

Santosh @ Rajesh @ Gopal

v.

State of Madhya Pradesh

(Criminal Appeal No. 2030 of 2024)

19 September 2024

**[Sanjiv Khanna,* Sanjay Kumar and
R. Mahadevan, JJ.]**

Issue for Consideration

Evidence provided by the prosecution, if sufficient to secure a conviction of the appellant for the murder of the victim.

Headnotes[†]

Evidence Act, 1872 – ss.8 and 27 – Motive, preparation and previous or subsequent conduct – How much of information received from accused may be proved – Chain of circumstances to establish hypothesis of guilt – Absence of corroborative evidence – On facts, conviction of the appellant u/ss.302, 34 and 120B IPC and s.25(1-B)(A) of the Arms Act, for committing murder of the victim, by the courts below – Conviction on the basis of the recovery of a pistol from him and the ballistic report which confirmed that the bullet recovered from the body of the victim, was fired from the pistol recovered from the appellant, however, no eyewitnesses to the crime, implicating the appellant – Correctness:

Held: Ballistic report connecting the pistol recovered from the appellant with the bullet recovered from the body of the victim, is an inculpatory fact – Prosecution case that the said discovery and recovery of the pistol is attributable to the disclosure statement provided by the co-accused (since deceased), are governed by ss.8 and 27 – As the disclosure statement led to the arrest of the appellant, the prosecution may take the benefit of s.8 – However, absence of any corroborative evidence directly linking the appellant to the crime introduces a significant gap in facts as alleged in the chain of circumstances, which fails to establish a hypothesis of guilt that conclusively excludes all other reasonable possibilities – To establish that the appellant participated in the murder, the

* Author

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prosecution must present further material and evidence linking the appellant to the actual crime – Appellant may be guilty of an offence u/s.201 IPC, the evidence provided by the prosecution insufficient to secure a conviction for the murder of the victim – Thus, the prosecution failed to prove that the appellant guilty of murder, either individually or with shared common intention or in conspiracy with the co-accused – Thus, the conviction of the appellant set aside – Penal Code, 1860 – ss.302, 34 and 120B – Arms Act, 1959 – s.25(1-B)(A). [Paras 11, 13, 15, 16]

Evidence Act, 1872 – s.27 – How much of information received from accused may be proved – Conditions to be satisfied u/s.27 – Stated. [Para 12]

Evidence – Circumstantial evidence – Principles to be satisfied to conclusively establish the guilt of the accused:

Held: Where the case rests entirely on circumstantial evidence, a finding of guilt is justified only if all the incriminating facts and circumstances are incompatible with the accused's innocence – There must be a chain of evidence so far complete, such that every hypothesis is excluded but the one proposed to be proved and such circumstances must show that the act has been done by the accused within all human probability. [Para 9]

Case Law Cited

Hanumant v. State of Madhya Pradesh [\[1952\] 1 SCR 1091 : \(1952\) 2 SCC 71](#); *Sharad Birdhichand Sharda v. State of Maharashtra* [\[1985\] 1 SCR 88 : \(1984\) 4 SCC 116](#); *Perumal Raja v. State, Represented By Inspector of Police* [\[2024\] 1 SCR 87](#); *Mohmed Inayatullah v. State of Maharashtra* [\[1976\] 1 SCR 715 : \(1976\) 1 SCC 828](#); *State of Maharashtra v. Suresh* [\[1999\] Supp. 5 SCR 215 : \(2000\) 1 SCC 471](#) – referred to.

List of Acts

Evidence Act, 1872; Penal Code, 1860; Arms Act, 1959.

List of Keywords

Murder; Recovery of pistol; Ballistic report; No eyewitnesses to the crime; Inculpatory fact; Disclosure statement; Absence of corroborative evidence; Chain of circumstances; Common intention; Conspiracy; Evidence; Circumstantial evidence.

Santosh @ Rajesh @ Gopal v. State of Madhya Pradesh**Case Arising From**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2030 of 2024

From the Judgment and Order dated 18.10.2022 of the High Court of M.P. at Indore in CRLA No. 5856 of 2017

Appearances for Parties

Ms. Shweta Garg, Ashish Gopal Garg, Rakesh Garg, Advs. for the Appellant.

Nachiketa Joshi Sr. Adv./A.A.G., Pashupathi Nath Razdan, Pushpender Singh, Mirza Kayesh Begg, Ms. Maitreyee Jagat Joshi, Ms. Ruby, Advs. for the Respondent.

Judgment / Order of the Supreme Court**Judgment**

Sanjiv Khanna, J.

Five individuals, namely, Laadkunwar Bai, Jitendra Singh, Nirbhay Singh @ Rajesh Mama, Meharban Singh and the appellant, Santosh @ Rajesh @ Gopal, were prosecuted for the murder of Narayan Singh in the chargesheet arising out of First Information Report No. 640/2011 dated 13.11.2011, registered with Police Station – Industrial Area, District Dewas, Madhya Pradesh, for offence(s) punishable under Sections 302, 34 and 120B of the Indian Penal Code, 1860, and Section 25(1-B)(A) of the Arms Act, 1959.

2. Three out of these five persons are related to the victim, Narayan Singh. Laadkunwar Bai and Jitendra Singh are the wife and son of the victim, Narayan Singh. Meharban Singh is the father-in-law of Jitendra Singh, the son of Narayan Singh. The remaining two persons, namely, Nirbhay Singh and the appellant, Santosh @ Rajesh @ Gopal, are allegedly hired killers.
3. On 30.11.2017, the trial court acquitted Laadkunwar Bai and Meharban Singh. However, Nirbhay Singh @ Rajesh Mama, Jitendra Singh, and the appellant, Santosh @ Rajesh @ Gopal, were convicted.
4. Following this, Nirbhay Singh @ Rajesh Mama, Jitendra Singh, and the appellant filed appeals before the High Court of Madhya Pradesh at Indore. During the pendency of the appeal, Nirbhay Singh @ Rajesh Mama passed away, resulting in the dismissal of his appeal as abated.

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5. By the impugned judgment dated 18.10.2022, Jitendra Singh has been acquitted. His acquittal has not been challenged. However, the conviction of the appellant, Santosh @ Rajesh @ Gopal, was upheld, prompting him to file the present appeal.
6. The prosecution's case, in brief, is that on 13.11.2011, at 9.30 p.m., Rachna Bai, the mother of the victim, Narayan Singh, deposed as PW-2 that both she and Narayan Singh were sleeping at their house in Village Binjana, District Dewas, Madhya Pradesh. Someone called out Narayan Singh's name from outside, prompting him to open the door. At that moment, Rachna Bai (PW-2) heard a gunshot. She ran towards Narayan Singh, and shortly after, a second gunshot was fired, striking Narayan Singh in the chest, and causing him to fall. When Rachna Bai (PW-2) went outside, she saw her daughter-in-law, Laadkunwar Bai (Narayan Singh's wife), and Jitendra Singh (Narayan Singh's son) standing on the opposite side of the house. She also saw two individuals with their faces covered fleeing the scene on a motorcycle.
7. The prosecution's primary evidence against the appellant, Santosh @ Rajesh @ Gopal, also referenced in the impugned judgment, is the recovery (Exhibit P-6) of a pistol and the ballistic report (Exhibit P-57), which confirms that the bullet (Exhibit B-1) recovered from the body of the victim, Narayan Singh, was fired from the country-made pistol (Exhibit A-1 and C-1). There is evidence to show that the pistol was recovered (Exhibit P-6) from the appellant, Santosh @ Rajesh @ Gopal, and we would accept the said version of the prosecution.
8. There are no eyewitnesses to the crime, implicating the appellant, Santosh @ Rajesh @ Gopal. The case against the appellant, Santosh @ Rajesh @ Gopal, rests entirely on circumstantial evidence.
9. Where the case rests entirely on circumstantial evidence, a finding of guilt is justified only if all the incriminating facts and circumstances are incompatible with the accused's innocence. In other words, there must be a chain of evidence so far complete, such that every hypothesis is excluded but the one proposed to be proved and such circumstances must show that the act has been done by the accused within all human probability.¹
10. In *Sharad Birdhichand Sharda v. State of Maharashtra*,² this Court outlined five essential principles, often referred to as the

1 *Hanumant v. State of Madhya Pradesh* (1952) 2 SCC 71

2 [1985] 1 SCR 88 : (1984) 4 SCC 116

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“golden rules”, which must be satisfied for circumstantial evidence to conclusively establish the guilt of the accused:

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

xxx

xxx

xxx

(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.”

11. The ballistic report (Exhibit P-57) connects the pistol recovered (Exhibit P-6) from the appellant, Santosh @ Rajesh @ Gopal, with the bullet (Exhibit B-1) recovered from the body of the victim, Narayan Singh. This is an inculpatory fact. However, it is also the prosecution’s case that the said discovery and recovery is attributable to the disclosure statement (Exhibit P-35) provided by the co-accused, Nirbhay Singh (since deceased). Such discovery and recovery at the instance of an accused are governed by Sections 8³ and 27⁴ of the Indian Evidence Act, 1872.⁵

³ Section 8 of the Evidence Act reads:

“8. Motive, preparation and previous or subsequent conduct.— Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.”

⁴ Section 27 of the Evidence Act reads:

“27. How much of information received from accused may be proved.— Provided that, when any fact is deposited 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.”

⁵ For short, “Evidence Act”.

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12. This Court, in *Perumal Raja v. State, Represented By Inspector of Police*,⁶ has referred to *Mohmed Inayatullah v. State of Maharashtra*,⁷ which elucidated the conditions required to be satisfied under Section 27:

“Section 27 of the Evidence Act is an exception to Sections 25 and 26 of the Evidence Act. It makes that part of the statement which distinctly leads to discovery of a fact in consequence of the information received from a person accused of an offence, to the extent it distinctly relates to the fact thereby discovered, admissible in evidence against the accused. The fact which is discovered as a consequence of the information given is admissible in evidence. Further, the fact discovered must lead to recovery of a physical object and only that information which distinctly relates to that discovery can be proved.”

The word, “distinctly”, used in Section 27 relates to the discovered fact. Only that much which relates to the discovery of a physical object is admissible. The rest of the testimony is to be excluded. The facts proved by the prosecution, particularly the admissible portion of the statement of the accused, would give rise to two alternative hypotheses, namely, (i) that the accused had himself deposited the physical items that were recovered; or (ii) only the accused knew that the physical items were lying at that place. The second hypothesis is wholly compatible with the innocence of the accused, whereas the first would be a factor to show the involvement of the accused in the offence. The court has to analyse which of the hypotheses should be accepted in a particular case. Further, a fact already known to the police is not admissible under Section 27 of the Evidence Act.

13. As the disclosure statement (Exhibit P-35) has led to the arrest of the appellant, Santosh @ Rajesh @ Gopal, the prosecution may take the benefit of Section 8 of the Indian Evidence Act, 1872. However, even assuming this to be the case, the absence of any corroborative evidence directly linking the appellant to the crime introduces a significant gap in facts as alleged in the chain of circumstances. In our view, this fails to establish a hypothesis of guilt that conclusively excludes all other reasonable possibilities.

6 [2024] 1 SCR 87

7 [1976] 1 SCR 715 : (1976) 1 SCC 828

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14. This Court, in *State of Maharashtra v. Suresh*,⁸ observed that when any incriminating material is discovered based on a disclosure statement, three hypotheses emerge: -
- “26. We too countenance three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by himself. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there...”
15. In the present context, it is the prosecution’s case that the location of the pistol was disclosed by the co-accused, Nirbhay Singh (since deceased). However, to establish that the appellant, Santosh @ Rajesh @ Gopal, participated in the murder, the prosecution must present further material and evidence linking the appellant to the actual crime. While the appellant, Santosh @ Rajesh @ Gopal, may be guilty of an offence under Section 201 of the IPC, the evidence provided by the prosecution is insufficient to secure a conviction for the murder of the victim, Narayan Singh, on 13.11.2011. Consequently, the prosecution has failed to prove that the appellant, Santosh @ Rajesh @ Gopal, is guilty of murder, either individually or with shared common intention or in conspiracy with the co-accused, Nirbhay Singh @ Rajesh Mama (now deceased).
16. We, therefore, allow the present appeal and set aside the conviction of the appellant, Santosh @ Rajesh @ Gopal. The appellant, Santosh @ Rajesh @ Gopal, was granted bail by this Court on suspension of sentence, *vide* order dated 08.04.2024. The bail bonds and sureties furnished by the appellant, Santosh @ Rajesh @ Gopal, shall be treated as cancelled.
17. The impugned judgment is set aside and the appeal is allowed. Pending application(s), if any, shall stand disposed of.

Result of the Case: Appeal allowed.

⁸Headnotes prepared by: Nidhi Jain