

Reserved on :08.08.2022

Delivered on: 21.10.2022

Court No. - 48

Case :- GOVERNMENT APPEAL No. - 71 of 2021

Appellant :- State of U.P.

Respondent :- Nanhe Lal And Another

Counsel for Appellant :- G.A.

Counsel for Respondent :- Dhananjay Singh

Hon'ble Suneet Kumar,J.

Hon'ble Syed Waiz Mian,J.

Per Hon'ble Syed Waiz Mian,J.

1. By means of this Government Appeal, on behalf of the State, challenge has been made to the validity and legality of judgment and order of acquittal dated 11.11.2020, having been passed by the learned Additional Sessions Judge, Fast Track Court, Bareilly, in connection with Session trial No. 275 of 2017, State vs. Nanhe Lal and another, arising out of Case Crime No. 89 of 2017, under Sections-302, 376, 394 and 411 I.P.C., Police Station-Bhamora, District-Bareilly.
2. Heard Shri Vikas Goswami learned A.G.A. and perused the record.
3. Brief facts emerge from the the First Information Report are that the complainant presented a written complaint at the concerned police Station, stating therein that he had solemnized marriage of his daughter with one Morpal and thereafter, on the occasion of festival of Holi she was present at her parental house on 15.03.2017; she went to the house of accused respondent to watch television but she did not return till the evening; search was made but she could not be traced out; on 16.03.2017, at about 7 a.m. dead body of daughter of informant was found in a wheat field near river.
4. On presentation of the application of complainant/informant a

criminal case being Case Crime No. 89 of 2017, under Sections-302, 376, 394, and 411 I.P.C. Police Station-Bhamaura, District-Bareilly, came to be registered against one Nanhe Lal and his wife Smt. Nisha Devi.

5. Upon investigation, statements of informant, constable and another were recorded on 17.03.2017. In charge, Sub Inspector Ajab Singh, with police team, was patrolling in search of the accused. On reaching Devchara, they got information from the police informer that accused, who had killed the deceased, are standing at Devchara square; believing the information, I.O. Ajab Singh, along with his police team, reached at the place where accused persons were standing; upon inquiry one told his name as Nand Lal and another Nisha Devi, R/o Village Sirohi, Police Station-Bhamaura, District-Bareilly; they told that a criminal case, against them, is registered, at the police station. With regard to the occurrence it was apprised by the informant that his daughter went to watch T.V. at their house; accused admitted that Sunita d/o Veerpal, who lives in their neighbour, had come to their house to watch T.V.; she was wearing golden earrings (kundals) in her ears and one locket on her neck; they out of greed, murdered the deceased by strangulation by her Dupatta and snatched jewellery from her and kept them in the Almirah placed in the room; they had thrown her dead body in the wheat field on 15.03.2017 at around 12 at night; to save them, they offered the Investigating Officer and Police Team that they can get recovered the jewellery wore by the deceased;

Investigating Officer and police team were brought by both the accused to their house and they opened the room in their house and the Almirah and the jewellery was got recovered from there; the recovered articles were identified by the Rajendra and Rajdulari and these articles were sealed on the spot, in the presence of the accused as well as witnesses; memo of recovery of articles was written and it was signed by all the witnesses, accused, investigating Officer and police constable etc, accompanying the investigating officer.

6. Inquest of the dead body of the deceased was conducted by the Sub Inspector, in the presence of Panchan and he prepared an inquest report, Exhibit-Ka-3, to ascertain the real cause of death of the deceased, dead body along with necessary papers were forwarded for conducting the autopsy on the dead body to District Mortuary, wherein, autopsy was conducted, and an autopsy report, Exhibit-Ka-9 by the Doctor was prepared. In this autopsy report the details have been recorded and the cause of death of the deceased has been opined as Asphyxia due to strangulation.

7. During investigation, the investigating officer has recorded the statements of rest of witnesses and accused under Section 161 Cr.P.C.; during investigation clothes wore by the deceased and her other belongings were also taken so that scientific examination can be done and the same were forwarded to Joint Director Forensic Scientific

Laboratory, Moradabad, and the office of Joint Director, Forensic Science Laboratory, has sent examination report dated 17.06.2017 (Exhibit-Ka-17) to C.O. Aonla (Bareilly) which is on record.

8. On the strength of incriminating evidence collected by the Investigating Officer, the investigating officer forwarded a police report for offences punishable under Sections 302, 376, 394 and 411 I.P.C. against the accused Nanhe Lal and Nisha Devi to the Court concerned.

9. Learned Chief Judicial Magistrate, Bareilly, upon taking cognizance in exercise of powers enshrined under Sections-190 (1) Cr.P.C. has found ample evidence under aforementioned offences against both accused and thus took cognizance and summoned the accused. After completing the formalities, the learned Chief Judicial Magistrate, vide order dated 11.08.2017 committed the criminal case which came to be registered as criminal case No. 275 of 2017 to the Court of District District and Sessions Judge, Bareilly, for necessary action.

10. In the Court of District and Sessions Judge, the said case was registered as S.T. No. 275 of 2017, which was transferred to Additional Sessions Judge, Fast Tack Court, and vide order dated 21.09.2017, charges for offences under Sections 302/34, 376, 394 and 411 I.P.C. against both the accused were framed the charges for offences under Sections 302/34, 376, 394 and 411 I.P.C. against both the accused,

they denied the charges and claimed trial, hence their trial commenced.

11. In order to prove charges against the respondents, under above sections of I.P.C. the witnesses P.W.-1 Veerpal, informant who approved his written First Information Report, P.W.-2 Rajdulari, P.W.-3 Rajendra, inquest report, as exhibit Ka1-2, P.W.-5, Tejpal, also proved inquest report and also identified his signature thereon and P.W.6 Yaduveer Singh, who proved First Information Report Chik as Exhibit Ka-4 and G.D. Exhibit Ka-Kha-Ka 5, respectively, were examined.

12. Thereafter, accused admitted the genuineness of prosecution papers, however, vide Court order dated 11.09.2020 C.W. 1, Sub Inspector-Ajab Singh, was summoned, who proved site plan of place of occurrence and memo of recovery of articles as Exhibit Ka-7, Exhibit-Ka-8, inquest report Exhibit-Ka 3, Forensic Science Laboratory report, Exhibit Ka-17, two gold earrings as material Exhibit-Ka-1, locket as material, Exhibit-Ka 2. Further, the accused also admitted the genuineness of the police report and other police papers as Exhibit Ka-6, to Exhibit Ka-16.

13. After closure of evidence, on behalf of the prosecution, statements of accused under Section 313 Cr.P.C. were recorded.

14. Accused Nanhe Lal and Smt. Nisha Devi stated that the evidence of P.W.-1, and recovery memo and evidence of P.W.-4, P.W. 5 are false. They further stated that the

recovered articles and other belongings of the deceased were planted on account of enmity of political rivalry and they have been falsely implicated in this case and they declined to adduce any evidence in their defence.

15. Learned Additional Sessions Judge, Fast Track Court, Bareilly, vide judgment and order dated 11.11.2020 did not find sufficient evidence against the accused and extended the benefit of doubt to the accused and accordingly, acquitted them from the charges under aforementioned offences.

16. Feeling aggrieved by the judgment and order dated 11.11.2020, rendered by learned Additional Sessions Judge, Fast Track Court, Bareilly, instant Government Appeal on behalf of the State of U.P. has been preferred challenging the impugned judgment and order on the grounds that the accused respondents have committed offences of murder, rape and robbery and also stated that the robbed gold articles were recovered at the instance of accused from the Almirah kept in the room of their house and the same were handed over to the Investigating Officer and police personnel in the presence of the witnesses; learned lower Court has not properly appreciated the evidence on record and the impugned judgment and order is based on conjuncture and surmises; the trial Court despite cogent and clinching evidence against the accused has committed gross illegality and perversity by acquitting the accused, thus, the impugned judgment and order is erroneous in the eyes of

law and not sustainable, therefore, it is urged that the impugned judgment and order dated 11.11.2020 be set aside and respondent/accused convicted and sentenced in accordance with law.

Analysis

17. P.W.-1 Veerpal, in his examination in chief recorded on 09.11.2017 has stated that his daughter was married to one Morpal and she had come to his house to celebrate the festival of Holi; she had gone to the house of his neighbour Nanhe Lal at about 1.00 p.m. to watch T.V. but till evening she did not return, whereupon, he searched her daughter but she could not be traced out; on the following day at about 7 O clock, her dead body was found in the wheat field near canal which flows in the western side of the village. Under suspicion, that his neighbour Nanhe Lal and his wife had murdered her daughter, he presented a written First Information Report at the concerned police station.

18. P.W.-1, Veerpal states that he has not found jewellery, which was wore by the deceased, on her dead body. In his remaining examination in chief, P.W.-1 Veerpal, was recorded before the learned Court below on 17.04.2019, wherein, he had stated that the recovered jewellery articles were not before him.

19. P.W.-1, Veerpal, in his cross examination which was on 09.11.2017 has deposed that house of the accused is opposite to his house and they enjoy good relation with them; they also exchange visits to their houses; he has not

seen her daughter to have gone to house of Nanhe Lal to watch Television. On his dictation one Raj Kumar had written his First Information Report and Partibandi prior to the alleged incident was existing between Nanhe Lal and Rajkumar.

20. P.W.-1 Veerpal, next states that scribe Rajkumar is a home guard, and was posted in Police Station-Bhamora; Rajkumar, had said to him that he will write his First Information Report; he, does not know as to what is written in the First Information Report; in the First Information Report he did not read that the murder of his daughter had taken place in his presence; he had not told Rajkumar to nominate accused Nanhe Lal and Smt. Nisha Devi; accused cannot murder his daughter; his previous statement in the Court was given due to fear of police and the statement he is giving today is true because it is not the result of any fear.

21. P.W.-1-Veerpal, who has got the First Information Report written by Rajkumar has not mentioned in the First Information Report that his daughter, in his presence on 15.03.2017 at around 1 p.m., had gone from his house, to watch television, to the house of accused Nanhe Lal; he has also not stated in his examination in chief that his daughter had gone to the house of the accused in his presence and in this connection he has specifically deposed that he merely on the basis of suspicion had named both the accused in the First Information Report; he in his cross

examination has categorically denied the involvement/ complicity of both the accused in the murder of his daughter and he has deposed that accused are friendly to him and enjoys good relations with them. He has said that he can not even imagine that accused can kill his daughter. P.W.-1 Veerpal has also admitted that out of enmity existing between Raj Kumar and accused Nanhe Lal, prior to alleged incident, Rajkumar at his own has noted the name of both accused. P.W.-1 Veerpal has not cast doubt upon accused about their complicity in the alleged incident.

22. P.W.-1 Veerpal, in his entire testimony has not deposed to have seen the commission of the incident.

23. P.W.-2, Rajdulari, who is wife of P.W.-1, Veerpal and mother of the deceased states in her examination in chief that she has not seen her daughter going to the house of accused to watch Television; they had tried to search and trace out their daughter as she had not returned to their house till evening; on the following day her dead body was found in the wheat field. She also has candidly denied in her deposition that accused had killed her daughter by strangulation.

24. P.W.-2 Rajdulari, on being declared hostile was on the request of the prosecution put to cross examination, wherein, she has specifically denied that her daughter had gone to the house of accused to watch Television; however, she admits that she had not seen her daughter while she

had gone out of their house; she also expresses her ignorance as to who had called her daughter but she unequivocally deposes that accused had not called her daughter.

25. P.W.-5 Rajendra, also feigns ignorance in his statement by saying daughter of his brother Veerpal had gone to the house of the accused to watch Television because on that date, he was out of the village and when he had returned on the next day he had come to know about the dead body of victim was lying in the wheat field. He also deposes that it is true that his brother on the basis of suspicion has registered the case against both accused.

26. P.W.-4 Rajkumar in his examination in chief has also stated that his house is situated at a distance from the house of Veerpal; On 16.08.2017 dead body of the deceased was found in the wheat field.

27. Like P.W.-3 Rajendra, P.W.-4-Rajkumar, as well has turned hostile and they were also cross examined on behalf of the prosecution but in their cross examination too, they have not supported the prosecution story against the accused.

28. P.W.-1-Veerpal, in his examination in chief, has deposed that on the pointing out of the Nanhe Lal and Smt. Nisha Devi, earrings (Kundal), which the deceased had wore on the date of occurrence and one locket was also recovered from the Almirah in the room of their house in the presence of Rajendra and his wife Rajdulari and in this

respect both accused had confessed to have called his daughter and they had also confessed that they had got recovered the articles they had snatched from the deceased Daroga Ji had prepared a memo of recovery, which was not only witnessed by him but other police personnel accompanied Daroga Ji were also present.

29. P.W.-1 Veerpal, had also stated that the memo of recovery, paper No. 6Ka/A was prepared in his presence and after being readover he had signed the said paper. He also next states that the recovered jewellery was also taken by Daroga Ji, in his possession and the same was sealed at the place of recovery.

30. Due to paucity of time complete statement of P.W.-1 Veerpal could have not been recorded on 09.11.2017, therefore, for remaining statement he was again examined on 17.04.2019 and in his cross examination he contradicted his aforementioned statement given in his examination in chief by saying that on the pointing out of accused Nanhe Lal and Smt. Nisha Devi no recovery of jewellery, belongings of his daughter, was made in his presence; nor Daroga Ji had prepared recovery memo in his, or his wife, or in presence of his brother; Daroga Ji had taken their signatures and thumb impression on a plain paper.

31. He also denies that the recovered articles were sealed in his presence. He also expresses his ignorance as to how the memo of recovery came to be written, as such, P.W.-1, Veerpal, with regard to alleged recovery of jewellery and,

belongings of the deceased, has given contradictory and inconsistent statement.

32. P.W.-2 Rajdulari, P.W.-3 Rajendra and P.W.-4 Rajkumar, have also made somersault over their statements stated to have been recorded by the Investigating Officer, during investigation and have stated that Daroga Ji, during investigation, did not record their statements and no recovery of jewellery etc. was made in their presence by Daroga ji, on the pointing out of the accused. These witnesses have also claimed in their ocular evidence that their signatures/ thumb impression were having been taken by Daroga Ji on a plain paper and they also deny the memo of recovery to have been written in their presence by Daroga Ji.

33. It transpires from the analysis and scrutiny of the ocular evidence of P.W.-1 to P.W.-5 that none of them have admitted to have seen the deceased, to have gone in their presence, to the house of accused to watch T.V. and have also denied that the deceased was strangulated or killed by the accused. All witnesses of facts have also categorically denied the complicity of the accused in alleged incident.

34. All the witnesses have also admitted in their ocular evidence that they are on good terms with accused.

35. Hon'ble Apex Court has observed consistently that in a criminal case based on the strength of circumstantial evidence, chain of circumstances must be complete and on

completion of such chain only one conclusion can be drawn that it is only the accused who had committed the crime.

36. In *Suraj Singh vs. State of U.P., reported in 2008 (11) SCR 286* the Hon'ble Apex Court has held as follows:

“The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the "credit" of the witnesses; their performance in the witness box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.”

37. In *C. Magesh & Ors.v/s State of Karnataka*, Criminal Appeal Nos. 1028-1029 OF 2008, decided On 30 April 2010, the Apex Court has held as under:

“In a criminal trial, evidence of the eye witness requires a careful assessment and must be evaluated for its creditability. Since the fundamental aspect of criminal jurisprudence rests upon the stated principle that "no man is guilty until proven so", hence utmost caution is required to be exercised in dealing with situations where there are multiple testimonies and equally large number of witnesses testifying before the court. There must be a string that should join the evidence of all the witnesses and thereby satisfying the test of consistency in evidence amongst all the witnesses.”

38. Section 27 of the Evidence Act laws down as follows:

“When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of 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.”

39. Hon'ble Apex Court in *Silash Singh Kurid vs. The State*, reported in *2018 Cr.L.J. 3944* had held that;

“ Where no eye witness is available in a murder case and the case is only based on circumstantial evidence, recovery of weapon and evidence on the basis of disclosure of the accused alone would not automatically lead the conclusion that offence was also committed by the accused. Ho'ble Supreme Court further held that in fact burden lies on the prosecution to establish close link between the discovery of

the material objects and its use in the commission of offence and what is admissible under Section 27 of the Evidence Act is the information leading to discovery and not any opinion formed on it by the prosecution.”

40. Present case rests upon the circumstantial evidence. In the case of *Sharad Birdhi Chand Sarda vs. State of Maharashtra (1984) 4 SCC 116*, in paragraph 153, Hon’ble Apex Court has laid down five golden principles (Panchsheel). Para 153 is reproduced as follows:

“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 & Anr. v. State of Maharashtra* where the following observations were made:

"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.”

41. C.W.-1, Ajab Singh, Investigating Officer, deposed in support of the memo of recovery but that does not find

corroboration from any witness of fact, on the contrary P.W.-1 to P.W.-4 have categorically denied the alleged recovery of belonging of the deceased from the Alimarh in the room of the house of the accused. They have also deposed that their signatures, thumb impression were taken by Daroga Ji on plain paper, therefore, it is not safe and expedient in the interest of justice to place reliance upon the testimony of C.W.-1 to the extent that conviction of the accused for offences under afore stated sections could be held.

42. P.W.-1 to P.W.-4, in their cross examinations have said that it would be wrong to suggest that they are not supporting the prosecution case on account of any compromise having been arrived at between them and accused.

43. P.W.-6, H.M. 474 Yaduvir Singh, has proved First Information Report Chik and copy of GD as Exhibit Ka-4 and Ka-5 thus only the First Information Report Chik and G.D. stand proved, however, the deposition of this witness does not help to prove charges against the accused.

44. This case rests on circumstantial evidence; no witness has come forward to depose that she or he had seen the deceased going to the house of the accused-respondent to watch Television. Even P.W.-1, Veerpal, on whose instance First Information Report came to be lodged and crime was investigated has turned hostile and he has not supported the allegations in this respect contained in his written First

Information Report. P.W.-2 Rajdulari w/o P.W.-1 has also turned hostile. It has also emerged from the above discussion that independent witnesses have also turned hostile and these witnesses in their cross examination have not stated any thing which may support the prosecution story. Even the witnesses, stated to have seen the alleged recovery of jewellery, said to have been worn by the deceased have not supported the prosecution story. However, the recovery memo, prepared by the Investigating Officer who stated that the alleged recovery was made, at the instance of the accused, from the Almirah in a room owned by accused. P.W.-1 is an interested witness of fact, has not supported his evidence, declared hostile, therefore, alleged recovery of articles from the Almirah of the accused is also not proved.

45. In the light of foregoing discussion, we are of the opinion that learned trial Court has held and recorded the findings on considering each and every aspect of the case, both factual, as well as, legal. In this case, there is no worthy evidence which may connect the accused with the commission of crime except the testimony of CW-1 Ajab Sigh, I.O., thus, we find that the impugned judgment and order dated 11.11.2020, passed by the learned Additional Sessions Judge, Fast Track Court, Bareilly, in connection with Session trial No. 275 of 2017, is not erroneous or perverse and we also find that the same is sustainable in the eyes of law.

46. Accordingly, the judgment and order dated 11.11.2020, passed by the learned Additional Sessions Judge, Fast Track Court, Bareilly, in Session trial No. 275 of 2017, State vs. Nanhe Lal and another, arising out of Case Crime No. 89 of 2017, under Sections-302, 376, 394 and 411 I.P.C., Police Station-Bhamora, District-Bareilly is affirmed and upheld.

47. In the result the instant appeal is dismissed.

48. Registry to return the record to the Court below along with this order.

Order Date : 21.10.2022

Deepak/

(Suneet Kumar, J.)

(Syed Waiz Mian, J.)