Akhilesh Hajam vs State Of Bihar on 28 April, 1995

Equivalent citations: AIRONLINE 1995 SC 722

Author: G.N. Ray

Bench: G.N. Ray

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           CASE NO.:
Appeal (crl.)  540 of 1987

PETITIONER:
AKHILESH HAJAM

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT: 28/04/1995

BENCH:
G.N. RAY & FAIZAN UDDIN

JUDGMENT:
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JUDGMENT 1995 SCR (3) 864 The Judgment of the Court was delivered by FAIZAN UDDIN, J. 1. In this appeal the appellant Akhilesh Hazam has challenged his conviction under Section 302 of the Penal Code recorded by the Sessions Judge, Rohtas, Sasram in Sessions Trial No. 30/1981 for which he had been sentenced to undergo life imprisonment. The said conviction and sentence have been affirmed by Patna High Court in Criminal Appeal No. 630/1982 decided on 30.9.1982.

2. The relevant facts leading to this appeal are that on 10.10.1979 at about 4.00 PM when Somaru Dusadh, Chowkidar of village Dehlabad was going towards the east of village Dehlabad and had reached near the house of one Kedar, Goldsmith, he was informed by one Raja Singh that the appellant after committing the murder of his mother, sister, wife and a daughter, had absconded. On receiving this information Chowkidar, Somaru went to the house of appellant where some persons had also assembled. The Chowkidar alongwith one Ram Dev went into the house and to his amazement he found the dead body of the mother of the appellant lying on a cot in a pool of blood in the courtyard of the house, having injury on her hand. On the western side of the varandah which was used as a kitchen, he found the dead bodies of the wife and sister of the appellant lying smeared with blood having injuries on their respective heads. The daughter of the appellant was also lying injured but as she was alive she was taken to the hospital for treatment but she too died later. Chowkidar Somaru left his brother Narain Dusadh at the spot and also called Hanif Chowkidar of village Nagadih to keep a watch over the dead bodies and thereafter he proceeded to the Police Station, Rohtas where he lodged the F.I.R. at 6.30 PM stating therein that he had learned that the appellant Akhilesh had killed the victims by assaulting them with an iron angle. According to the prosecution the appellant after committing the murders fled away towards the village Tumba and

was caught near Tumba Railway Station and brought back home.

3. The Assistant Sub-Inspector of Police visited the place of occurrence and found the appellant at the door of the house where he had been kept by his father and some villagers. The Sub-Inspector from the behaviour and appearance of the appellant took an impression that he was under the influence of some intoxicate and, therefore, after arresting the appellant he sent him to Akbarpur hospital for his medical examination. The doctor who examined the appellant indicated in his report, Ext. 7 that there was no symptom of poisoning and the appellant was in normal mental state.

4. On interrogation by the Sub-Inspector of Police the appellant is said to have made disclosure statement with regard to the concealment of an iron angle which is said to have been used as a weapon in the commission of four murders. According to the prosecution the said iron angle stained with blood was recovered and seized from beneath the heap of wood stored for fuel purposes in a room of the house at the instance of the appellant. The Asstt. Sub-Inspector of Police held local inspection and prepared inquest reports in respect of the dead bodies, seized the blood stained earth and prepared a sketch map of the place of occurrence. Autopsy was conducted over the dead bodies and the reports were received.

5. The appellant was sent up for trial under Section 302 of the Penal Code. The appellant adjured his guilt and pleaded to be tried. The prosecution examined as many as 12 witnesses but they did not support the prosecution case. However, the trial court relying on the circumstantial evidence recorded the finding of guilt against the appellant and, therefore, convicted the appellant under Section 302 I.P.C. and sentenced him to suffer life imprisonment. The High Court also found favour with the view expressed by the learned Trial Judge and, therefore, affirmed the conviction and sentence.

6. Learned counsel appearing for the appellant contended that the prosecution tried to introduce some evidence to show that the appellant was under intoxication and pretended as if he had become a person of unsound mind with a view to escape the guilt and sentenced that may be awarded to him which fact has been falsified by the medical report, Ext. P.7 which indicated that there was no symptom of poisoning and the appellant was found in normal mental state. He also submitted that the appellant was very much present in the village but the prosecution has vainly tried to show that he had absconded while in fact he was arrested in the village itself. Learned counsel for the appellant further submitted that the evidence with regard to the disclosure statement and seizure of blood stained iron angle is not worthy of reliance and even if it is accepted the conviction of the appellant could not be based on the sole circumstances of recovery of iron angle. It was submitted that there are no eye-witnesses to the incident and in the absence of any evidence of motive the circumstantial evidence does not complete the chain so as to lead to the only conclusion that the appellant and none-else was the murderer of his mother, wife, sister and daughter.

7. In the present case admittedly, there are no eye-witnesses to the incident and the conviction of the appellant solely rests on the circumstantial evidence. It may be stated that the standard of proof required to convict a person on circumstantial evidence is now well settled by a series of pronouncements of this Court. According to the standard enunciated by this Court the

circumstances relied upon by the prosecution in support of the case must not only be fully established but the chain of evidence furnished by those circumstances must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. The circumstances from which the conclusion of the guilt of an accused is to be inferred, should be of conclusive nature and consistent only with the hypothesis of the guilt of the accused and the same should not be capable of being explained by any other hypothesis, except the guilt of the accused and when all the circumstances cumulatively taken together lead to the only irresistable conclusion that the accused alone is the perpetrator of the crime. In the present case the Trial Court as well as the High Court founded the conviction of the appellant on the basis of the circumstances which are said to be established against the appellant and the same are set out herein below :

(1) All the four deceased persons were alive on 10.10.1979 at 7.30 AM when PW 5, father of the appellant had left the house for Amjore.

(2) The four victims were found murdered at about 2.00 PM in the house in which the appellant also lived with his father and the victims.

(3) In between the period from 7.30 to 4.00 PM there was no alarm of theft or dacoity in the house and they had no enmity with any person which rules but the possibility of the commission of the murder by any other person.

(4) The accused was found absconding from his house soon after the murder who was subsequently caught outside the village and brought at the door of the house at about 4 PM.

(5) When the appellant was with his father and other witnesses, the Assist. Sub-Inspector of Police arrived and noticed the appellant as if he was under the influence of some intoxication.

(6) Although four members of his family including his wife and daughter were murdered the appellant did not go to see them and remained outside his house.

(7) On the disclosure statement made by the appellant the blood stained iron angle was recovered and seized at the instance of the appellant from the room of the house concealed beneath the fuel wood stored therein.

8. The question for consideration arises whether the aforementioned circumstances are proved beyond all reasonable doubt and if so whether they provide so complete a chain as not to leave any reasonable ground for a conclusion consistent with the innocence of the appellant. In other words, whether the circumstances said to be established are of the conclusive nature and consistent only with the hypothesis of the guilt of the appellant and the same are not capable of being explained by any other hypothesis, except the guilt of the appellant which if taken cumulatively together lead to the only irresistable conclusion that the appellant alone is the perpetrator of the crime.

9. A perusal of the prosecution evidence goes to show that in all probability the four murders took place before 2.00 PM because the dead bodies of all the four victims were seen by the hostile witness PW 4 at about 2.00 PM. According to the medical evidence of the Medical Officer. PW 11 who performed an autopsy over the dead bodies on 11.10.1979 from 4.40 PM onwards deposed that the deaths had taken place more than 24 hours from the time when he performed the post-mortem. It is true that there is evidence of PW 2, PW 4 and PW 5 to the effect that the victims were alive at 7.30 AM but there is no definite evidence as to till what time they were seen alive by the prosecution witnesses. But one thing is definitely clear that the murders had taken place sometimes before 2.00 PM. It is also not clear from the prosecution evidence that the appellant remained in the house alongwith the victims right from 7.30 AM till 2.00 PM during which the murders were committed. On the contrary PW 4 clearly stated that when he visited the place of occurrence Akhilesh Hajam was not seen there. Admittedly the appellant had no motive to commit the ghastly crime of his own mother, sister, wife and daughter and simply because the family had not enmity with anyone in the village or that there was no alarm of any theft or dacoity in the house during the said period, it would not lead to the only inference that nobody else could have committed the murders except the appellant in the absence of any positive evidence that the appellant remained at the house alongwith the victims continuously from 7.30 AM to 2.00 PM on the date of occurrence. That being so, it would be unsafe and unreasonable to draw an inference that the appellant alone is the perpetrator of the crime.

10. The evidence that the appellant had absconded soon after the murders is also shaky and uncertain. According to PW 4 the appellant was not present in the house but he was seen going towards village Tumba station and according to the evidence of PW 2, Village Tumba is only one mile away from village Dehlabad where occurrence took place. That means both the villages are situated closely to each other. From this evidence it cannot be inferred that appellant had absconded after the occurrence. The evidence show that the appellant was found in the village itself from where he was taken by some of the witnesses to the house and detained at the door of the house till the arrival of the police. If in fact the appellant had any intention to disappear from the scene or from the village itself to avoid his arrest then nothing prevented him to leave the village to some unknown place but there is no evidence suggesting that the appellant had left the village at all. All that comes but from the evidence on record is that the appellant was not found in the house but was found roaming about in the village for which there may be more than one reasons. The possibility cannot be ruled out that in the absence of the appellant someone com-mitted the ghastly murders and when the appellant stepped into the house and found the dead bodies of his near and dear he became dumb founded and temporarily lost the balance and equilibrium of his mind as is clear from the prosecution evidence. PW 4 also deposed that the appellant had fallen down near the boring of one Deoratan Singh. Almost all the wit-nesses including the Asstt. Sub-Inspector of Police have deposed that the appellant was showing the behaviour of a person under the influence of some intoxication and looked as if the had lost his senses. It was for this reason that the police had sent the appellant first to the hospital for examination by the Medical Officer as to his mental state. It appears that the appellant was not in a position to walk due to mental imbalance as he was taken on a cot to the hospital.

11. As regards the seizure of blood stained iron angle on the basis of disclosure statement said to have been made by the appellant the same is also not free from doubt. According to the prosecution the appellant made the disclosure statement that he had kept the iron angle in the room concealed beneath the fuel wood which was used as a weapon of offence but according to the statement of PW 6 the witness of disclosure and seizure of the alleged iron angle the same was not found concealed beneath the fuel wood in the room but the iron angle was found in the varandah which is an open and accessable place. Such a seizure from an open and accessable place can hardly be said to be a recovery on the basis of disclosure statement. It is therefore, difficult to accept that the seizure of iron angle was on the basis of the disclosure statement made by the appellant. Even if the iron angle would have been recovered from a concealed place then also on the basis of this circumstance of recovery alone, in the absence of any report of Serologist as to the present of human blood on the same the conviction of the appellant could not be founded. Thus, in our considered opinion, the circumstantial evidence discussed above does not conclusively lead to the only irresistable conclusion that the appellant was the perpetrator of the crime and none else. The prosecution case does not travel beyond the realm of doubt, the benefit of which has to be given to the appellant.

12. From the tenor of the evidence adduced by the prosecution it can well be seen that there has been a deliberate venture and an attempt of the witnesses to favour the appellant and it becomes clear that the witnesses did not come out with the truth and tried to suppress the material facts to deflect the course of justice for reason best known to them. On going through the prosecution evidence though it appears to us that in all probability the appellant may be the culprit but probabilities and moral convictions have no place or any role to play to convict a person in the absence of legal evidence. There is a long distance to be travelled between the expression "may be" and "must be". However strong------- emotional considerations may be, but the same cannot take the place of proof. It is indeed unfortunate that four innocent persons lost their lives and the culprit whosoever he may be goes unpunished. But it would be still worse if a innocent person is held responsible for the same merely on the basis of strong and serious doubts and, therefore, the conviction of the appellant deserves to be set aside by giving him the benefit of doubt.

13. For the reasons stated above the appeal succeeds and is hereby allowed. The conviction of the appellant under Section 302 with sentence thereunder is set aside. It is directed that the appellant shall be set at liberty if not required in any other offence.