

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1216 OF 2011

NAZEER @ NAZEER MOHAMMEDAppellant(s)

VERSUS

STATE REP BY INSPECTOR OF POLICERespondent(s)

JUDGMENT

DINESH MAHESHWARI, J.

1. By way of this appeal, the accused-appellant has questioned the judgment and order dated 09.11.2009 as passed by the High Court of Judicature at Madras in Criminal Appeal No. 93 of 2009, whereby the High Court, while dismissing the appeal, affirmed the judgment and order dated 20.01.2009, as passed by the Additional Sessions Judge, Puducherry at Karaikal in S.C. No. 56 of 2007, convicting the accused-appellant of the offences under Sections 302 and 201 Indian Penal Code, 1860 ('IPC') and awarding varying punishments, including that of life imprisonment for the offence under Section 302 IPC.

2. The appellant has been held guilty of the offences aforesaid after the Trial Court and the High Court have concurrently found proved the entire chain of circumstances

connecting the appellant with the killing of the victim Ravi, who was a driver on the car belonging to PW-1 Kumar @ Marumaiyan. Though, there had not been any eye-witness to the incident but, the Courts have found that the evidence led by the prosecution clearly established the connectivity of the appellant with the deceased with regular communications at the material point of time between them; and they having been seen together in the car in question. The Courts have further found that later on, a dead body found on the road-side was ultimately identified to be of the deceased Ravi by his brother PW-10 Meganathan with reference to the photographs; and the evidence established the dealings of the appellant with the car and its stepney after demise of the victim car driver Ravi. One of the strong circumstances relied upon by the prosecution has also been of the recovery of driving licence of the appellant with the dead body of the victim.

3. We have heard Mr. Atul Y. Chitale, learned senior counsel, ably assisted by Ms. Tanvi Kakar and Mr. A. Radhakrishnan for the appellant and Mr. Aravindh S., learned counsel for the respondent-State at some length.

4. Learned counsel for the appellant has strenuously argued that conviction of the appellant, based on the alleged last seen evidence with reference to the testimony of PW-5 Natarajan and PW-6 Bala @ Balasubramanian; on the alleged recovery of his driving license with the dead body

of an unknown person; and on the alleged identification of the said dead body being that of the victim Ravi by PW-10, carry several shortcomings and lacunae, and do not provide a complete chain of circumstances so as to rule out any other hypothesis.

5. It is also submitted that even the seizure of driving licence of the appellant, as allegedly found near the dead body of the victim is not free from doubt, particularly when the Seizure Mahazar Ex. P-2 does not show any seal of the jurisdictional Court in the State of Karnataka, from where it was allegedly sent to Puducherry. It has also been pointed out that the person who allegedly gave the information about dead body was never examined by the prosecution.

6. Learned counsel for the appellant has also drawn our attention to a fact occurring in the testimony of PW-7 Kalarani, sister of the deceased, that she had a conversation with the deceased on 05.09.2006. If this fact is taken into account, according to the learned counsel, the unknown dead body recovered on 04.09.2006 could not have been of Ravi, brother of PW-7. It has also been argued that the dead body was allegedly identified by PW-10 only by looking at the photographs and the assertions so made remain suspicious and then, there had not been any corroboration in that regard. It is also submitted that the chain of circumstances, being either incomplete or carrying

such factors which do not provide necessary links, is not decisive in nature and hence, the appellant cannot be held guilty of the offence punishable under Section 302 IPC beyond reasonable doubt. Learned counsel would contend that the accused No. 2 in this case was rightly extended the benefit of doubt and the same benefit ought to have been extended to the appellant.

7. Learned counsel for the respondent has duly supported the judgment and order passed by the High Court and the Trial Court. Apart from other pieces of evidence, the learned counsel has particularly drawn our attention to the testimony of PW-22 G.Vengadachalapathy, S.I. read with the document Ex. P-29 establishing that on 02.09.2006, in the morning and noon hours, precisely the date and time when the deceased had taken the vehicle of PW-1 on the pretext of receiving the guests of PW-2 at Bangalore, the appellant was regularly communicating with the deceased. Learned counsel has further pointed out that even the doubts as suggested with reference to the testimony of PW-7 stand quelled by the other part of her statement where she made it clear that later on, she could realise that the call made on 05.09.2006 from a different mobile number, was not from his brother Ravi (the deceased) but from some stranger.

8. Having heard learned counsel for the parties and having scanned through the record, we are not persuaded to

consider interference in the concurrent findings of fact as recorded by the Trial Court and the High Court in this case.

9. We have taken note of the totality of circumstances of the case and are clearly of the view that even when the prosecution has not examined the person who firstly informed about the location of dead body by way of his information Ex.P-1; and even if the Mahazar Ex. P-2 as such does not show the seal of jurisdictional Court in the State of Karnataka, these factors remain trivial in nature and do not take away the substance of the matter.

10. In an overall appreciation of evidence, it is but clear that the entire chain of circumstances is complete, starting from the deceased Ravi taking the vehicle of PW-1 on the pretext of receiving the guests at Bangalore; the appellant having been in connectivity with deceased Ravi on his mobile at the material time on the material date; the deceased having been found in the company of the appellant in the same car by PW-5 and PW-6; the driving licence of the appellant having been found near the dead body; the said dead body having been identified by PW-10 to be that of Ravi; and the appellant having been found dealing with the car in question and its stepney, as established by the testimony of PW-11 Chandru @ Chandrasekar and PW-16 Prabakar.

11. When all the circumstances and factors are taken together, they lead to the result that the findings of fact as recorded by the Trial Court and the High Court are cogent findings and do not suffer from any such infirmity as to call for interference by this Court in this appeal.

12. In view of the above, this appeal fails and is, therefore, dismissed.

13. All pending applications also stand disposed of.

.....J.
[DINESH MAHESHWARI]

.....J.
[BELA M. TRIVEDI]

NEW DELHI;
SEPTEMBER 29, 2022.