

Pradeep Kumar vs The State Of Chhattisgarh on 16 March, 2023

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Bench: B.R. Gavai, Vikram Nath, Sanjay Karol

1

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1304 OF 2018

PRADEEP KUMAR

... APPELLANT

VERSUS

STATE OF CHHATTISGARH

... RESPONDENT

JUDGMENT

SANJAY KAROL, J.

1. On 01.10.2003, Umesh Chowdhary, a resident of village Chitarpur falling within the territorial limits of Police Station Dhaurpur District was allegedly murdered by accused Pradeep Kumar (Appellant No. 2 in CRA No.940 of 2004) before the High Court Chhattisgarh, Bilaspur and Bhainsa alias Nandlal (Appellant No.1. before the High Court in the very same appeal) in relation to which FIR No.126/03 (Ex.P-6) was registered at Police Station Dhaurpur.

2. On 02.10.2003, Investigation Officer, I. Tirkey (PW-19) commenced investigation and after verifying the place of occurrence sent the dead body for post-mortem analysis which was conducted by Dr. Kamlesh Kumar (PW-14) in terms of his report (Ex.P-10). Investigation revealed that the crime was committed on account of animosity which the Appellant was harbouring against the deceased. The motive being the former's desire to use the shop in possession of the deceased in village Chitarpur.

3. The Trial Court, based on the extra judicial confessional statement (Ex.P-11) of accused Pradeep Kumar made in the presence of Ramkripal Soni (PW-1) and Gopal Yadav (PW-7), the depositions of

Gajadhar Chowdhary (PW-10) father of the deceased, co-villagers Sirodh (PW-6), Radhika (PW-13) wife of (PW-7), all establishing the factum of prior animosity/“tension” inter se the parties; and with the addition of the police recovered keys of the shop of the deceased and his currency notes amounting to Rs.300/- from the possession of the Appellant. The Court convicted both the accused in relation to offences punishable under Section 302/34 IPC and 201/34 IPC and sentenced them to serve imprisonment for life and pay fine of Rs.500/- in relation to the offence under Section 302/34 as also suffer imprisonment for seven years and pay fine of Rs.500/- in respect of the offence punishable under Section 201 IPC.

4. The Trial Court found the testimonies of both PW-1 and PW-7 reliable (despite PW-1 not supporting the prosecution) and the prosecution to have established the factum of accused Pradeep Kumar having confessed his guilt before the Investigation Officer (PW-19). The Ld. Trial Court also found the recovery of articles seized as a result of the disclosure of statement, to be an additional link, as a chain of events, in support of the case set up by the prosecution.

5. However in an appeal preferred by both the accused, the High Court upheld the conviction of accused Pradeep Kumar in relation to all the offences and the sentences in terms thereunder, but acquitted accused Bhainsa alias Nandlal on all counts.

6. Hence, the present appeal filed by the Appellant – accused Pradeep Kumar. Significantly, none of the Courts below have returned finding to the effect that the guilt of the accused stands proven by the prosecution, beyond reasonable doubt. Suspicion, howsoever grave or probable it may be, cannot substitute the evidence, be it circumstantial or direct in nature, in establishing the guilt of the accused beyond reasonable doubt, the onus of which, at the first instance, is to be discharged by the prosecution. The distance between “may be” and “must be” is quite large and it divides vague conjectures from solid conclusions. [Shivaji Sahabrao Bobade & Another v. State of Maharashtra, (1973) 2 SCC

793.]

7. The High Court, by relying upon the principles of law enunciated by the Apex Court in Hari Charan Kurmi vs State Of Bihar, AIR 1964 SC 1184, to the effect that confession of a co-accused being inculpatory in nature, cannot be used against the accused, acquitted Bhainsa alias Nandlal.

8. However, in so far as accused Pradeep Kumar is concerned the Court found testimonies of (PW-1) and (PW-7) to be absolutely inspiring in confidence and that the witnesses “being independent and disinterested”, having no reason to “manufacture evidence”, “falsely implicating” the accused. Further, the High Court held that the defence was not able to show that the extra-judicial confession made by Pradeep Kumar (Appellant No.2) before the said witnesses was “involuntary” or “made on account of any coercion”, “inducement”, “promise” or “favour”. The Court below also held that there is no reason “whatsoever” to disbelieve the testimonies of PW-1 & PW-7 qua the issue of extrajudicial confession.

9. The accused cannot be convicted on the principles of preponderance of probability. It is the duty of this Court to ensure avoidance of miscarriage of justice at all costs and the benefit of doubt, if any, given to the accused. [Sujit Biswas v. State of Assam, (2013) 12 SCC 406, Hanumant Govind Nargundkar v. State of M.P. (AIR 1952 SC 343) and State v. Mahender Singh Dahiya, (2011) 3 SCC 109].

10. The impugned judgement to say the least, is sketchy. The presumption of the guilt of accused Pradeep Kumar by both the courts below is based on improper and incomplete appreciation of evidence which in the considered view of this Court, has resulted into travesty of justice.

11. The prosecution case, at best, rests upon three circumstances (a) the alleged confessional statement of accused Pradeep Kumar made before PW-1 and PW-7; (b) prior animosity/“tension” between Pradeep Kumar and the deceased; and (c) the recovery of the keys of the shop of the deceased and his currency notes amounting to Rs.300/- on the asking of the accused.

12. Since both the Courts below have placed paramount significance and reliance to the extra judicial confession made by the Appellant, it is important to take note of the principles enunciated by this Court in the case of Sahadevan v. State of T.N., (2012) 6 SCC 403 as under:

“ 16.

(i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

- (ii) It should be made voluntarily and should be truthful.
- (iii) It should inspire confidence.
- (iv) An extra-judicial confession attains

greater credibility and evidentiary value if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law.”

13. Before we deal with each of the aforesaid circumstances, we must place on record certain undisputed facts. Those being

(a) the homicidal death of deceased Umesh Chowdhary S/o Gajadhar Chowdhary, (b) the identity of the deceased, (c) the recovery of the dead body of the deceased from the Dodki Nala of village Chitarpur, (d) the post-mortem of the dead body conducted by PW-14 affirming the deceased to have died as a result of asphyxia due to throttling and (e) the cause of the death being homicidal in

nature. The ante- mortem analysis reflects multiple abrasions present on the front portion of the neck of the deceased caused by a hard and blunt object. There was a fracture of the hyoid bone, congestion in both the lungs and the trachea rings.

14. Proceeding further, examining the testimonies of the prosecution witnesses we find that it is the case of Manorama Devi (PW-11), w/o the deceased to have deposed that on 1.10.2003 finding her husband not to have returned home at night, asked her elder son Vinay Kumar (PW-12) to visit the shop and makes enquiries. Soon, he returned informing that his father's dead body was lying besides the road at Dodki Nala with marks of injuries. On the basis of suspicion, Gajadhar Chowdhary (PW-10) father of the deceased lodged a complaint with the police bearing FIR No.126/03 (Ex.P-6) dated 2.10.2003.

15. Significantly, at this point in time, neither PW-11 nor PW-12 had suspected any person to have committed the crime.

16. Gajadhar Chowdhary (PW-10) states that it was he who made inquiries about the death of the deceased and as disclosed to him by Sirodh (PW-6), owner of the shop, deceased was lastly seen by him closing the shop around 8:00 PM. We note that there is a significant time gap between when the deceased was lastly seen by him and the time of the crime. Also he was not seen in the company of the accused. In his testimony he states that accused Bhainsa and Pradeep Kumar killed Umesh Chowdhary but then this fact is based on "his suspicion" for the reason that accused had "harboured animosity" in connection with the shop. Well that is about all and without any further elaboration.

17. Significantly, even this limited fact is not disclosed in the complaint. Also to this effect, we find there is material improvement in his testimony. That apart, we do not find this witness to be reliable or his testimony worthy of credence. He failed to make inquiries about the cause of the incident from any of the villagers. He is not a spot witness. He is also not the witness who had lastly seen the Appellant with the deceased or the Appellant having gone either towards the shop of the deceased or the place of occurrence of the incident, both being two separate places. However, what is crucial, rendering his version to be self belied, in his unequivocal admission that, "no quarrel ever took place prior to the fatal incident between the deceased and the accused" and that he "never lodged any report in connection with any quarrel."

18. To this very effect, we may also take note of the deposition of Sirodh (PW-6) who, in any event, has not supported the prosecution in Court.

19. When we come to the deposition of Vinay Kumar (PW-12) son of the deceased, unequivocally he states that "... later on the police personnel told me that accused persons have thrown my father after committing murder..." Now this totally belies the testimony of his grandfather Gajadhar Chowdhary (PW-10). To similar effect, it is the testimony of Radhika (PW-13) who only adds that "...Later on I came to know that Umesh has been murdered. I heard from the villagers...". Significantly, her statement that she was not informed by her husband (PW-7), of the deceased being murdered by the Appellant was not recorded in her previous statement with which she was confronted. But what is crucial is her deposition is that her husband himself was a suspect and that

she admits it to be correct, "... that the police personnel took my husband for inquiry in connection with the murder of deceased. The police personnel kept my husband for one day..." This negates one of the circumstances that there was tension between the deceased and the accused, which was, the motive of commission of crime, i.e. issue of use of the shop inter se the parties.

20. We notice in respect of the next circumstance, which is the recovery of keys and the money, that there is no independent corroborated material except for the confessional statement of the accused, which also is not proven on record. Even otherwise, the keys, the currency notes and the blood stained clothes were not sent for chemical analysis. There is only an unexhibited copy of the FSL Report of the alleged blood stained clothes of the Appellant which stands not proven by anyone. Also none has come forward to depose that the accused had kept the keys of the shop with himself, for after all, it is not the case of the prosecution that the shop belonged to the accused.

21. The substratum of the evidence, that is the extra judicial confessional statement of the Appellant, apart from being hit by Section 27 of the Indian Evidence Act, 1872, we find it not to have been supported by Ramkripal Soni (PW-1) and Gopal Yadav (PW-7), who as is evident, was himself a suspect. He admits it to be "...correct to say that the Inspector had detained me and some villagers where the dead body was laying..." and "...it is correct to say that I did not disclose the statement made by accused Pradeep to any other person before 4 o'clock..." We have already noticed his wife Radhika (PW-13) to have supported this statement. Now, if this witness was himself a suspect, his testimony cannot be said to be unimpeachable or free from blemish. Still further, deposition of PW-7 reveals the witness not to have deposed truthfully and the prosecution to have introduced another theory as according to him the accused had immediately, after the incident confessed the crime with him. This was in the night intervening first and second October, 2003. But then, he does not disclose such fact to anyone. We may remind the prosecution that he is a co- villager. His version also appears to be false for he admits voices and noises were audible from the place of the occurrence of the incident and that he heard none on the fateful day. He admits that there are houses of other persons including Ramsanehi, closer to the spot of crime. He did not bother to make inquiries for ascertaining the truth from any of the co-villagers, including all those named by him. This witness, in our considered view, cannot be said to be reliable and trustworthy and this we say so for the reason, that as according to his deposition, he received information of the death of deceased at 7:00-8:00 AM, the following morning and yet he did not visit the spot of the crime until the police reached, which was at 10:00 AM and only much later, got his statement recorded at about 4:00 PM. His stoic silence, in not informing or meeting any of the family members of the deceased, neighbours or Police is unexplainable.

22. Dealing with the star witness of the prosecution which is the Investigation Officer, I.Tirkey (PW-19), we find his testimony to be wholly unworthy of any credence:

unbelievable; and the witness to be unreliable. This we say so for the reasons that he did not record the statement of Gajadhar Chowdhary (PW-10) or Gopal Yadav (PW-7) in respect any prior animosity between the deceased and the accused. The evidence pertaining to the genesis of the crime was not collected by him. He also does not state as to what made him detain accused Pradeep Kumar on 3.10.2023. Be that

as it may, he did not examine witnesses, who in our considered view, perhaps may have thrown some light about regard to the actual occurrence of the incident. He admits that houses of Ramsevak, Gopal and Rashri are just at a distance of 30 to 70 meters from the spot of the crime. Yet, he did not examine any of them. Why so? No explanation is forthcoming. Crucially, he admits that, “the investigation concluded having no direct evidence” indicating the time and the manner in which the crime took place. He admits to have prepared some document in relation to the keys recovered from the accused however no such fact is recorded in his diary. In fact, such fact is not found recorded in the Panchnama prepared by him. The basis for the Investigation Officer (PW-19) to have arrived at the guilt of co-accused Bhainsa is missing in his statement. In fact, he does not even state to have suspected Bhainsa of having committed any crime. The sole basis for the Investigation Officer (PW-19) to have arrested the Appellant for having committed the crime is his extra judicial confession (Ex. P.11) which in our considered view, apart from becoming inadmissible, is of no use as it has not led to recovery of any new fact – be it the place of the grocery shop; prevailing tension between the accused and the deceased; recovery of the body of the deceased near the Dodki drain: All these facts were known to the police from before and as far as recovery of money and keychain is concerned we have already discussed issue.

23. Apart from sending the dead body for post-mortem, the Investigation Officer (PW-19) does not state what investigation he conducted on the crime spot. It is the case of the prosecution that only this person conducted the investigation and that he was not engaged in any other crime or had to attend to other urgent work, resulting into the delay thereof. Perusal of the First Information Report (Ex.P-6) does reveal Gajadhar Chowdhary (PW-10) to have disclosed the name of accused Pradeep Kumar as a suspect in the crime. Whether such report was lodged in time or not, itself is in doubt. That apart if the Investigation Officer (PW-19) was himself aware of the suspect then what prevented him from immediately detaining or examining him. In fact, it has come on record that other persons were detained as suspects. The investigation conducted is absolutely shady and has been done in a casual manner. In this backdrop it cannot be said that the prosecution witnesses, more specifically (PW-19), (PW-10) and (PW-7) have deposed truthfully.

24. It is important to note that the cardinal principles in the administration of criminal justice in cases where heavy reliance is placed on circumstantial evidence, is that where two views are possible, one pointing to the guilt of the accused and the other towards his innocence, the one which is favourable to the accused must be adopted. [Kali Ram v. State of H.P. (1973) 2 SCC 808].

25. In the present case, we state that the circumstances present before us, taken together, do not establish conclusively only one hypothesis, that being the guilt of the accused, Pradeep Kumar. The presumption of innocence remains in favour of the accused unless his guilt is proven beyond all reasonable doubts against him. [Babu v. State Kerala, (2010) 9 SCC 189]. The cherished principles or golden threads of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly which was done by the Courts below.

26. In the present case, we find neither the chain of circumstances to have been completely established nor the guilt of the accused alone, having committed the crime to be proven, much less beyond reasonable doubt. This Court has stated essential conditions that must be fulfilled before an accused can be convicted in a case revolving around circumstantial evidence in the landmark case of *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116:

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(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.”

27. Normally, we do not interfere with the concurrent findings of fact of the Courts below. We step in only in exceptional cases or where gross errors are committed, overlooking crying circumstances and well established principles of criminal jurisprudence leading to miscarriage of justice. Hence it becomes our bounden duty to correct such findings in view of the principles enunciated in *Ramaphupala Reddy v. State of Andhra Pradesh*, (1970) 3 SCC 474, *Balak Ram v. State of U.P.*, (1975) 3 SCC 219 and *Bhoginbhai Hirjibhai V. State of Gujarat*, (1983) 3 SCC

217.

28. To conclude, we state that both the courts below, erred in finding the Appellant guilty of having committed the crime, charged for, under Section 302/34 IPC read with 201/34 IPC. Hence we set aside the findings of guilt and sentence arrived at vide judgment dated 28.08.2004 by the Ld. Trial Court as subsequently affirmed by the High Court in its judgement dated 21.07.2017 in CRA No.940 of 2004 titled as *Bhainsa@Nandlal and Anr. vs. The State of Chhattisgarh*.

29. The appeal is allowed and the Appellant stands acquitted of all the charges framed against him.

We direct the Appellant Pradeep Kumar be released forthwith unless required in any other case.

.....J. (B.R. Gavai)J. (Sanjay Karol) Dated: 16th March, 2023;

Place: New Delhi.