the G.T. Road, the appellant along with two there killed one Om Prakash by stabbing him with a knife. Six eye witnesses were examined to support this charge. Of them one was the Havildar Mir Singh

(PW.4) and the other was a Police Constable Gian Singh (PW.6). These two witnesses along with one Jagdish Singh were on guard duty at the Hindon Bridge. They were informed by some passersby that a man was being stabbed at a distance of about two furlongs from the place where the guard room was located. On getting the information the three police personnel ran to the spot. With the help of the torchlight which one of them held, they saw from a distance that three persons were engaged in stabbing the deceased but when the torch was focussed, the assailants started decamping. They were chased. Two of them managed to escape but the appellant was caught with the knife stained with blood. The other two were not traced. The four other eye witnesses did not support the prosecution story and were declared hostile.

The appellant in his defence took the stand that was the driver of the taxi in which three persons came as passengers. Soon after the bridge had been crossed, the passengers started quarreling among themselves. That diverted the attention of the appellant and resulted in a cyclist being dashed against. When the car came to a standstill the three people who were quarreling among themselves got down and two of them started assaulting the deceased with a knife after going a little away from the road. The appellant went there to G rescue the deceased. In that process his wearing apparel got blood soaked. After fatally assaulting the deceased the assailants ran away when some people started collecting there. He denied the recovery of the blood stained knife from him. Four of the hostile witnesses supported the defence plea that the appellant had been attempting to rescue the deceased and had not himself given any assault. The trial Court held that the hostile witnesses were not speaking the truth; it relied upon the two police witnesses, accepted the prosecution version that the blood stained knife had been recovered from the appellant and drew support for the charge from the blood stained wearing apparel to hold that it was he who had stabbed the deceased to death along with two other unknown people. Accordingly he was convicted under s. 302/34. IPC and sentenced to imprisonment for life.

The appellant appealed to the High Court against his conviction. Of the two police witnesses, one had denied seeing the appellant giving any knife blow while the other had made a firm statement that he did see the act of giving the knife blow. The High Court accepted the appellant's contention that neither had seen actual infliction of knife blow by the appellant. Once the evidence in regard to the infliction of the blows was discarded, the High Court proceeded to examine circumstantial evidence to ascertain whether the charge can be said to have been established. These circumstances as indicated by the High Court are: (i) an attempt by the appellant to escape and his arrest after a chase; (ii) he being found to be in possession of the blood stained knife; (iii) his clothes having become blood stained: (iv) if the defence version was true, namely, that the appellant was trying to rescue the deceased, he would have received injuries in the scuffle; and (v) if the appellant had really tried to intervene in the way he claims, he being a well built man could have saved the life of the deceased.

Law is well settled that the chain of circumstances must be complete and must clearly point to the guilt of the accused. The circumstances indicated here, in our opinion, do not really complete the chain so as to lead to the conclusion that the appellant and no other could have been the assailant. Broad perspectives have to be kept in view The appellant was admittedly the driver of the taxi in which the others were the passengers. From the recoveries made, it appears that two liquor bottles

have been found from the car-one from the back seat where the three passengers were seated and the other from the front portion. There is no justification to discard the evidence of PW. 2, the cyclist who was injured by the appellant's car.

Admittedly, the incident occurred at a place which was not lighted. There is no evidence as to whether apart from the torchlight which the police witnesses focussed, if and other light was available. Once the car stopped and the lights of the car were no more available to help seeing things around, a confusion must have prevailed when the assault started. We agree with the trial Court as also the High A Court that the two police witnesses were present at the spot and in the manner indicated by them. The evidence regarding the directions to which the three persons ran away is discrepant. While some said that they ran away to counter directions-two to one side and the one to the other, the appellant appears to have been apprehended from the said direction. Chase by itself does not seem to be an important feature particularly when the total distance for which chase is said to have been made was about 22-25 feet. It is conceivable, as Mr. Mulla for the appellant has argued, that he had not moved but the police witnesses ran to reach him because they were anxious to catch hold of any one from the group who was available. The appellant's stand had been that he volunteered to rescue the deceased. In that process his wearing apparel being soaked with human blood is a sufficient explanation. The allegation that the knife was seized from him has been stoutly denied. The evidence also seems not to be very clear. It is some what unnatural that the appellant should be holding the knife when he was caught and would continue to carry the knife till he reached the police station quite a distance away. When he was about to be apprehended in the dark night, he could have thrown away the knife if he had been holding it or he could have refused to carry knife to the police station in case he had really been found to be with the knife when he was arrested. The evidence regarding the appellant holding the knife at that point of time is not impressive and does not arouse confidence in our mind, as it is against human conduct and no one would keep holding such an incriminating material as a blood stained knife. The other two circumstances which are indeed negative in the setting are innocuous. Merely because the appellant, a young man of about 23 at the time of occurrence, was of stout built, was not a sufficient circumstance to give him the confidence to match against two of whom one had an open knife in hand. The fact that no injuries have been sustained by him while trying to rescue the deceased by itself is not an implicating circumstance because the assailants having no reason to injure him may have not assaulted him. By sheer chance as well the appellant may have escaped injuries. The two assailants may be looking for a further ride in the taxi to reach their destination and if the driver was injured that would not have been possible. These circumstances on which the High Court has relied, therefore, are really not available to be props for the prosecution case.

There are certain other features which were placed by Mr. Mulla in support of the appeal which may be noticed in brief. The distance from the spot to the guard room is said to be 420 paces which easily works out to a furlong's distance. If the informants of the police had noticed the assault and then proceeded to give information to the police, the time lag between their seeing the assault and the police people reaching the spot would at least be 15 to 20 minutes. The assailants would have been anxious to commit the crime and get away from the spot. It is true that as many as 18 (not 16 as stated by the High Court) injuries have been found during postmortem examination of the dead body. But for inflicting 18 injuries by two assailants armed with knife it need not have taken that

length of time. Again, when the police people were coming from Hindon Bridge side they must have already been flashing their torch from a distance and when the assailants would have noticed that light in the midst of darkness they must have been already alerted If they were to escape before the police people came close they must have left the place. The presence of the liquor bottles as Mr. Mulla has emphasised, can have some place of importance in assessing the evidence. We, however, do not think it is necessary to enter into the field of conjecture over the bottles of liquor. We are of the view that the prosecution has failed to establish the charge It is pertinent to take note of the submission made by Mr. Dalveer Bhandari for the respondent before we conclude the judgment. He contended that this Court does not, in exercise of its jurisdiction under Article 136 of the Constitution, enter into a re-appreciation of the evidence and, therefore, the facts found should not be interfered with. It is well established that the powers of this Court under Article 136 of the Constitution are plenary and restrictions in the exercise, if any, are self-imposed. We agree with Mr. Bhandari that ordinarily this Court does not enter into re-appreciation of evidence but where evidence is placed and the conviction appears to the Court to be not justified in law, nothing stands in the way in directing reversal of conviction.

We allow the appeal, set aside the conviction of the appellant and direct his acquital. He is already on bail. We, therefore, direct G? cancellation of his bail bonds.

M.L.A. Appeal allowed.