

KAILASH POTLIA
v.
THE STATE OF ANDHRA PRADESH
AUGUST 14, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Indian Penal Code, 1860:

Sections 302, 380—Murder—Trial—Conviction based on circumstantial evidence—Held, prosecution failed to establish case against appellant beyond all reasonable doubt.

Evidence Act, 1872: Circumstantial Evidence—Conviction under sections 302 and 380 IPC, Evidence regarding extra judicial confession and recovery of stolen articles found not reliable- judicial confession u/s. 164 not recorded—Held, evidence is too weak to form a chain strong enough to tie the appellant with so serious an offence as murder.

The accused-appellant filed the instant appeal by special leave against the order of conviction and sentences under sections 302 and 380 IPC passed by the trial court and affirmed by the High Court. The appellant was alleged to have committed murder of one of his acquaintance for gain in her hut in the night between 1/2 May, 1986. The circumstances relied on to connect the appellant with the crime were : (1) PW. 18, a hotel clerk, had seen the appellant on the fateful night in the neighbourhood of the scene of occurrence; (2) injury on the finger of the appellant; (3) extra-judicial confession said to have been made to PW. 13 on the following day; and (4) the statement made under s. 27 of the Evidence Act to PW.22 leading to recovery of gold ornaments of deceased from the shop of appellant's father.

Allowing the appeal and setting aside the conviction and sentences, this Court

HELD : 1.1. The prosecution has failed to establish the case against the appellant beyond all reasonable doubt. [692-A]

1.2. The evidence of PW. 13, to whom the appellant is alleged to have made extra-judicial confession, does not inspire confidence. He admitted

A that the appellant had for the first time taken him in a scooter. He did not know the names of the father and the relation of the appellant and had gone with the appellant to the place where the appellant is claimed to have made extra-judicial confession. Though he had gone near the dead body and found there some persons including the police, he did not disclose the alleged confession to anyone at that time. No ostensible reason was given to take PW.13 into confidence to confess the crime. Judicial confession under section 164 was not recorded. [691-D-E]

B

C 1.3. PW.22, the witness to the recovery practically admitted in the cross-examination that he was taken to the appellant's father's shop. His shop was opposite the police station. He volunteered, at the instance of the Sub-Inspector, to go to the place for recovery. From the tenor of cross-examination and the answers given by him, it would be clear that he did not know the place of recovery. The other panch witness was not examined to corroborate his evidence. It is hard to accept the uncorroborated sale testimony of PW.22 to believe the recoveries said to have been made.

D [691-F-G]

E 1.4. If the testimony of PW.13 and PW.22 is excluded from evidence, no other unimpeachable evidence is there to connect the appellant with the crime. The circumstances of the presence of the appellant near the scene of occurrence at the mid-night and an injury on his finger are too weak to form a chain strong enough to tie the appellant with so serious an offence as murder. [691-H; 692-A]

F CRIMINAL APPELLATE JURISDICTION : Criminal Miscellaneous Petition No. 214 of 1994.

IN

Criminal Appeal No. 719 of 1992.

G From the Judgment and Order dated 6.9.91 of the Andhra Pradesh High Court in Crl. A. No. 932 of 1990.

K. Madhava Reddy and P.K. Dey for the Petitioner/Appellant.

G. Prabhakar for the Respondent.

H The following Order of the Court was delivered :

Heard the counsel on both sides. The entire prosecution case rests on circumstantial evidence. According to the prosecution, the appellant was acquainted with deceased Smt. Shanti Devi. On the intervening night of May 1/2 1986, the appellant had gone to the hut of the deceased when she was alone and murdered for gain.

The circumstances to connect the appellant with the crime are that (1) PW 18, a hotel clerk, had seen the appellant at mid- night on May 1, 1986 in the neighbourhood of the scene of offence; (2) injury on the finger of the appellant; (3) extra-judicial confession said to have been made to PW 13 on May 2, 1986; and (4) statement made under s.27 of the Evidence Act (Ext. P-8) leading to recovery of gold ornaments of the deceased from the shop of the father of the appellant spoken to by PW 22, the mediator.

We have carefully seen the evidence of PW 13 to whom the appellant is alleged to have made extra-judicial confession. He admitted that the appellant had for the first time taken him in a scooter. He did not know the names of the father and the relation of the appellant and had gone with the appellant to the Tankbund, where the appellant is claimed to have made extra-judicial confession. The evidence does not inspire confidence as, according to PW. 13, though he had gone near the dead body and found some person there he did not disclose the alleged confession to anyone at that time. Police too was seen near the dead body, but he did not tell them about it, nor about the availability of the appellant at that time. No ostensible reason was given to take PW.13 into confidence to confess the crime. Judicial confession unders s.164 was not recorded.

PW.22, the recovery witness practically admitted in the cross-examination that he had been taken to the appellant's father's shop. His shop was opposite to the police station. He volunteered, at the instance of the Sub-Inspector, to go to the place for recovery. From the tenor of cross-examination and the answers given by him, it would be clear that he did not know the place of recovery. The other panch witness was not examined to corroborate his evidence. It is hard to accept the uncorroborated sole testimony of PW.22 to believe the recoveries said to have been made.

If these two pieces of evidence are excluded from evidence, no other unimpeachable evidence is there to connect the appellant with the crime punishable under s.302 I.P.C. inasmuch as the circumstances of the presence of the appellant near the scene of occurrence, at the mid-night,

A and an injury on his finger are too weak to form a chain strong enough to tie the appellant with so serious an offence as murder. So, we hold that the prosecution has failed to establish the case against the appellant beyond all reasonable doubt.

B Even with regard to offence under s.380, if the evidence of PW.22 is excluded, which has to be done for reason already alluded, it would be difficult to sustain this conviction and it is accordingly set aside. The recovered ornaments of the deceased shall be returned to her son.

The appeal is accordingly allowed. The appellant will be set at liberty and shall be released forthwith unless required in any other case.

R.P.

Appeal allowed.