

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 632 OF 2011

VIJAY THAKURAPPELLANT(S)

VERSUS

STATE OF HIMACHAL PRADESHRESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 633 OF 2011

J U D G M E N T

A.K. SIKRI, J.

These two appeals arise out of concurrent order of conviction passed by the courts below convicting these two appellants, viz. Vijay Thakur and Surjeet Khachi, along with third accused, namely, Rajinder Thakur under Section 302 read with Section 34 of the Indian Penal Code, 1860 and sentencing all of them to undergo imprisonment for life and pay a fine of ₹5,000, etc. The appellants are also convicted for the offence under Section 392 read with Section 34 IPC and are given the sentence

of five years and fine of ₹2,000 each with a default clause in case fine is not paid.

2) As correctness of the narration of this prosecution case recorded by the High Court is not in dispute, we may state the prosecution version by borrowing from the said judgment. It is as under:

(a) Deceased Santosh Kumar, son of Bir Chand (PW-1), was employed as a driver by Ganga Ram (PW-2) to drive his Maruti van, which he had purchased only few days prior to the date of occurrence, i.e. August 21, 2004. The van had yet not been registered with the Registration Authority, though application for registration had been moved. On August 21, 2004, all the three appellants were looking for a taxi as they wanted to escort a truck carrying timber. They got lift in a truck at Narkanda for going to Sainj to hire a taxi. The truck by which they went to Sainj was being driven by Rajesh Kumar (PW-30). It was carrying merchandise belonging to PW-30. At Sainj, the appellants hired Maruti van of PW-2 on which the deceased had been engaged as a driver. The van started from Sainj for Narkanda late in the evening. On the way, deceased Dharam Pal, an electrician working at Kingar, was approached by the deceased to accompany him. Dharam Pal too boarded the van. Thereafter,

the deceased, along with his van, went missing. PW-2, who is the owner of the van, started searching for him.

(b) On August 25, 2004, PW-2 met PW-1 at Luhri and asked him if the deceased had visited his house. PW-1 replied him in the negative. PW-1 and PW-2 started searching for the deceased and the van. A report was lodged on August 24, 2004, with the Police Station, Kumarsain by PW-2 about deceased having gone missing along with Maruti van. An entry was made in the *Rojnamcha* and the same is exhibited as Ex. PW-47/A.

(c) On August 26, 2004, one Shano Devi (PW-18) spotted two dead bodies in Thachru Nallah, which falls by the side of the road connecting to Sainj with Narkanda. She informed her co-villagers. Police was informed telephonically. Entry regarding telephonic information was made in the Daily Diary and marked as Exhibit PW-37/A. ASI Sada Nand (PW-49) went to the spot accompanied by PW-1, PW-2 and one Talru Ram (PW-3), who is the father of deceased Dharam Pal. Dead bodies were identified to be those of Santosh Kumar and Dharam Pal. Both of them had been strangulated, one by means of a string of jacket's hood and another by means of a handkerchief. Also, there were injuries on their heads. A danda (Exhibit P-1) was also found lying on the

spot.

(d) PW-1 made a statement under Section 154 of the Code of Criminal Procedure, 1973 (for short. 'Cr.P.C.') to PW-49, which is exhibited as Ex.PW-49/A. It was sent to the Police Station for registration of the case, where FIR (Exhibit PW-48/A) was recorded by ASI Rattan Chand (PW-48). Inquest was conducted by PW-49 and Forms (Exhibits PW-1/A, 1/B and 1/C) were filled in. Dead bodies were sent to Community Health Centre, Kumarsain, where post-mortem examination was conducted by a team of doctors, consisting of Dr. Ramesh Chand Guleria (PW-32), Dr. N.K. Mehta (PW-33) and Dr. Sumeet Attri (PW-43). The doctors found injuries on the heads of both the dead bodies and also that the necks of the deceased had been tightened with a string of jacket's hood and a handkerchief. They gave the opinion that the case of death, in both the cases, was head injuries and asphyxia caused by strangulation. Post-mortem reports are exhibited as Exhibits PW-32/B and PW-32/D.

(e) On August 27, 2004, the Maruti van in question was found abandoned at Saproon on Solan-Subathu road. It was taken into possession by ASI Sukhdarshan Singh (PW-36), In-charge of Police Post Saproon. Later on, the van was handed over to SI

Rupinder Singh (PW-50), who was associated with the investigation of the case.

- (f) When no perceptible progress was achieved in the investigation of the case, a special team of police was constituted by Superintendent of Police, Shimla, vide order Exhibit -52/A. Vijay Kumar (PW-50) was one of the members of that team, who arrested the present appellants and Rajinder Thakur on February 20, 2005.
- (g) During the course of their interrogation, the accused persons made disclosure statements. The appellant Surjeet Khachi, in his disclosure statement marked as Exhibit PW-11/B, stated that he had thrown one Chunni and one ribbon, which were there in the van, at a place called Nanni, falling in the area of Matiana. On the basis of this disclosure statement, Chunni (Exhibit P-2) and ribbon (Exhibit P-3) were recovered and taken into possession vide Memo (Exhibit PW-2/B). PW-2 identified the said Chunni and the ribbon to be the same which he had kept in the Maruti van. Surjeet Khachi also made a disclosure that wrist watch of Rajinder Thakur had been pledged with a shopkeeper of Kuthar in Solan District for payment of price of 1½ litres of petrol, which had been purchased from him, when the fuel in the Maruti Van

completely ran dry. On the basis of this disclosure statement, wrist watch (Exhibit P-4) was recovered from one Gian Chand (PW-16) of village Kuthar. House of Rajinder Thakur was searched and two vouchers (Exhibits PW-54/O and PW-54/P), with regard to purchase of wrist watch, were recovered vide memo Exhibit PW-24/A.

- (h) Appellant Vijay Thakur made a disclosure statement, which led to the recovery of Jacket (Exhibit P-5) from his house. The string of Jacket's hood was found missing and it appeared that it was the same string by which the neck of deceased Dharam Pal was found tightened.
- (i) During the course of investigation, it also came to light that the appellants and Rajinder Thakur went with the Maruti van to some remote area of Patiala District in Punjab and tried to sell it, but they could not find any buyer. Then they came back and on the way, when the fuel ran dry completely, they purchased 1½ litres of petrol from PW-16. After the fuel was consumed, they abandoned the vehicle at Saproon on Solan-Subathu road. Rajinder Thakur then tried to sell the Maruti van to a transporter of Dhalli, namely, Vikas Verma (PW-8). PW-8 introduced Rajinder Thakur to one Sneh Bhagat (PW-42), who accompanied by Rajinder Thakur and

Dharmender (PW-10), a driver, went to Saproon. But by that time the Maruti van had already been seized by the Police under section 102 of Cr.P.C. and taken to Police Post Saproon.

- 3) After the completion of investigation, charge sheet was filed, whereby all the three accused persons were challaned. Case was committed by the concerned Judicial Magistrate to the Sessions Court after complying with the requisite procedural formalities. Charges were framed by the Sessions Court and the matter went for trial as all the three accused persons pleaded 'Not Guilty'. Prosecution examined various witnesses and the deposition of some of the material witnesses examined. After the conclusion of prosecution evidence, the statements of the accused persons under Section 313 of Cr.P.C. was recorded. The appellants denied all the incriminating circumstances/material put to them and depositions of the various prosecution witnesses as well as documents placed on record. The accused persons specifically denied that they had hired Maruti van, which was driven by the deceased or that they have travelled by that van on or about August 21, 2012. They also denied having taken lift in the truck of PW-30 from Narkanda to Sainj. Similarly, there was a denial by them that they took the van to an area in Patiala District,

Punjab or to Kuthar or to Solan District in Himachal Pradesh or attempted to sell the van. They also pleaded that no such disclosure statements leading to the alleged discovered were made by them.

4) After recording his analysis of the evidence on record, in light of the arguments submitted by the counsel for the prosecution as well as defence counsel, the learned trial court came to the conclusion that prosecution was able to successfully prove the guilt of all the three accused persons. It is the accepted position that there are no eye-witnesses in the present case and the case of prosecution is completely based on circumstantial evidence. The Sessions Court arrived at the finding that the circumstances which were proved by the prosecution made a complete chain, thereby leading to the hypothesis that all the persons were guilty. On the basis of this conviction, sentences followed, as aforesaid.

5) All the three accused persons challenged the verdict of the trial court by preferring common appeal, which has been dismissed by the High Court, affirming the decision of the Sessions Court. The High Court has recapitulated seven circumstances which, according to it, formed a complete chain leading to the irresistible

conclusion of the guilt of the appellants in murdering the two deceased persons and robbing deceased Santosh Kumar of the Maruti van which he was driving. These circumstances are mentioned in para 15 of the impugned judgment, which read as under:

“a) On 21st August, 2004, appellants took lift in a truck which was being driven by PW-30 Rajesh Kumar and in which PW-39 Raj Kumar Tayagi was present in the capacity of owner of the goods, which were being carried in that truck, and they (appellants) de-boarded the truck at Sainj.

b) Deceased Santosh Kumar had two passengers, who wanted to travel to village Dalash by his taxi, but in the meanwhile, he was approached by some other passengers for being taken to Narkanda and, so, he approached PW-7 Sanjay Kumar, another taxi driver, to carry the two passengers to Dalash.

c) Appellant Rajinder made an attempt to sell a Maruti Van to PW-44 Kartar Singh resident of a village in Patiala District.

d) Appellants ran out of fuel at Kuthar in Solan District on 24th August, 2004 and they purchased 1½ litres of petrol from PW-16 Gian Chand, a shopkeeper and being short of money, they pledged the wrist-watch Ext. P4 of appellant Rajinder Thakur with said Gian Chand (PW16).

e) On 27th August, 2004, appellant Rajinder Thakur went to PW-8 Vikas Verma and asked him to help him sell the Maruti Van, who (the witness) then introduced him to PW-42 Sneh Bhagat and Sneh Bhagat accompanied by driver PW-10 Dharmender Singh and appellant Rajinder went to Saproon, where the van was stated to be parked, but the van was not there as the same had been sized by Solan Police, before that, under Section 102 Cr.P.C.

f) Appellant Surjeet Khachi made a disclosure statement, leading to the discovery of Chunni Ext. P-2 and ribbon P-3, which PW-2 Ganga Ram had kept in the Maruti Van.

g) Appellant Vijay Kumar made a disclosure statement, leading to the discovery of Jacket Ext. P-5, the hood string of which was missing.”

- 6) Thereafter, the judgment of the High Court proceeds to dilate upon these circumstances explaining as to how they stand proved and form a complete chain of events leading to the conviction of the accused persons.
- 7) These two appeals are filed by two out of the three convicted persons. Third accused, namely, Rajinder Thakur, has accepted the judgment of the High Court. Therefore, our discussion in the instant appeals shall confine to the alleged role and culpability of only the two appellants before us.
- 8) We have already recapitulated above the circumstances which are held against all the three accused persons, including the two appellants, who are convicted. We may, therefore, in the first instance, start our discussion on the presumption that all these circumstances stand proved (though we may mention at this stage itself that learned counsel for the appellants had argued that there is no sufficient evidence to implicate the two appellants

insofar as those circumstances are concerned. We shall advert to that aspect at a later stage).

- 9) Circumstance mentioned at (a) above would show that the appellants had taken lift in a truck from Narkanda and they alighted from this truck at Sainj. As per circumstance (b) above, at Sainj, deceased Santosh Kumar was present with a van of which he was the driver employed by PW-2. He had two passengers who wanted to travel to village Dalash. However, he was approached by '*some other passengers*' for being taken to Narkanda. Therefore, Santosh Kumar approached PW-7 Sanjay Kumar and requested him to carry the said two passengers to Dalash, meaning thereby, he had taken '*some other passengers*' to Narkanda. PW-7 has not seen those '*other passengers*'. The number of '*other passengers*' is also not given. In his statement, he does not say that he had seen the appellants and Rajinder Thakur, whom deceased Santosh Kumar was going to carry in his van. Therefore, at this stage, insofar as the appellants are concerned, the chain has broken. It may be that the chain continues insofar as Rajinder Thakur is concerned, having regard to circumstance (c), (d) and (e), inasmuch as, those circumstances are attributed to accused Rajinder Thakur who was

found in possession of the Maruti Van which was being driven by the deceased and he was making attempts to sell the said van. Likewise, it is Rajinder Thakur who had approached PW-8 Vikas Verma and asked him to help him sell the said van and Vikas had introduced him to PW-42 Sneh Bhagat. Again, it is Rajinder Thakur who had gone with the said van to Saproon where the van was stated to be parked. Thus, it is clear that when attempt was made by Rajinder Thakur to sell the said Maruti Van and he was going from place to place for this purpose, the two appellants were not with him. No doubt, reading of circumstance (d) above gives an impression that all the three accused persons were there at Kuthar in Solan District when they ran out of fuel and they had purchased 1½ litres of petrol from PW-16 Gian Chand. However, on reading the statement of PW-16, it becomes abundantly clear that he has stated that *“last year one boy came to my shop and demanded petrol from me. I had provided him petrol about one and a half litres which was taken from Dinesh Kumar. That boy had pledged his wrist watch with me”*. Therefore, it is clear that even PW-16 has mentioned that one person had gone to him to buy the petrol. Circumstance (d) above, therefore, has to be confined to one person and in the chain of events, he appears to be Rajinder Thakur. Thereafter, as per circumstances (f) and (g),

these two appellants had made a disclosure statement which has led to some recoveries. We shall deal with that aspect at the appropriate stage. What we are emphasising at this stage is that if the disclosure statement is ignored for the time being, the only circumstance against the appellants is that they had travelled with Rajinder Thakur up to Sainj. Thereafter, there is nothing against these two appellants. Insofar as the appellants are concerned, the link is broken at that stage itself. It is not known as to whether they were together or not and there is no credible evidence (or for that matter, any evidence at all) to show that they were with Rajinder Thakur. On the contrary, as per the evidence coming on record, it is Rajinder Thakur alone who is found in possession of the Maruti Van which was being driven by the deceased and it is he who was trying to sell the said vehicle.

- 10) Keeping in mind the aforesaid position, we now discuss the alleged disclosure statements made by the two appellants. As per the prosecution, appellant Surjeet Khachi made a disclosure statement leading to the recovery of *Chunni* (Exhibit P-2) and Ribbon (Ex. P-3), which PW-2 had kept in the Maruti Van. Alleged disclosure of this kind of material is somewhat intriguing. It is not the weapon of crime. *Chunni* and Ribbon were allegedly kept in

the Maruti Van as it was a new vehicle. As per PW-2 (who is the owner of the vehicle), one *Chunni* and Ribbon were kept in the vehicle and appellant Surjeet Khachi had led the Police to where they were concealed and, accordingly, they were recovered from the said place and taken into possession. One fails to understand as to what would be the purpose of removing the said *Chunni* and Ribbon from the vehicle and throwing them at some place. It is well known that in this part of the country, *Chunni* and Ribbon (as sacred objects representing blessings of *Maa Durga*) are tied, particularly when the vehicle is new. But they were neither used for the commission of crime, nor any purpose could be achieved in removing them from the van. Further, as per the prosecution case, after these were recovered, they were taken into possession vide Memo Exhibit PW-2/B. A reading of Exhibit PW-2/B would show that they were recovered from *Nallah* from the opposite side of the road. This recovery was alleged made on 26.02.2005, that is more than six months after the incident, which took place on August 21, 2004. If one presumes that after removing the said *Chunni* and Ribbon, the accused had thrown it at the aforesaid place, one fails to understand as to how the said two things were lying intact at that open place for so many months. It seems that this recovery is shown just to rope in the

appellant Surjeet Khachi as well.

11) RE. - PETROL

To the same effect are our observations *qua* the alleged recovery of wrist watch of Rajinder Thakur. It is shown that appellant Surjeet Khachi had made a disclosure statement wrist watch of Rajinder Thakur had been pledged with a shopkeeper of Kuthar in Solan District for payment of price of 1½ litres of petrol, which had been purchased from him, when the fuel in the Maruti Van completely ran dry. Curiously, as per the prosecution's own version, based on the testimony of PW-6 Gian Chand, from whom the petrol was purchased, the said van was being driven by Rajinder Thakur, who had purchased petrol from him. He has very clearly stated that it was only Rajinder Thakur in the said van and did not name these two appellants. This aspect has been mentioned in circumstance (d) and the evidence in this respect has already been analysed above to show that the said evidence concerns only to Rajinder Thakur. From this, it can be clearly discerned that even this disclosure statement is attributed to appellant Surjeet Khachi just to rope him as an accused person. Otherwise, for the reasons stated above, this disclosure statement does not inspire any confidence. The High Court has

failed to notice these important aspects which make the alleged disclosure statements suspectful.

- 12) Coming to the alleged disclosure of the appellant Vijay Kumar, a discovery of jacket (Exhibit P-5) is attributed to him. This recovery was sought to be proved from the statement of PW-23, who has said that appellant Vijay Kumar had made a disclosure statement that he had kept the jacket in his house and the statement was recorded as Exhibit PW-3/C. However, in his cross-examination, he has admitted that document Exhibit PW-3/C was prepared 10-15 minutes prior to the recovery of clothes and he was not there when recovery was effected. He had seen the clothes when they were with the Police. Therefore, recovery of jacket on the disclosure statement made by accused Vijay Kumar also becomes doubtful. In such circumstances, it would be too risky to convict these two appellants solely on the basis of alleged disclosure, which recovery is also shrouded with elements of doubts. As already discussed above, there is no other circumstance which relate these two appellants to the commission of the offence.

- 13) It is to be emphasized at this stage that except the so-called recoveries, there is no other circumstances worth the name which

has been proved against these two appellants. It is a case of blind murder. There are no eyewitnesses. Conviction is based on the circumstantial evidence. In such a case, complete chain of events has to be established pointing out the culpability of the accused person. The chain should be such that no other conclusion, except the guilt of the accused person, is discernible without any doubt. Insofar as these two appellants are concerned, there is no circumstance attributed except that they were with Rajinder Thakur till Sainj and the alleged disclosure leading to recoveries, which appears to be doubtful. When we look into all these facts in entirety in the aforesaid context, we find that not only the chain of events is incomplete, it becomes somewhat difficult to convict the appellant only on the basis of the aforesaid recoveries.

- 14) In **Mani v. State of Tamil Nadu**, (2008) 1 SCR 228, this Court made following pertinent observation on this very aspect:

“21. The discovery is a weak kind of evidence and cannot be wholly relied upon on and conviction in such a serious matter cannot be based upon the discovery. Once the discovery fails, there would be literally nothing which would support the prosecution case....”

- 15) There is a reiteration of the same sentiment in **Manthuri Laxmi Narsaiah v. State of Andhra Pradesh**, (2011) 14 SCC 117 in the

following manner:

“6. It is by now well settled that in a case relating to circumstantial evidence the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken the accused must get the benefit thereof. We are of the opinion that the present is in fact a case of no evidence.”

16) Likewise, in ***Mustkeem alias Sirajudeen v. State of Rajasthan***,

(2011) 11 SCC 724, this Court observed as under:

“24. In a most celebrated case of this Court, *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116, in para 153, some cardinal principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence the following features are required to be complied with. It would be beneficial to repeat the same salient features once again which are as under: (SCC p.185)

“(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established;

(ii) 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;

(iii) The circumstances should be of a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and

(v) 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.”

25. With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.”

It is settled position of law that suspicion, however strong, cannot take the character of proof.

- 17) We, therefore, have no hesitation in allowing these appeals and setting aside the conviction and sentence of the two appellants under Section 302 read with Section 34 of the Indian Penal Code, 1860. We order accordingly. The appellants are directed to be released from jail forthwith, if not required in any other case.

.....J.
(J. CHELAMESWAR)

.....J.
(A.K. SIKRI)

**NEW DELHI;
SEPTEMBER 19, 2014.**