PARAM HANS YADAV & SADANAND TRIPATHI
v.
STATE OF BIHAR & ORS.

FEBRUARY 25, 1987

[RANGANATH MISRA AND M.M. DUTT, JJ.]

Indian Evidence Act, 1872: ss.24 & 30—Confession of a co-accused—Not Substantive evidence against other co-accused in the trial—Can be used only for lending assurance to other substantive evidence—Extra-judicial confession made following assault—Neither voluntary nor natural.

Indian Penal Code, 1860: s.302 read with s. 120-B—Death sentence—Direct evidence—Accused caught red-handed—Confessed to his crime—Conviction and sentence upheld—Crime whether committed at the behest of co-accused—Where prosecution relies upon circumstantial evidence a clear link to be established and the chain completed to prove conspiracy.

The appellants were alleged to have conspired to kill the Collector-cum-District Magistrate. The latter died in a bomb attack by the first accused appellant. He was caught red-handed and when given a beating by eye-witnesses he readily confessed to his guilt, but gave out that he had committed the ghastly murder at the behest of the second appellant, who was at that material time detained in jail. He made a similar confession before the Magistrate. They were both convicted under s.302 read with s.120B of the Indian Penal Code and sentenced to death. Their sentence was confirmed by the High Court.

Disposing of the appeals, this Court,

HELD:1. There was direct evidence of first appellant's involvement in the crime and he had also confessed to his guilt. There was, therefore, no justification to take a view different from what has been said about him by the High Court. His conviction as also sentence shall stand. [408F-G]

2.1 The prosecution has failed to establish by circumstantial evidence the complicity of the second appellant in the conspiracy to kill the Collector through the first accused. He was, therefore, entitled to the benefit of doubt and his conviction was not sustainable. [413D]

A **2.2 Where the prosecution relies upon circumstantial evidence to support the charge of conspiracy, a clear link has to be established and the chain has to be complete, otherwise it would indeed be hazardous to accept a part of the link as the complete one. On the basis of such incomplete circumstantial evidence, the allegation of conspiracy cannot be accepted. [413C]**

B

3.1 The confession of a co-accused is not substantive evidence against other co-accused persons in the same trial but could only be used for lending reassurance if there be any other substantive evidence to be utilised or acted upon. [411C]

C *Kashmira Singh* **v.** *State of Madhya Pradesh,* **[1952] SCR 526 and** *Hari Chand Kurmi & Anr.* **v.** *State of Bihar,* **[1964] 6 SCR 623, referred to.**

3.2 The judicial confession of the main accused in the instant case was exculpatory in nature and, therefore, would not be admissible D **against the co-accused. It has, to be kept out of consideration. [410A-B]**

3.3 The extra-judicial confession of the main accused relates to the point of time contemporaneous to the incident. There was evidence that he was beaten up badly after being apprehended by the mob soon after the bomb burst. Several prosecution witnesses have spoken about E **his confession before them. There was clear material that he was manhandled. [410B-C]**

3.4 In his statement recorded under s.164 of the Code on 13.4.1983, the main accused denied to have made any statement following his apprehension. Even accepting the prosecution story that he F **made this statement, he appears to have made the statement following assault on him. Even if it is accepted that he has made the statements as alleged, the same cannot be utilised against the co-accused. Obviously when the accused was beaten up, he must have been anxious to ensure that the assault stopped. His plea in such a situation would neither be voluntary nor natural. It would not be proper to rely upon the same for** G **any purpose. [410H; 411A-B]**

4. The 2nd appellant might have had grudge against the Collector for his detention as also for the demolition of his Ashram. That must have been the common reaction of all the ashramites, including the co-accused. This could not, therefore, be a feature to supply motive for H **establishing conspiracy. [412C-D]**

5.1 Several witnesses were examined to show that the main accused was very close to the co-accused. But the source of their knowledge appeared to be statement of the main accused and independently they had no personal knowledge of the fact. [412B-C]

5.2 P.W.4, who testified that during his interview with his wife in the same jail, he had overheard the alleged conversation between the accused and the 2nd appellant, was himself a convict in three cases of murder. His wife, who was a material witness has not been examined in the case. Adverse inference, has to be drawn against the prosecution for not doing so. [413A-B]

5.3 This type of evidence, even if accepted, does not establish conspiracy because the accused being a follower of the 2nd appellant, a religious preacher, he was likely in the usual course to meet the latter and the fact that they were meeting at regular intervals by itself would not establish conspiracy. [412F]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 423-425 of 1986.

From the Judgment and Order dated 4.4.1986 of the Patna High Court in Death Reference No. 3 of 1984 and in Crl. Appeal No. 676, 647 and 627 of 1984.

R.L. Kohli and S.P. Singh for the Appellants.

Jaya Narayan and D. Goburdhan for the Respondents.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. These appeals by special leave are directed against a common judgment of the Patna High Court rendered in Death Reference 3 of 1984 and Criminal Appeal No. 627, 647 and 676 of 1984. Each of the appellants in the two appeals has been sentenced to death under section 302 read with section 120-B of the Indian Panal Code.

Appellant Yadav has independently been convicted under section 302 of the Code and has been sentenced to death. He has also been convicted under section 3 of the Explosive Substance Act and has been sentenced to ten years' rigorous imprisonment. Two other accused persons who had been put on trial along with the appellants were

A acquitted by the trial court and their acquittal has become final.

Mahesh Narain Prasad Sharma, the victim, was a Member of the Indian Administrative Service and was posted as Collector and District Magistrate of Gopalganj District in the State of Bihar on the 11th of April, 1983 Mahesh Narain went to his court to work in the morning B and after he finished his work, both he and his brother, P.W.62, who was waiting in the chamber of the victim started going down from the first floor of the Collectorate to reach the portico where the Collector's car was parked. Mahesh Prasad was followed by his Orderly-Peon, P.W.19, and his brother one after the other. When the deceased came on the landing, Yadav who was following them suddenly took out a C bomb from the bag which he held and threw it at the Collector. The bomb exploded with a loud noise and as a result of the burst Mahesh Prasad fell rolling on the ground and part of his body was blown off. Yadav jumped off from the stairs through the side railing but was chased by P.W.62 and others and was apprehended near a fruit stall. He readily confessed to his guilt but gave out that he had committed D the ghastly murder at the behest of appellant Tripathi. According to Yadav, Tripathi had prevailed upon him to kill the Collector by way of retaliation for demolishing the Ashram after getting Tripathi detained in jail. Yadav further maintained that Sadiq, one of the accused persons, had supplied the bomb to him. P.W.14, the Inspector of Police, who was attracted to the scene by the sound of the bomb burst E recorded the first information given by P.W.62, arrested Yadav and sent him to Gopalganj Police Station.

At the trial, 75 witnesses were examined for the prosecution. Out of them, the evidence of 14 had been tendered. So far as Yadav is concerned, there was direct evidence of his involvement and he had F also confessed to his guilt. Special leave, so far as he is concerned, is limited to the question of sentence. We have, therefore, heard learned counsel for Yadav on the question of sentence and see no justification to take a view different from what has been said about him by the High Court. His appeal, therefore, is dismissed and his conviction as also sentence as awarded by the trial court and confirmed by the High G Court shall stand.

We shall now deal with the appeal filed by Sadanand Tripathi. Sadanand came from a poor family and started his career as a Bus Conductor. While in employment, he obtained the Degree in Law and started practice as a lawyer in Uttar Pradesh for some time. There- H after, he started giving religious discourses and styled himself as Sant

Gyaneshwar Maharaj. He tried to make his followers believe that he had seen God and if they followed him and his preachings, they too could see God. Soon he picked up considerable following. He used to tell his followers that they should surrender their body, wealth and mind so that the prospect of seeing God would be bright. He encroached upon a plot of Government land and built his Ashram thereon. As he had easy access to resources, the Ashram got fitted with all modern amenities. Soon his followers, however, started realizing that they had been duped and tricked and began to withdraw from him. Sadanand had employed a band of muscle men to carry out his nefarious designs. His followers often became apprehensive of their own security and approached the local authorities for protection. The Ashram, as the prosecution has tried to show, turned into a den of criminals. Ultimately the authorities raided the Ashram, recovered bombs and several other objectionable articles therefrom. Sadanand and many others were taken into custody on 10.7.1982. The deceased, Mahesh Prasad, who was Collector of Gopalganj made an order under the Crime Control Act detaining Sadanand in jail. Eviction proceedings from the encroached land had already been undertaken. On 14.7.1982 the Commissioner dismissed the appeal filed on behalf of the Ashram and on 15th July, 1982, the entire structure of the Ashram was demolished under the direct supervision of the Collector.

It is not disputed that from 10th July, 1982 Sadanand had continuously been detained in jail till the Collector's murder on 11.4.1983. In view of this fact, the prosecution has relied upon the allegation of conspiracy, confession and other features to establish the complicity of Sadanand in the murder of the Collector.

There are two confessions—a judicial confession before a Magistrate, being Exhibit 44 and the other is extra judicial confession. Dealing with Exhibit 44, the High Court has observed:-

> "So far as the confession before the Magistrate, Exhibit 44, is concerned, the trial court has itself, hesitatingly, accepted the same. From the confession I find that it was in the nature of the cross-examination which is not permissible under the law and has been depricated by the Supreme Court and different courts of the country. Mr. Pandey, learned counsel appearing on behalf of the State, has fairly submitted that Exhibit 44 cannot be used in this case. Therefore, it has to be excluded from consideration."

A Before us Mr. Jai Narain for the State initially placed reliance on the confession but later conceded that apart from what the High Court has observed with regard to the confession, it appeared to be exculpatory in nature and, therefore, would not be admissible against the co-accused. In these circumstances, the judicial confession has to be kept out of considerations.

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Coming to the extra judicial confession it has to be remembered that the same related to the point of time contemporaneous to the incident. There is evidence that Yadav was beaten up badly after being apprehended by the mob soon after the bomb burst. Several prosecution witnesses have spoken about Yadav confession before them. There is clear material that Yadav was man-handled. P.W.3 has stated:-

C

> "He was held by me and other persons chasing him. We began to assault him and make enquiries from him. Then the said person himself said, 'why you people are assaulting me. I have killed the Collector by bomb at the orders of Guru Sant Gyaneshwar and one bomb has been left in the Jhola".

D

P.W.10 stated:

> E "The people who caught of him began to assault him and began to ask him why has he killed the Collector. On being asked, he replied that he had killed the Collector under the orders of Baba ....."

P.W.11 stated:-

F

> "On being caught hold of, he was assaulted with slaps, fists and asked as to why he did so. On being asked, the said person replied that he had hit the Collector by bomb at the orders of Guru."

G Several other witnesses have also spoken in the same trend about Yadav being assaulted by the angry mob soon after his apprehension. It is a fact that a set of witnesses who, according to the prosecution, were present when Yadav was taken into custody following the incident, have not spoken about any confession. They are P.Ws. 5, 12, 15, 40 and 57. In his own statement recorded under section 164 of the

H Code on 13.4.1983, Yadav denied to have made any statement follow-

ing his apprehension. Even accepting the prosecution story that Yadav made this statement, he appears to have made the statement following assault on him. Even if it is accepted that Yadav has made the statements as alleged, can the same be utilised against Sadanand is the next aspect for consideration. Obviously, when Yadav was beaten up, he must have been anxious to ensure that the assault stopped. His plea in such a situation would neither be voluntary nor natural. It would not be proper to rely upon the same for any purpose.

It is well-settled that the confession of a co-accused is not substantive evidence against other co-accused persons in the same trial. As this Court pointed out in *Kashmira Singh* v. *State of Madhya Pradesh,* [1952] SCR 526 the confession of a co-accused is not substantive evidence against the other accused persons at the trial but could only be used for lending reassurance if there by any other substantive evidence to be utilised or acted upon.

In *Hari Charan Kurmi & Anr.* v. *State of Bihar,* [1964] 6 SCR 623 this Court observed:-

> "Thus, the confession may be regarded as evidence in that generic sense because of the provisions of section 30, the fact remains that it is not evidence as defined by section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the Court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence."
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> ".....that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence."

It is now to be found out if apart from the confession there is any substantive evidence from which the prosecution can have support for its case. According to the prosecution, Yadav was staying with

A Sadanand in the Ashram. Learned counsel for Sadanand has argued that the prosecution evidence on this score should be rejected as when on 10th July, 1982 Sadanand was taken into custody following the raid on the Ashram, Yadav was not found there. Again on the 15th when the Ashram was demolished and most of the inmates were taken into custody, Yadav was not arrested.

B

Several other witnesses were examined to show that Yadav was very close to Sadanand. But as has been rightly pointed out the source of their knowledge appeared to be statement of Yadav and independently they had no personal knowledge of the fact.

C Prosecution sought to place reliance upon motive. Undoubtedly, Sadanand must have had grudge against the Collector for his detention as also for the demolition of the Ashram. As a matter of fact, that must have been the common reaction of all the ashramites including Yadav and Sadiq. Thus, this could not be a feature to supply the link for establishing conspiracy.

D

Prosecution also relied upon a feature, which if accepted, could provide some link between the two for the commission of the offence. According to the prosecution, Yadav was regularly visiting Sadanand at the jail. The jail records do not support such visits. According to the prosecution case, Yadav was bribing the jail officials for meeting E Sadanand. The prosecution has further led evidence to show that after the arrival of Sadanand at the jail, enforcement of rules became slack and there was a regular flow of food from outside. Jail officials were also entertained by Sadanand. This type of evidence, even if accepted, does not establish conspiracy because Yadav, being a follower, was likely in the usual course to meet Sadanand and the fact that they were F meeting at regular intervals by itself would not establish conspiracy. Prosecution relied on an event of 11th April, 1983 by examining P.W.4. This witness who was a convict staying in the same jail stated that his wife had an interview with him in the jail by paying bribe of Rs.2 or Rs.3 on 11.4.1983. While he was talking to his wife, he saw accused Yadav talking to Sadanand. He over-heard Yadav telling G Tripathi that his work would be done within an hour or so. Sadanand appeared to be happy on being told so. P.W.4 has admitted that he has been convicted in three cases of murder and several dacoities. It appears that by then he had some pending cases against him where final reports were later given by the police. His wife who was a material witness has not been examined in the case.

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Obviously, as the jail records did not show that P.W.4 had an interview with his wife that day, the story of bribing the jail officials has been introduced. We are prepared to accept the criticism of counsel for the appellant that if the wife had been called she would not have supported the version that she met her husband P.W.4 on that day. Adverse inference for not examining the wife has to be drawn against the prosecution. This would thus be the net position.

It is true as argued by Mr. Jai Narain for the State that it is difficult to support the charge of conspiracy with direct evidence in every case but if the prosecution relies upon circumstantial evidence, a clear link has to be established and the chain has to be completed, otherwise it would indeed be hazardous to accept a part of the link as a complete one and on the basis of such incomplete evidence, the allegation of conspiracy cannot be accepted. Keeping the nature of the offence in view and the conclusions drawn by the High Court, we have not been able to agree with the High Court that the prosecution has established by circumstantial evidence the complicity of Sadanand in the conspiracy to kill the Collector through Yadav. In these circumstances, Sadanand has become entitled to the benefit of our doubts and his conviction is not sustainable. His appeal has to be allowed. He is acquitted and is directed to be set at liberty forthwith.

Before we part with the case, we must point out that in a case involving the killing of the District Magistrate in his office, better investigation was expected and the State should have taken great care to ensure that every loophole in the investigation was plugged at the right time in accordance with law. It is unfortunate that lapses have occurred.

P.S.S. Appeals disposed of.