Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 486 OF 2010

Raja @ Rajinder ... Appellant

Versus

State of Haryana ...

Respondent

J U D G M E N T

Dipak Misra, J.

The present appeal is directed against the judgment and order dated 7.09.2009 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 770-DB of 2006, whereby the Division Bench has confirmed the judgment of conviction and order of sentence passed by the learned Additional Sessions Judge, Sirsa in Sessions Case No. 357 of 2003 convicting the present appellant for the offences punishable under Sections 302 and Section 201 read with Section 34 of the Indian Penal Code (IPC) and

sentencing him to suffer rigorous imprisonment for life and payment of fine of Rs.5000/- under Section 302 and rigorous imprisonment of three years and fine of Rs.1000/- under Section 201 read with Section 34 IPC with default clause for the fine amount in respect of both the offences with the stipulation that both the sentences would be concurrent.

2. Bereft of unnecessary details, the prosecution case, as has been unfurled is that on 18.1.2003 about 6.30 p.m., Het Ram, the deceased, had left his home with the accused-appellant and did not return till the morning of 19.1.2003. The family members of the deceased searched for him at various places and made enquiries from the relations but despite their best efforts, he could not be found. In course of that enquiry it was revealed by the owner of a tea-stall that on 18.01.2003 about 8.30 p.m. the appellant and the deceased had taken tea together and thereafter they had left that place. Being so informed by the tea stall owner, Subhash, PW-8, brother of the deceased along with Pala Ram and Ramesh went to the house of the accused-appellant, and came to learn from his father Krishan Kumar, the co-accused, that Raja had gone

to village Kharia but could not be contacted as the telephone number of village Kharia was out of order. Thereafter, Subhash, PW-8, the informant returned to his house and waited till night for the return of Het Ram. When the deceased did not come till night, Subhash along with his relations again proceeded to the house of the appellant who was present in the house, and informed them that in the night of 18.01.2003 he and the deceased had taken tea together but when they were returning to their houses, a Sikh boy met them and Het Ram went with that boy on his motor cycle. After getting the said information, when the informant and others were returning from the house of the accused, they noticed blood stains in the street in front of the houses of Mohan and Mahender Singh. It aroused suspicion of the informant that his brother might have been murdered by the appellant and the dead body could have been disposed of. The motive behind the incident, as mentioned, was that the appellant was indulged in consuming poppy husk and the father of the appellant had a suspicion that the deceased was instrumental in making his son a drug addict. On the basis of the aforesaid allegations, an FIR No. 45 dated 20.1.2003 was lodged at

the police station Rania. After the criminal law was set in motion, the investigating agency went to the place where blood stains were found and prepared the site plan and seized the bloodstained earth. On the next day, police went to village Bani in connection with the investigation and blood stains were found on the stairs, platform and wall of a well situated in the old Abadi of the village. The police collected the bloodstained bricks from there and noticed a bundle inside the well and eventually recovered the dead body of Het Ram which was found inside the said bundle. The investigating agency sent the dead body for post-mortem to the General Hospital, Sirsa and arrested the accused on 22.1.2003. During the investigation the appellant suffered disclosure statement, Exh. P. EE, to the effect that he had taken Het Ram to the tea stall and thereafter to his 'Nohra' on a false pretext, where he had caused a blow with a knife on the neck of Het Ram about 10.00 P.M. on 18.01.2003. Het Ram tried to escape but he chased him and when the deceased fell down in front of the house of Mahender Singh, he inflicted several blows with the knife on the chest and the waist region of the deceased. Being unable to drag the dead body back to his

courtyard, he took the help of his father for the disposal of the body. The blanket worn by the deceased was burnt in the courtyard of the appellant. Thereafter, the bloodstained clothes of the appellant and the knife were recovered by the police from the pit of latrine on the basis of the statement of the accused-appellant. The parcels of bloodstained earth, bloodstained clothes of the accused and the deceased, the seized knife and other materials were sent to the Forensic Science Laboratory, Madhuban, for examination and the report, Exhibit P.RR, was received by the prosecution. During the investigation, statement of Sukha, PW-7, was recorded on 21.1.2003 wherein he had stated that the deceased was murdered by the appellant as the appellant was suspicious that the deceased had illicit relationship with his wife. Similar statement was also made by Nanak, PW-9. The investigating officer recorded statement of number of witnesses and after completing the investigation, placed the chargesheet against the accused-appellant for the offences punishable under Sections 302 and 201 read with Section 34 IPC. The co-accused, Krishan Kumar, was chargesheeted for the offence under Sections 201 read with Section 34 IPC. After the chargesheet was

laid, the competent court committed the matter to the court of Session for trial. The accused pleaded not guilty and claimed to be tried.

3. The prosecution in order to substantiate the charges levelled against the accused persons examined as many as 13 witnesses. The principal witnesses are Dr. N.K. Mittal, PW-1, who had conducted the post-mortem on the dead body of the deceased, Sukha, PW-7, Subhash, PW-8, the brother of the deceased and the informant, Nanak, PW-9, Mahender, PW-10, who had seen the deceased and the appellant having tea together in the tea stall and Kalawati, PW-11, mother of the deceased who had witnessed the deceased leaving the house in the company of the accused-appellant.

4. The accused persons in their statements u/s 313 of the Code of Criminal Procedure (CrPC) denied the allegations and pleaded false implication. They claimed that accused-Raja was neither married to anyone nor addicted to opium and, therefore, the alleged motive to commit the murder of Het Ram was totally baseless. They further denied having made any disclosure statements to the police and stated that the police had planted articles to

create evidence against the accused. The accused persons chose not to adduce any evidence in their defence.

5. The learned trial Judge, on the basis of the material brought on record, came to hold that the whole case rested on circumstantial evidence and the prosecution had been able to establish the chain in completeness against the accused persons and accordingly convicted the appellant and his father and sentenced them, as has been stated hereinbefore. Being dissatisfied, the appellant and his father had preferred the criminal appeal wherein the High Court had affirmed the conviction and sentence of the appellant but as far as his father, Krishan Kumar, is concerned, while maintaining the conviction, modified the sentence of Krishan Kumar imposed by the trial Judge and restricted it to the period already undergone without interfering with the quantum of fine. The present appeal has been preferred by Raja assailing his conviction and sentence.

6. We have heard Mr. M.M. Kashyap, learned counsel for the appellant and Mr. Vikas Sharma, learned counsel for the State.

7. As the factual matrix would show, the case of the prosecution entirely hinges on circumstantial evidence. When a case rests on circumstantial evidence, the Court has to be satisfied that the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. [See ***Padala Veera Reddy v. State of A.P***.[1]]

8. In ***Balwinder Singh v. State of Punjab***[2], it has been laid down that:

> "..... the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be

[1] 1989 Supp (2) SCC 706
[2] 1995 Supp (4 SCC 259

> conclusive in nature to connect the accused with the crime. All the links in the chain of events must be established beyond a reasonable doubt and the established circumstances should be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In a case based on circumstantial evidence, the court has to be on its guard to avoid the danger of allowing suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed by emotional considerations, howsoever strong they may be, to take the place of proof."

9. From the aforesaid it is clear as day that the Court is required to evaluate the circumstantial evidence to see that the chain of events have been established clearly and completely to rule out any reasonable likelihood of the innocence of the accused. Needless to say whether the chain is complete or not would depend on the facts of each case emanating from the evidence and no universal yardstick should ever be attempted [See ***Ujjagar Singh v. State of Punjab***[3]].

10. In the instant case, the circumstances that have been established by the prosecution are that the deceased had accompanied the accused–appellant, being called by him, from his house in the early part of the evening on the date of occurrence. The mother of the deceased, Kalawati, PW-

[3] (2007) 13 SCC 90

11, has deposed in that regard. Thereafter, from the material brought on record, it is clearly revealed that the appellant was seen at the tea stall with the deceased. The said fact has been deposed by Mahender, PW-10. Thus, from the aforesaid evidence, two facts are established, namely, the accused and the deceased had left the house of the deceased and were seen taking tea together at the tea stall. It is submitted by the learned counsel for the appellant that the last seen theory as advanced by the prosecution is not acceptable inasmuch as the owner of the tea stall has not been examined. When the testimony of the aforesaid two witnesses deserve acceptance and receive corroboration from the other evidence on the record, no adverse inference should be drawn because of non-examination of the tea stall owner, who, as has been submitted by the learned counsel for the appellant, is a material witness. It is well settled in law that non-examination of a material witness is not a mathematical formula for discarding the weight of the testimony available on record, if the same is natural, trustworthy and convincing [See ***State of H.P. v. Gian Chand***[4]]. That

[4] (2001) 6 SCC 71

apart, he was not such a witness who alone was the competent witness to depose about a fact and his non-examination would really destroy the version of the prosecution.

11. Another reason for acceptance of the last seen theory is that the brother of the deceased, Subhash, PW-8, has testified that he had enquired from the accused as regards the whereabouts of the deceased, for the deceased had accompanied the accused and at that juncture the accused had replied that at the tea stall a Sikh boy came and the deceased went with him. As per the prosecution case, the deceased and the accused are co-villagers. In his statement recorded under Section 313 CrPC, the accused-appellant totally denied to have accompanied the deceased. Learned trial Judge and the High Court have placed reliance on the evidence of the mother, Kalawati, PW-11, the brother, Subhash, PW-8 and Mahender, PW-10. The cumulative reading and apposite appreciation of the said evidence proves beyond reasonable doubt that the deceased was last seen with the accused.

12. Another circumstance that has been proven is about the recovery of knife, blood-stained clothes and the ashes

of the burnt blanket. The seizure witnesses Sukha, PW-7 and Nanak, PW-9 have proven the seizure. It is submitted by the learned counsel for the appellant that police had recorded the confessional statement of the accused-appellant at the police custody and thereafter, as alleged, had recovered certain things which really do not render any assistance to the prosecution, for the confession recorded before the police officer is inadmissible. That apart, the accused had advanced the plea that the articles and the weapon were planted by the investigating agency. To appreciate the said submission in proper perspective, we may profitably reproduce a passage from ***State of U.P. v. Deoman Upadhyaya***[5]:

> "The expression, 'accused of any offence' in Section 27, as in Section 25, is also descriptive of the person concerned i.e. against a person who is accused of an offence, Section 27 renders provable certain statements made by him while he was in the custody of a police officer. Section 27 is founded on the principle that even though the evidence relating to confessional or other statements made by a person, whilst he is in the custody of a police officer, is tainted and therefore inadmissible, if the truth of the information given by him is assured by the discovery of a fact, it may be presumed to be untainted and is therefore declared provable insofar as it distinctly relates to the fact thereby discovered. Even though Section 27 is in the

[5] AIR 1960 SC 1125

> form of a proviso to Section 26, the two sections do not necessarily deal with the evidence of the same character. The ban imposed by Section 26 is against the proof of confessional statements. Section 27 is concerned with the proof of information whether it amounts to a confession or not, which leads to discovery of facts. By Section 27, even if a fact is deposed to as discovered in consequence of information received, only that much of the information is admissible as distinctly relates to the fact discovered."

13. In ***State of Maharashtra v. Damu***[6], while dealing with the fundamental facet of Section 27 of the Evidence Act, the Court observed that the basic idea embedded in the said provision is the doctrine of confession by subsequent events, which is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. It further stated that the information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information and, therefore, the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum.

[6] (2000) 6 SCC 269

14. Thus, if an accused person gives a statement that relates to the discovery of a fact in consequence of information received from him is admissible. The rest part of the statement has to be treated as inadmissible. In view of the same, the recovery made at the instance of the accused-appellant has been rightly accepted by the trial Court as well as by the High Court, and we perceive no flaw in it.

15. Another circumstance which has been taken note of by the High Court is that the blood-stained clothes and the weapon, the knife, were sent to the Forensic Science Laboratory. The report obtained from the Laboratory clearly shows that blood stains were found on the clothes and the knife. True it is, there has been no matching of the blood group. However, that would not make a difference in the facts of the present case. The accused has not offered any explanation how the human blood was found on the clothes and the knife. In this regard, a passage from ***John Pandian v. State***[7] is worth reproducing:

> "The discovery appears to be credible. It has been accepted by both the courts below and we find no reason to discard it. This is apart from the fact that this weapon was sent to the

[7] (2010) 14 SCC 129

> forensic science laboratory (FSL) and it has been found stained with human blood. Though the blood group could not be ascertained, as the results were inconclusive, the accused had to give some explanation as to how the human blood came on this weapon. He gave none. This discovery would very positively further the prosecution case."

In view of the aforesaid, there is no substantial reason not to accept the recovery of the weapon used in the crime. It is also apt to note here that Dr. N.K. Mittal, PW-1, has clearly opined that the injuries on the person of the deceased could be caused by the knife and the said opinion has gone unrebutted.

16. Another circumstance which needs to be noted is that Sukha, PW-7, a taxi driver, has deposed that on 18.1.2003 about 11.00 p.m. while he was going to Fatehabad for taking passengers, he saw a bullock cart parked in front of the house of the accused and certain persons were tying a bundle in a "palli". On query being made by him, the accused persons told him that they are carrying manure to the fields. Though, this witness has given an exaggerated version and stated differently about the time of arrest, yet his testimony to the effect that he had seen the accused with a bundle in "palli" at a particular place cannot be

disbelieved. The maxim "*falsus in uno, falsus in omnibus*", is not applicable in India. In ***Krishna Mochi v. State of Bihar***[8], it has been held thus:

> "The maxim *falsus in uno, falsus in omnibus* has no application in India and the witnesses cannot be branded as liars. The maxim *falsus in uno, falsus in omnibus* (false in one thing, false in everything) has not received general acceptance ... nor has this maxim come to occupy the status of the rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded."

17. In ***Yogendera v. State of Rajasthan***[9], it has been ruled that the Court must assess the extent to which the deposition of a witness can be relied upon. The court must make every attempt to separate falsehoods from the truth, and it must only be in exceptional circumstances, when it is entirely impossible to separate the grain from the chaff, for the same are so inextricably intertwined, that the entire evidence of such a witness must be discarded. Thus viewed, the version of PW-7 to the extent that has been stated hereinabove is totally acceptable and credible.

18. In a case based on circumstantial evidence, motive assumes great significance as its existence is an

[8] (2002) 6 SCC 81
[9] (2013) 12 SCC 399

enlightening factor in a process of presumptive reasoning [See ***Kundula Bala Subrahmanyam and Anr. v. State of Andhra Pradesh***[10]]. In the case at hand, it had come in the evidence that the accused-appellant was suspicious of the illicit relationship between the deceased and his wife. The accused has taken the plea that he was never married. It is noteworthy that the materials brought on record go a long way to show that after the death of his brother he had entered into the wedlock with his sister-in-law as per the tradition of the community, that is, 'Kareva' marriage. The said facet of evidence has really not been assailed or shaken. Thus, it has been established that there was suspicion by the accused that the deceased was having relationship with his brother's wife and that had aroused his anger. The said motive further strengthens the case of the prosecution.

19. In view of the aforesaid analysis, we are of the considered opinion that the appeal preferred by the appellant is totally devoid of merit and is accordingly dismissed.

[10] (1993) 2 SCC 684

.....J.
(Dipak Misra)

....., J.
(N.V. Ramana)

New Delhi
April 10, 2015