

KULDEEP SINGH AND ORS.

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v.

STATE OF RAJASTHAN

APRIL 25, 2000

[K.T. THOMAS, DORAISWAMY RAJU AND S.N. VARIAVA, JJ.]

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Penal Code, 1860—Ss. 302 and 120-B/S. 120-B r/w. S. 302—Murder—Circumstantial evidence—Motive established—No infirmity in appreciation of the evidence—Conviction and sentence by trial Court—Upheld.

Criminal Procedure Code, 1973—S. 313—Murder—Circumstantial evidence—False explanation offered by an accused—Effect of—Held, provides additional or missing link in completing the chain of circumstances.

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Appellants were prosecuted for offences under Ss. 302 and 120-B/S, 120-B r/w. S. 302 Penal Code. The prosecution case was that 'S' and his brother 'M' were staying in different portions of a house along with their families. After the death of 'M', his wife viz. appellant No. 4 and daughters continued to stay in the said house. Appellant No. 4 developed illicit relationship with appellant No. 1, a former tenant of 'M'; 'S' objected to the said relationship. He was also objecting to appellant No. 4 wanting to sell off her portion of property. Consequently, appellants conspired to kill 'S'. In pursuance of the said conspiracy, appellant No. 4 took all the family members to see Ramleela festival leaving 'S' alone in the house. Appellant No. 4 went away from the Ramleela festival for some time. When the family members returned home they found 'S' lying in a pool of blood. Trial Court on appreciation of evidence, held that circumstantial evidence established beyond reasonable doubt the guilt of the accused and convicted and sentenced appellant Nos. 1 & 2 under Ss. 302 and 120-B IPC and appellant Nos. 3 and 4 under S. 120-B r/w. 302 IPC. On appeal, High Court confirmed the conviction and sentence. Hence the present appeal.

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Disposing of the appeals, the Court

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HELD : 1. It is established beyond reasonable doubt that accused Nos. 1, 2 and 4 had entered into a conspiracy and had murdered 'S'. There is no infirmity or fallacy in appreciation of the evidence or the marshalling of the facts and circumstances which unerringly lead to a conclusion of

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A **guilt beyond a reasonable doubt so far as Appellants 1, 2 and 4 are concerned. Thus, conviction and sentence passed by Trial Court on appellants 1, 2 and 4 is sustained. [502-G-H]**

B **2. Appellant 4 in her statement under S. 313 Cr.P.C. denied that she had left the Ramleela function. However, the evidence of witnesses clearly establishes that she had left the Ramleela programme. The false answer given by Appellant No. 4 provides the additional link or a missing link in completing the chain of circumstances. [507-C-D; E]**

C *Swapan Patra v. State of West Bengal, [1999] 9 SCC 242 and State of Maharashtra v. Suresh, [2000] 1 SCC 471, relied on. [507-G-H; 508-A]*

D **3. There is no circumstances or proof which links appellant No. 3 to the conspiracy of murder. The deposition of PW 9 that he had seen appellant No. 3 going along with appellant Nos. 1 and 2 towards the house of the deceased, by itself is not sufficient to establish the guilt. The only other evidence viz. PW 5 had made contradictory statements to the police which are substantial, cannot be relied upon. Thus, conviction of appellant No. 3 under S. 120-B read with S. 302 IPC is set aside. [507-G-H; 508-A]**

E **CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 658 of 1998.**

From the Judgment and Order dated 10.3.98 of the Rajasthan High Court in D.B. CrI.A. No. 247 of 1978.

F **P.R. Aggarwal, Pramod Dayal and Piyush Sharma for the Appellants.**

Sushil Kr. Jain, A. Mishra and Ms. Anjali Doshi for the Respondent.

The Judgment of the Court was delivered by

G **S. N. VARIAVA, J.** This Appeal is against the Judgment dated 10th March, 1997. By the judgment the Appeal of the Appellants against their convictions by the Additional Sessions Judge has been confirmed. Appellants 1 and 2 had been convicted under Sections 302 and 120B I.P.C. Appellants 3 and 4 have been convicted under Section 120B read with Section 302 I.P.C.

H **All of them are sentenced to undergo imprisonment for life.**

Briefly stated the facts are as follows:

One Sohan Singh and his brother Mohan Singh were staying in different portion of house at Ward No. 35, Old Abadi, Ganganagar. Both of them had practiced as Vaid and were running a medical shop. Sohan Singh was married to one Karnail Kaur. He has two daughters and one son. Mohan Singh was married to Surjeet Kaur i.e. Appellant No. 4. They have three daughters. Mohan Singh expired sometime in 1974. Thereafter, Sohan Singh and his family and Appellant No. 4 and her children continued to stay in the portions of the same house occupied by them earlier. Sohan Singh was found murdered in his own house, in the night intervening 15th and 16th of October 1977.

It is the case of the prosecution that Appellant No. 1, Kuldeep Singh was earlier a tenant of Mohan Singh. Appellant No. 2, Mahindra Singh is a maternal uncle of Appellant No. 1. Appellant No. 3, Uttam Chand is a friend of Appellant No. 1. It is the case of the prosecution that Appellant No. 1 developed illicit relationship with Appellant No.4. It is the case of the prosecution that Appellant Nos. 2 and 3 used to visit the house of Appellant No. 4 when Appellant No. 1 was a tenant there. It is the case of the prosecution that Sohan Singh was objecting to the illicit relationship between Appellant No. 1 and Appellant No. 4. It is the case of the prosecution that Sohan Singh was also objecting to Appellant No. 4 wanting to sell off her portion of the house. It was the case of the prosecution that all the four Appellants conspired to cause the death of Sohan Singh and in pursuance of the said conspiracy Appellants 1 and 2 murdered Sohan Singh. It is this case of the prosecution that in pursuance of the said conspiracy Appellant No. 4 got all the family members, including the wife of Sohan Singh, to attend Ramleela which was being played in the village. It is the case of the prosecution that Appellant No. 4 tried to persuade the son of Sohan Singh also to stay back at home but could not succeed in doing so as the son insisted on attending the Ramleela programme. It is the case of the prosecution that Appellant No. 4 accompanied the other family members to the Ramleela festival, but thereafter went away from the Ramleela grounds for some time. It is the case of the prosecution that when Karnail Kaur and other family members asked Appellant No. 4 where she had gone, she stated that as she was not feeling well so she had sat in the open away from the crowd.

Karnail Kaur and other family members came home at about 1 A.M. On coming home they found that Sohan Singh was lying in pool of blood. It is

A the case of the prosecution that on coming home Appellant No. 4 immediately went to her room and bolted the outside door, which allowed entry to her room from outside. It is the case of the prosecution that thereafter Appellant No. 4 called Jaswinder Kaur and Dalbir Kaur, the daughters of Sohan Singh to her room and told them not to say that they had any enemy or to name any person as otherwise there would be trouble.

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It is the case of the prosecution that on seeing Sohan Singh there was an outcry by the family members which attracted the neighbours including one Harnek Singh, Advocate. The said Harnek Singh, then called the police. The police reached the house of Sohan Singh and recorded the statement of Jaswinder Kaur, the daughter of the deceased. They then inspected the site, held an inquest, interrogated the witnesses and arrested the accused.

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Charges under Sections 120B and 302 I.P.C. were framed against all the four accused, who pleaded not guilty. The prosecution examined 15 witnesses. Appellants led no evidence. All the Appellants in their statements under Section 313 Cr.P.C. denied the accusations. Appellant Surjeet Kaur stated, in her statement under Section 313 Cr.P.C., that she had been roped in the case in order to deprive her of her share in the property. She denied that she had left the Ramleela ground for some time.

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The learned Sessions Judge held, on the evidence, that Sohan Singh had met homicidal death. He further held that all the four Appellants had entered into a criminal conspiracy to murder Sohan Singh and that Appellants 1 and 2 had committed his murder. He, therefore, convicted Appellants 1 & 2 under Sections 302 and 120-B I.P.C. and convicted Appellants 3 & 4 under Section 120B read with Section 302 I.P.C. All the accused were sentenced to life imprisonment. Criminal Appeal No. 247 of 1978 was dismissed by the impugned Judgment dated 10th March, 1997.

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Both the Courts below have considered the evidence in detail. Both Courts have held that the circumstantial evidence was sufficient to establish the guilt of all the Appellants beyond a reasonable doubt. We have perused the judgment of the Courts below. We have read the evidence. We do not find any infirmity or fallacy in appreciation of the evidence or the marshalling of the facts and circumstances which unerringly lead to a conclusion of guilt beyond a reasonable doubt so far as Appellants 1, 2 and

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4 are concerned.

The evidence of PW4 Dr. Rajender Kumar Gupta who performed the autopsy shows that Sohan Singh had following injuries: A

1. Bruise with abrasion 1/1"x1" anterior surface of right knee joint.
2. Bruise with abrasion 1"x1/2" on the anterior surface of the left knee joint. B
3. Incised wound (oblique) 3/4"x1/4"x bone deep on the terminal phalynx of the left index finger on the dorsal aspect.
4. Incised wound (oblique) 1"x1/4" x bone deep on the terminal phalynx of the middle finger on the dorsal aspect. C
5. Incised wound (oblique) 1-1/4"x1/8" bone deep on the dorsal aspect of the first and second phalynx of the middle finger of the left side.
6. Multiple incised wound (oblique) in the area of 3-1/2"x1/2"x bone deep on the dorsal aspect of the left hand extending from second metacarpal bone to sixth metacarpal bone. D
7. Multiple incised wound in the area of 2"x1" x bone deep on the medial side of the left wrist joint cutting lower end of uina. E
8. Multiple incised wound (oblique) in the area of 3"x1" x muscle deep on the posterior aspect of left fore arm on the lower half tailing of towards medial side.
9. Incised wound (oblique) 1"x1/2" on the upper half of the fore arm on the dorsal surface tailing towards medial side. F
10. Incised wound (oblique) 1-1/4"x1/2" on the posterior aspect of the fore arm on the upper tailing of towards medial side.
11. Incised wound (oblique) 1/2"x1/4"x muscle deep on the latero posterior aspect of the left arm on the deltoid region tailing of anteriorly. G
12. Incised wound (oblique) 1/2"x1/4" muscle deep above the injury No. 11. H

- A 13. Incised wound (oblique) 1/2"x1/2" x muscle deep above the injury no. 12.
14. Incised wound in the area of (oblique) 3-1/2"x2-1/2" x muscle deep on the superior surface of the left shoulder joint tailing of towards lateral surface of the upper arm.
- B 15. Incised wound (oblique) 2" x 3/4" x bone deep on the left scapular region tailing of towards the dorsal spine.
- C 16. Incised wound (oblique) in the area of 3"x1/2"x muscle deep on the infraclavicular region of the left side tailing towards medial side.
17. Incised wound (oblique) in the area of 2"x1/4"x muscle deep above injury No. 16.
- D 18. Incised wound oblique a multiple in the area of 3"x2"x deep to trachea cutting thyroid and cricoid cartilage, trachea and larynx extending from below the right angle of mandible left supra clavicular region.
- E 19. Multiple incised wound on the dorsal aspect of the right hand cutting through and through and separating thumb index finger middle finger and half of the ring finger from the little and half right hand finger.
- F 20. Multiple incised wound on the left side of the neck deep to cervical vertebrae cutting all the muscle vessels and all the nerves of the left side of the neck and posterior side also. This wound extended upto right ear. Wound was in the area of 11"x5" maximum breadth of on the left side below left angle of the mandible.
- G 21. Incised wound (oblique) 1-1/2"x1/2" x bone deep on the left maxillary area tailing of towards the nose.
22. Incised wound (oblique) 1-1/2" x 1/2" x bone deep on the occipital region.
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PW4 further says that on opening the body, he found that the trachea was cut and there were fractures of the following bones:-

1. Terminal phalynx of the left index finger.
2. Second to fifth metacarpal bone of the left side.
- 3 . Lower end of the ulna of the left side.
4. Spine of the scapula of the left side.
5. Thyroid and crab cide.
6. Third and fourth metacarpal bone of the right hand.
7. Proximal phylanx of right ring finger.
8. Terminal phylanx of the right little finger.

PW4 also says that all the injuries, found on the person of Sohan Singh, were ante-mortem in nature and they were collectively and cumulatively sufficient in the ordinary course of nature to cause death. According to him, injuries nos. 18 & 20 even individually were sufficient to cause his death. There is nothing in the cross examination of the medical officer to doubt his expert opinion. By his evidence, it is amply proved that Sohan Singh had suffered number of incised wounds on the various parts of his body, and that he had died of the injuries suffered by him.

In our view it is sufficient, to mention the circumstances which unerringly point to the guilt of Accused Nos. 1, 2 and 4. The evidence of P.W.1 (Jaswinder Kaur), P.W.2 (Smt. Karnail Kaur) and P.W.3 (Dalbir Singh) establish that Appellant No. 1 was for some time a tenant of Mohan Singh. This evidence establishes that Mohan Singh was for some years prior to his death suffering from paralysis. It establishes that there was an illicit relationship between Appellant No. 1 and Appellant No. 4. This evidence along with the evidence of P.W.8 (Gyanendra Singh) also establish that Sohan Singh was objecting to the illicit relationship between Appellants No. 1 and 4. The evidence of PW1 and PW8 establishes that Appellant No.4 had also threatened Mrs. Karnail Kaur that she would see that she also became a widow. The evidence also establishes that Appellant No. 4 got all other family members to attend the Ramleela function and had tried to keep back the son of Sohan

A Singh in the house along with Sohan Singh, but could not succeed in keeping the son at home. This evidence also establishes that Appellant No. 4 had left the Ramleela function and that when she was asked by Karnail Kaur and others as to where she had gone, she stated that she was not feeling well and had merely sat in the open some distance away. Further the evidence of P.W.9 (Buta Singh) establishes that Accused Nos. 1, 2 and 3 were seen by him going towards the house of Sohan Singh at approximately 9 P.M. on the same night.

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C Apart from the above, the evidence of P.W.6 (Iqbal Singh), P.W.7 (Gurdarshan Singh) and P.W.15, S.H.O., i.e. the Investigating Officer, establishes that there had been recovery of a Darat and a blood stained pant at the instance of Appellant No. 1 and recovery of another Darat at the instance of Appellant No. 2.

D In our view, both the Courts below have correctly held that the above evidence coupled with the recoveries establish beyond a reasonable doubt that Appellant No. was (a) for sometime a tenant of Mohan Singh; (b) that there had been illicit relationship between him and Appellant No. 4 (c) that Appellants 2 and 3 used to visit the house of Mohan Singh when Appellant No. 7 was a tenant in that house. (d) that Sohan Singh had objected to the illicit relationship between Appellant Nos. 1 and 4 (e) that Appellant No. 4 wanted to sell off her portion of the house and Sohan Singh was objecting to it (f) that there was motive for the murder (g) that Appellant No. 4 had threatened Karnail Kaur that she would see that she too became a widow (h) that Appellant No. 4 got all family members to attend Ramleela programme, thereby leaving Sohan Singh alone in the house (i) that Appellant No. 4 tried to get son of Sohan Singh also to stay back but could not succeed in doing so (j) that Appellant No. 4 left the Ramleela programme (k) that Appellant Nos. 1, 2 and 3 were seen going towards the house of Sohan Singh, round about 9 p.m. on the night of the murder (l) that on returning home, from the Ramleela programme Appellant No. 4 bolted the door of her room which allowed entry from outside and (m) Appellant No. 4 calling the daughters of Sohan Singh not to tell anybody about enmity or to name anybody.

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H This has to be coupled with the fact that there had been recovery of a blood stained Darat and pant at the instance of Appellant No. 1 and a blood stained Darat at the instance of Appellant No. 2. There is no explanation from Appellant Nos. 1 and 2 why the blood stained Darats were so hidden by them or how they could help discover the same. All these circumstances put together

unerringly lead to the conclusion that Appellants 1, 2 & 4 had conspired to murder and murdered Sohan Singh between the night of 15th and 16th October, 1977.

It is not possible to accept the submission that the evidence of the witnesses could not be believed. Both the Courts below have set out detailed reasons why the evidence was trustworthy and believable. We fully endorse those findings.

It must also be noted that in her statement under Section 313 Cr.P.C. Appellant No. 4 denies that she had left the Ramleela function. The evidence of witnesses clearly establishes that she had left the Ramleela programme.

In the case of *Swapan Patra v. State of West Bengal*, [1999] 9 SCC 242, it has been held that it is a well settled principle that in a case of circumstantial evidence when the accused offers an explanation and that explanation is found to be untrue then the same offers an additional link in the chain of circumstances to complete the chain. The same principle is reiterated in the case of *State of Maharashtra v. Suresh*, [2000] 1 SCC 471. In this case it has been held that a false answer offered by the accused when his attention was drawn to a circumstance renders that circumstance capable of inculcating him. It is held that in such a situation like this a false answer can also be counted as providing "a missing link" for completing the chain.

The false answer given by Appellant No. 4 denying that she had left the Ramleela programme provides the additional link or a missing link in completing the chain of circumstances.

In our view it is established beyond a reasonable doubt that Accused nos. 1, 2 and 4 had entered into a conspiracy and had murdered Sohan Singh.

However, so far as Appellant No. 3, Uttam Chand is concerned, the only evidence against him is the evidence of P.W.9. PW 9 has deposed that he had seen him going, along with Appellant Nos. 1 and 2, towards the house of the deceased. In our view, this by itself is not sufficient to establish the guilt. The only other evidence against Appellant No. 3 is the evidence of P.W.5 (Darshan Singh). Both the Courts below have accepted the evidence of P.W.5. We have read the evidence of P.W.5. We have also seen the contradictory statement which he had made in his statement to the police. In our view, the contradic-

A tions are substantial. They lead to the conclusion that the evidence of P.W.5 cannot be relied upon. In the absence of this evidence there is no circumstance or proof which links Appellant No. 3 to the conspiracy or the murder. We, therefore, set aside the conviction of Appellant No. 3 Uttam Chand under Section 120-B read with Section 302 I.P.C.. He is acquitted of all the charges.

B He shall be forthwith set at liberty, unless required in some other case.

The Appeal against the conviction of Appellant No. 1 - Kuldeep Singh, Appellant no. 2 - Mahendra Singh and Appellant No. 4 - Surjeet Kaur stands dismissed. They are sentenced to undergo imprisonment of life. The bail bonds shall stand cancelled. We direct Appellants 1, 2 and 4 to surrender. On their

C failure to do so we direct the Sessions Judge, Sri Ganganagar to take immediate and necessary steps to put the Accused in jail for undergoing the sentences imposed on them.

S.V.K.

Appeal dismissed.