

STATE OF RAJASTHAN

A

v.

KHUMA

SEPTEMBER 8, 2004

[ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

B

Penal Code, 1860—Section 302—Murder—Conviction by Trial Court based on circumstantial evidence—Acquittal by High Court—On appeal, Held: Circumstances were not of such conclusive nature as to exclude every possibility except accused being guilty—Identifying eye witness had very weak eye sight, and could not have identified the accused by speech since no other witness deposed that deceased spoke anything when he was near accused—It was improbable that accused who was allegedly absconding would carry incriminating materials, go near the police and present himself for arrest—Recovery of blood stained articles on being pointed out by accused was immaterial as place of occurrence was easily accessible and seized articles were not established to be carrying human blood.

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Criminal trial—Evidence—Appreciation of—‘Last seen theory’ Applicability of—Discussed.

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Respondent was tried for offence punishable under section 302 of Indian Penal Code, 1860. Trial Court convicted respondent relying on three circumstances viz. that he was last seen with deceased, that he was found in possession of incriminating articles at time of his arrest, and that blood stained articles were recovered on being pointed out by him. Respondent was awarded death sentence, but High Court acquitted him. Hence the present appeals.

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Appellant-state contended that circumstances highlighted by prosecution were sufficient for finding the accused guilty.

Dismissing the appeals, the Court

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HELD : 1.1. The tests required to convict a person based on circumstantial evidence were not available in the present case. The circumstances were not conclusive in nature. The facts established are not consistent only with the hypothesis of guilt and inconsistent

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A with the innocence of guilt and it has no moral certainty to exclude the possibility of guilt by any person other than the accused. Thus, the High Court's well reasoned judgment does not warrant interference. [222-B, C]

B 1.2. Circumstances which attracted notice of the High Court were that accused was last seen in the company of the deceased. It was based on the evidence of P.Ws. 7, 8 and 30. PW 7 was of very weak eye-sight and even, according to her own statement, she could not identify a person even if he or she passes nearby. The hypothetical "last seen theory" was pressed into service by the Trial Court by observing that

C the accused and PW-7 being of the same village, she could have identified him from his speech. No witness stated that the accused had spoken even a word when he was allegedly seen near the deceased. PW-8 only stated that she has seen the deceased and PW-7 together. He did not speak about accused being present nearby. Evidence of PW-30 is no

D better. That being so, the last seen theory could not have been pressed into service. The other circumstance was the alleged recovery of the incriminating materials. The High Court found it absolutely improbable that the accused who was allegedly absconding, would carry the incriminating materials and go near the police and present himself so that he could be arrested with the incriminating materials. Third

E circumstance was the recovery of blood stained articles. This was also discarded by the High Court as the place of occurrence was easily accessible and seized articles were not established to be carrying human blood. [221-E, F, G, H; 222-A]

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 559-560 of 1999.

From the Judgment and Order dated 25.8.98 of the Rajasthan High Court in D.B. CrI. M.R. No. 1/98, D.B. CrI. J.A. No. 121/98 and D.B. CrI. A. No. 106 of 1998.

G Ms. Madhurima Tatia and Aruneshwar Gupta for the Appellant.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : Heard learned counsel for the Appellant-State.

H There is no appearance on behalf of the respondent-accused.

Respondent faced trial for alleged commission of offence punishable under Section 302 of the Indian Penal Code, 1860 (in short 'I.P.C.'). Though found guilty by the Trial Court, he was acquitted by the High Court. A

We have gone through the judgments of the High Court and the Trial Court. The Trial Court relied upon three circumstances to find the respondent guilty. They were : (1) he was last seen with the deceased persons. (2) he was found to be in possession of the 'Kadiyas' when he was arrested and (3) the recovery of blood stained articles on being pointed out by him. The accused was awarded death sentence. He filed one appeal from jail and one through counsel. A reference was made by the Trial Court for confirmation of the death sentence. The High Court analysed the evidence and found the accused innocent and directed his acquittal. B C

Learned counsel for the appellant-State submitted that the circumstances highlighted by the prosecution were sufficient for finding the accused guilty. The Trial Court had rightly found the accused guilty but the High Court reversed it by discarding the circumstances, as not sufficient for the purpose of holding the accused guilty. D

The law relating to circumstantial evidence has been laid down by this Court in several cases. It has been laid down that the circumstances should be of such conclusive nature as to exclude every other possibility except the accused being guilty of the charged offence. Circumstances which attracted notice of the High Court were that accused was last seen in the company of the deceased. It was based on the evidence of P.Ws. 7, 8 and 30. PW-7 was of very weak eye-sight and even, according to her own statement, she could not identify a person even if he or she passes nearby. The hypothetical "last seen theory" was pressed into service by the Trial Court by observing that the accused and PW-7 being of the same village, she could have identified him from his speech. No witness stated that the accused had spoken even a word when he was allegedly seen near the deceased. PW-8 only stated that she had seen the deceased and PW-7 together. He did not speak about accused being present nearby. PW-30's evidence is no better. That being go, the last seen theory could not have been pressed into service. The other circumstance was the alleged recovery of the incriminating materials. The High Court found it absolutely improbable that the accused who was allegedly absconding, would carry the incriminating materials and go near the police and present himself so that he could be arrested with the incriminating materials. Third circumstance was the recovery of blood stained articles. This was also E F G H

A discarded by the High Court as the place of occurrence was easily accessible and seized articles were not established to be carrying human blood.

B Above being the position, the tests required to convict a person based on circumstantial evidence were not available in the present case. The circumstances were not conclusive in nature. The facts established are not consistent only with the hypothesis of guilty and in-consistent with the innocence of guilty and it has no moral certainty to exclude the possibility of guilt by any person other than the accused.

C Above being the position, the High Court's well reasoned judgment does not warrant interference. The appeals are, accordingly, dismissed.

V.S.S.

Appeals dismissed.