

SARDAR HUSSAIN & ANR.
v.
STATE OF UTTAR PRADESH

AUGUST 5, 1988

[G.L. OZA AND K. JAGANNATHA SHETTY, JJ.]

Indian Penal Code, 1860: Sections 210, 302 and 364—Appellants convicted by Trial Court—High Court confirming conviction—On appeal Supreme Court acquitting accused holding that circumstantial evidence falls short of required standard on all material particulars.

The prosecution case was: the appellants, who were of bad character, had an evil eye on the lands belonging to the younger brother of PW 1, in furtherance of which they got a fraudulent sale deed executed and murdered him in order to eliminate the possibility of the fraud being detected. Suspecting foul play of the appellants, PW 1 lodged an FIR. At the instance of appellant No. 2, who was first arrested, a dead body was recovered from a water logged pond and was identified to be that of PW 1's younger brother, on the basis of a shirt and a tahmad. The doctor, who conducted the post mortem, could not give the cause of death or its duration.

The appellants were convicted and sentenced under ss. 302, 364 and 210 IPC by the trial Judge. On appeal, the High Court maintained the conviction and sentence of appellant No. 1 but reduced the same of appellant No. 2 to one under s. 201.

Allowing the appeals,

HELD: The evidence against the appellants is purely circumstantial. But the circumstantial evidence falls short of the required standard on all material particulars. The conviction of the appellants cannot, therefore, be sustained. [247H, 249A]

There is no satisfactory evidence that the sale deed in question was executed by somebody impersonating the deceased. Though PW 12, who was identified by PW 11, scribe of the sale deed, as the person who impersonated the deceased, deposed that he had put his thumb impression on the sale deed, the thumb impression of the executant and the admitted thumb impression of PW 12 were not sent for expert opinion. Nothing could be elicited from, nor any question was put to PW 20 to

- A corroborate the version of PW 11, as to the contents of the sale deed or the identity of the persons who accompanied him to PW 11 or those who put the thumb impression on the sale deed. [248B-D]

- B The evidence on record is equally unsatisfactory as to identification of the dead body. Post-mortem was done more than three months from the date of alleged disappearance of the deceased. The doctor who conducted the post-mortem stated that it was skeleton of a young adult male and was unable to give the cause of death or when the death took place owing to the condition of the body. The two panch witnesses for the recovery of the dead body could not identify the clothes recovered from the dead body as belonging to the deceased. Though clothes were said to have been identified by PW 1 and his wife, a perusal of PW 1's evidence would indicate that the identification was nothing but farce. The body was not recovered at his instance. He could not have seen the dead body with the clothes, as these were removed, washed, dried and packed separately with the seal of the panchas. He was called to the Court only for the identification of the clothes and body. He stated that the dead body by appearance looked like that of his brother. He could identify the clothes by a chit and a knot on them. The witnesses, who were stated to have seen the deceased going with the appellant No. 1 and his father-in-law did not speak anything about the dress which the deceased was wearing at that time. PW 1's evidence could not be believed since he and the deceased were living separately, and he could not have seen all that he had stated in evidence. [248E, G-H, 249A-B, D-H]

Conviction and sentence of appellants set aside. They are acquitted of all charges. [250A]

- F CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 289 of 1978 were Cri. Appeal No. 403 of 1978.

From the Judgment and Order dated 10.5.1978 of the Allahabad High Court in Criminal Appeal No. 213 of 1973.

- G S.K. Dhingra and K.B. Rohtagi for the Appellant in Crl. A. No. 289 of 1978.

R.K. Jain, Rakesh Khanna and R.P. Singh for the Appellant in Crl. A. No. 403 of 1978.

- H Prithvi Raj Singh and Dalveer Bhandari for the Respondent.

The Judgment of the Court was delivered by

A

JAGANNATHA SHETTY, J. This appeal by Special leave is from a Judgment of the Allahabad High Court dated 10 May 1978 dismissing Criminal Appeal No. 213 of 1973.

The appellants were convicted and sentenced under Section 302, 364 and 210 IPC by the trial Judge. On appeal, the High Court maintained the said conviction and sentence of appellant No. (1), but reduced the same of appellant No. (2) to one under Section 201.

B

The prosecution case in brief is as follows:

C

Islam, the deceased, is the younger brother of Shabbir (PW 1). They were not living together. The former used to live with his mother. Islam had his own share of lands measuring 16 Bighas. He was separately cultivating the same. The appellants were once his close associates. They were of bad character. So mother and brother advised Islam to part company with them. So Islam did and went on minding his own work. He was unmarried. The appellants had an evil eye on the property of Islam. They got executed a fraudulent sale deed (Ex. Ka. 12). The deed was dated 15 February, 1971. One Ahsan who has been examined as PW 12 has impersonated Islam before the Sub-Registrar. The deed purports to transfer the agricultural land of Islam in favour of the wife of appellant No. (1). It is said that the appellants in order to eliminate the possibility of this fraud being detected, murdered Islam.

D

E

Shabbir suspecting foul play of the appellants lodged a report on 21 April, 1971. Zakir Ali appellant No. (2) was first arrested. He pointed out a dead body on 18 July, 1971. It was recovered from a place deeply buried in a water logged pond. However, it was said to be identified as that of Islam. The identification was based on a shirt (Ex. 1) and a tahmad (Ex. 2.).

F

Upon the post-mortem, the Doctor was unable to give his opinion regarding the cause of death or its duration.

G

The evidence against appellants is purely circumstantial: (i) motive for the crime (ii) the evidence as to last seen (iii) recovery of the body at the instance of Appellant No. (2), and (iv) identification of the clothes with which the dead body was found.

H

- A We will first examine whether the motive which is of course relevant in this case has been satisfactorily established. Ex. Ka. 12 is the sale deed by which the properties belonging to Islam were said to have been sold to the wife of Sardar Hussain, appellant No. (1). Usman Ali (PW 11), who is the scribe of the sale deed, has deposed to its contents. He has stated that one Sarfaraz (PW 20) along with the
- B accused came to him with a request to draft the sale deed. They gave the particulars. He has written the sale deed of which the executant was Islam. In the Court, he has identified Ahsan (PW 12) as the person who impersonated Islam and put his thumb impression. He has also identified Zakir Ali-appellant No. (2) who affixed his thumb impression to the sale deed as a witness. But when Sarfaraz Hussain was examined
- C as PW 20 in the Court, nothing was elicited about the sale deed or the persons who accompanied him to PW 11. No question was put to him as to the contents of sale deed Ex. Ka. 12 or to the identification of persons who affixed the thumb impressions thereon. PW 12 has, no doubt deposed that he had put his thumb impression on Ex. Ka. 12. But the prosecution has not sent the thumb impression of the execu-
- D tant of Ex. Ka. 12 with the admitted thumb impression of PW 12 for expert opinion. There is, therefore, no satisfactory evidence that the sale deed Ex. Ka. 12 was executed by somebody impersonating Islam.

- As to identification of the dead body, the evidence on record is equally unsatisfactory. Shabbir (PW 1) has deposed that about 14
- E months before, Islam was taken by Sardar Hussain and Yasin. Yasin is the father-in-law of Sardar Hussain. He has also stated when Islam went with them, he was wearing a shirt of green check and a black striped tahmad. Islam was taken on the pretext that they would get him married. He has further stated that Mian Jan (PW 2) and Sadiq (PW 3) and one other person called Majid had seen Islam going with
- F the Sardar Hussain and Yasin. But Main Jan (PW 2) and Sadiq (PW 3) did not speak anything about the dress which Islam was wearing when he was taken by Sardar Hussain and Yasin. Secondly, how could Shabbir see all that he had stated. Islam and Shabbir were living separately. Islam was not taken after a meeting with Shabbir. It is not the case of Shabbir that Islam came to him and told him about the purpose
- G of his going with the accused. If the purpose was to get Islam married, why did he allow Islam to go with the accused. Islam had by then parted company with them at the instance of Shabbir and mother, because they were of bad character. Is it understandable that such bad characters should arrange the marriage without the assistance or approval of Shabbir and mother? It is difficult to believe Shabbir in the
- H circumstances.

Islam was said to have disappeared on 12 April, 1971. PW 1 lodged the report on 21 April, 1971. The dead body was recovered on 18 July, 1971. The post-mortem was done on 20 July, 1971. It was more than three months from the date of alleged disappearance of Islam. Dr. D.P. Manchanda (CW 1) who conducted the post-mortem was not able to give the cause of death. He has stated that it was a skeleton of a young adult male. According to him, it would be difficult to tell correctly as to when the death of the deceased had taken place. There was no flesh left in the body. The eye-balls were missing. The Vertabrae was not found attached to the skull. With this condition of the skeleton the Doctor could not have given any better opinion.

Gulab Singh (PW 7) is a Panch witness for the recovery of the dead body. He has deposed that when the body was removed, the tahmad and shirt were intact and they were taken out by Sub-Inspector. Man Singh (PW 8) is another Panch witness. He has also stated that the shirt and tahmad were removed by the Sub-Inspector, washed, packed and sealed. The Panch witnesses could not identify the shirt and tahmad as belonging to the deceased.

That clothes are said to have been identified by Shabbir and his wife Smt. Bhoori (PW 13). The identification was conducted by Ramakant Dubé (PW 9). He had mixed up the said clothes with five like clothes resembling with each other. He has stated that Shabbir and Smt. Bhoori correctly identified them and did not commit any mistake. But if one carefully peruses his evidence, the identification was nothing but farce. The dead body was not recovered in the presence of Shabbir. He was called to the Court of the Magistrate only for the identification of the clothes and the body. He has stated that the dead body by appearance looked like that of his brother. We have earlier seen that the Sub-Inspector had removed the clothes, washed dried and packed them separately with the seal of the panchas. Shabbir could not have seen the dead body with the clothes. The shirt (Ex. 1) and tahmad (Ex. 2) were no doubt mixed up with other similar clothes for the purpose of identification as deposed by PW 9. But the witness identified Ex. 1 because there was paper chit pasted on it. He identified Ex. 2 because it had a knot. That is why we said earlier that the identification was a farce. We are surprised that the Courts below should rely upon this kind of evidence. The circumstantial evidence in the case thus falls short of the required standard on all material particulars. We are, therefore, unable to sustain the conviction of the appellants.

A In the result, these appeals are allowed. The conviction and sentence passed against the appellants are set aside. They are acquitted of all the charges. They be set at liberty if they are in custody, and if they are not required in any other case.

B N.P.V.

Appeals allowed.