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PRAKASH

v.

STATE OF RAJASTHAN

(Criminal Appeal No. 26 of 2008 etc.)

MARCH 22, 2013.

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[P. SATHASIVAM AND JAGDISH SINGH KHEHAR, JJ.]

PENAL CODE, 1860:

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ss. 302, 364 and 120-B - Minor boy kidnapped and murdered by three accused - Circumstantial evidence - Conviction and sentence of life imprisonment - Affirmed by High Court - Held: Cogent and acceptable evidence adduced by prosecution has established the deceased last seen with accused, recovery of incriminating articles pursuant to disclosure statements of accused, motive for the crime, i.e. enmity between complaint and accused and threat given by accused to finish the family of complainant - It leads to a conclusion that appellants/accused kidnapped and murdered the deceased - Conviction and sentence upheld - Evidence

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- Circumstantial evidence - Motive.

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The minor son of PW-1 left for school on 15.4.1998, as usual, but did not return. On 19.4.1998 his dead-body was found on a hillock. The investigation culminated in a charge sheet being filed against A-1, A-2 and A-3 for offences punishable u/ss 302, 364 and 120-B IPC. The trial court convicted the accused of the offences charged and sentenced each of them, inter alia, to imprisonment for life. The High Court affirmed the conviction and the sentences. Only A-2 and A-3 filed the appeals.

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Dismissing the appeals, the Court

HELD: 1.1 The prosecution case rests solely on the circumstantial evidence. In Sharad Birdhichand Sharda's

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case, this Court has laid down golden principles of standard of proof in a case of circumstantial evidence. The relevant and material circumstances heavily relied on by the prosecution are: (i) The deceased was last seen in the company of the appellants-accused; (ii) Recovery of incriminating articles in pursuance of the information given by the appellants; and (iii) motive. [para 4-6] [462-F; 463-A-B; 464-D-F]

Sharad Birdhichand Sarda vs. State of Maharashtra, 1985 (1) SCR 88 = (1984) 4 SCC 116 - relied on.

1.2 With regard to the last seen theory, prosecution examined three persons, namely, PW-3, PW-4 (both goldsmiths) and PW-10. PW-3 has stated that he was known to complainant, A-1 and A-2. He further stated that on the date of the incident at about 12 he had seen all the accused persons on a scooter and the son of the complainant sitting in between the three accused persons on the scooter. PW-4 has stated that on the date of the incident at about 12.15 he had seen the accused moving in a scooter along with the small boy. Further, PW-10 stated that on 15.4.2008 (the date of incident), he saw the accused along with a boy moving towards the Hillock. He stated that he was known to all the three accused persons and the child. He was cross-examined at length but nothing was elicited disproving his statement. The prosecution very much relied on PWs 3, 4 and 10 to prove the last seen theory and the courts below rightly accepted their version. This Court is satisfied that the prosecution has succeeded in establishing the circumstance of last seen theory. [para 11-12] [467-G-H; 468-A-E]

1.3 In the course of investigation and in pursuance of the information given by A-1, his pant and shirt stained with blood were recovered from his house in the

A presence of PWs 21 and 23. As per FSL report, the stains of blood on the pant and shirt are of human origin. [para 15] [469-C-D]

B 1.4 The analysis of the evidence, particularly the evidence o PW-1 and his wife PW-7, clearly shows that the prosecution has succeeded in establishing that the relations between the family of the complainant and the appellants-accused were hostile. In fact one of the accused had threatened the complainant and his wife of finishing their family. On the date her son went missing she had seen the three accused with a scooter near her house. This Court is satisfied that the prosecution has proved motive on the part of the appellants for committing the murder of the son of PWs 1 and 7. [para 13] [468-F-G]

D 1.5 In the facts and circumstances, this Court holds that the prosecution has established all the circumstances by cogent and acceptable evidence and it leads to a conclusion that it were the appellants/ accused who kidnapped and committed the murder of the deceased. The trial court has rightly accepted the prosecution case and awarded life sentence which was rightly affirmed by the High Court. [para 16] [469-D-E]

Case Law Reference:

F 1985 (1) SCR 88 relied on para 4

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 26 of 2008.

G From the Judgment and Order dated 02.03.2006 of the High Court of Rajasthan at Jodhpur in DB CrI. No. 154 of 2002.

Seeraj Bagga for the Appellant.

Shovan Mishra and Milind Kumar for the Respondent.

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The Judgment of the Court was delivered by

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P. SATHASIVAM, J. 1. These appeals are directed against the final judgment and order dated 02.03.2006 passed by the High Court of Judicature for Rajasthan at Jodhpur in D.B. Criminal Appeal No. 154 of 2002, whereby the High Court dismissed the appeal filed by the appellants herein and confirmed the order dated 31.01.2002 passed by the Additional Sessions Judge, Barmer, Rajasthan in Sessions Case No. 28 of 1998 by which the appellants herein were convicted for the offence punishable under Sections 302, 364 and 120-B of the Indian Penal Code (in short "IPC") and sentenced them to undergo imprisonment for life under Section 302 and to pay a fine of Rs.5000/- each.

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2. Brief facts:

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a) This is a case of kidnapping and murder of a 7 year old child out of enmity.

b) On 16.04.1998, Leeladhar (PW-1) lodged a report at Police Station, Barmer stating that on 15.04.1998 his son Kamlesh aged about 7 years left for the school in the morning but did not return home till evening at 7.00 p.m. In pursuance of the said report, the police made a search. On 19.04.1998, on an information by Hansraj (PW-8), Khet Singh (PW-9) and Bheemaram (PW-11) that a dead body of a boy was found lying on the hill of Sujeshwar in mutilated condition, the police along with one Leeladhar (PW-1) went to the spot. They found that some parts of the dead body were eaten by the animals. From the clothes, shoes, socks and school bag, PW-1 identified the dead body as that of his son.

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c) On 19.04.1998, another report of kidnapping and murder was lodged by Leeladhar (PW-1) suspecting the involvement of Ramesh S/o Dashrath, Prakash s/o Gautamchand, Ramesh @ Papiya S/o Bhanwar Lal, Pannu, Inder S/o Murlidhar, Ganesh and Pappu. After the investigation

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A and recovery, the police arrested Prakash, Ramesh @ Papia and Ramesh Khatri on 22.04.1998 and a charge sheet under Sections 302, 364 and 120-B of IPC was filed against the accused persons.

B d) By order dated 31.01.2002 in Sessions Case No.28 of 1998, the Additional Sessions Judge, Barmer convicted all the three accused persons for the offences punishable under Sections 302, 364 and 120-B of IPC and sentenced them under Section 302, to undergo life imprisonment with a fine of Rs.5000/- each, in default of payment of fine, further to undergo rigorous imprisonment for one year, under Section 364, RI for 7 years with a fine of Rs.2000 each, in default of payment of fine, further to undergo RI for 6 months and under Section 120-B to undergo 7 years RI with a fine of Rs.2000 each, in default of payment of fine, further to undergo 6 months RI.

D e) Challenging the order of conviction and sentence, the appellants filed appeal being D.B. Criminal Appeal No. 154 of 2002 before the High Court. By order dated 02.03.2006, the High Court dismissed the appeal filed by the appellants herein.

E f) Aggrieved by the said order, the appellants have preferred these appeals by way of special leave.

F 3. Heard Mr. Seeraj Bagga, learned Amicus Curiae for the appellants and Mr. Shovan Mishra, learned counsel for the respondent-State.

Discussion:

G 4. In the case on hand, the prosecution case rests solely on the basis of circumstantial evidence. It was contended by the learned amicus curiae for the appellants that in the absence of direct evidence, the slightest of a discrepancy, depicting the possibility of two views would exculpate the accused of guilt, on the basis of benefit of doubt. Before considering the materials placed by the prosecution and the defence, let us analyse the legal position as declared by this Court on the

standard of proof required for recording a conviction on the basis of circumstantial evidence. In a leading decision of this Court in *Sharad Birdhichand Sarda vs. State of Maharashtra*, (1984) 4 SCC 116, this Court elaborately considered the standard of proof required for recording a conviction on the basis of circumstantial evidence and laid down the golden principles of standard of proof required in a case sought to be established on the basis of circumstantial evidence which are as follows:

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra*, (1973) 2 SCC 793 where the observations were made: [SCC para 19, p. 807):

"Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) 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,

(3) the circumstances should be of a conclusive nature and tendency,

A (4) they should exclude every possible hypothesis except the one to be proved, and

B (5) 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.

C 154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

D 5. Though learned counsel for the appellants referred other decisions, since the above principles have been followed in the subsequent decisions, we feel that there is no need to deal with the same elaborately. With the above "five golden principles", let us consider the case of the prosecution and find out whether it satisfies all the tests.

E 6. The relevant and material circumstances heavily relied on by the prosecution are:

(i) The deceased was last seen in the company of the appellants-accused.

F (ii) Recovery of incriminating articles in pursuance of the information given by the appellants.

(iii) Motive.

G 7. Learned amicus curiae for the appellants as well as learned counsel for the respondent-State took us through the entire evidence, both oral and documentary. We scrutinized the same and also considered the respective submissions made by them. Before proceeding further, it is relevant to note that among these three accused, A-1 has not challenged his conviction and sentence. The present appeals are filed by A-2

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and A-3, wherein we refer the appellants which relates to A-2 and A-3 alone.

8. The first witness examined by the prosecution was Leeladhar (PW-1) - father of the deceased. In his deposition, PW-1 deposed that he is residing at Hathidhora, near Shiv Temple, Barmer. He had two sons and one daughter. His one son died prior to the incident. His eldest son was Kamlesh, thereafter his daughter Khushbu and then youngest son Narendra. He is doing the work of light fitting. He usually goes to work at 8.30-9.00 in the morning and returns back home at 8.00-8.30 in the night. Amongst his three children, Kamlesh used to go to School. He studied in Alesh Narayan Khatri School. On 15.04.1998, his son had gone to school at 11.30 a.m. At that time, son of Peetamber accompanied him. He further narrated that at 5.45 p.m., when he was working at the place of Cobblers, he received the news that his son Kamlesh has not come back from the school. On receipt of the said information, he went home where his wife informed that Kamlesh has not come back from the school. Thereafter, he went to the school and enquired from the school teacher, who told that Kamlesh had not come to school on that day. Thereafter, he enquired from all his relatives at Barmer and searched for him but could not locate him. Then he lodged a complaint with City Police Station stating that his child is not traceable. Five days thereafter at about 7 p.m. the police informed him that they found a dead body. Thereafter, he along with Premji Ghanshyamji went up to the hills. There is a mountain behind the Shivji temple. He was taken up to that mountain and Premji, Ghanshyamji and Moola had gone to the mountain top where the dead body was lying. On seeing the dead body, all the three came to C.I. Sahib and told that it was the dead body of his son Kamlesh. During night, it was not possible to lift the dead body, therefore, next morning he again went to that place and collected the dead body of his son tied in a cloth and brought the same to his home and buried it. He also stated that the right hand of the dead body was cut and the same was

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A missing. The head of the dead body was also missing. There was a white shirt with black spots, black pant, black belt and black shoes put on the dead body. There was also a school bag with the dead body, which was of his son Kamlesh. The clothes worn on by the dead body was also of his son.

B 9. He further narrated that on the second day after missing of his son, suspicion rose on Pappu who had gone to Delhi. He further explained that three months prior to the incident, Ramesh Khatri had entered into the house of Indramal Brahmin, whose house is adjacent to his house. In this regard he made
C a complaint to the parents of the girl as well as to the persons of the locality. The girl was of Indramal. Then Ramesh put the poison packet in the house of Indramal over the wall. Later on, the daughter of Indramal died by consuming that poison. Thereafter, Ramesh Khatri and Indramal Brahmin used to
D threaten him that they would take revenge of it and would abduct his son at the time of going to school. Three months after the said threat, they committed the murder of his son after abducting him when he was on the way to school. C.I. Sahib of police had taken away the clothes in his presence and also
E collected pant with black belt, a small blood smeared shirt with black spot design, two shoes and socks etc. He lodged a report (Ex.P-01) with police station on the same day stating that his child did not come back home from school. He also informed the police that the dead body of his son was found five days
F after his missing. After conducting inquest, the police handed over the dead body of his son.

10. The next witness relied on by the prosecution is PW-7, mother of the deceased. In her evidence, she deposed that she had three children. The name of the third child was
G Kamlesh. She narrated that about 14 months ago, she had sent Kamlesh to school. On the relevant date, when she was standing outside her house, the accused persons, namely, Pappu, Ramesh and Prakash present in the court were standing at the shop of Pappu. Amongst them, Pappu went to
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his house and brought scooter and went on the scooter in the same direction in which Kamlesh and Santosh had gone. Thereafter, she went inside her home. At the relevant time, her husband was doing the work of light fitting and he used to go to work spot at 9 'O Clock in the morning return home at 8 'O Clock in the evening. On the relevant date, when he returned home, she informed him that their son Kamlesh had not come back from the school. Thereafter, her husband PW-1 went in search of Kamlesh along with her brother Prem. She also narrated the incident about Ramesh that 12 months prior from the date of her missing of her son, at 11 O clock, she had seen the accused Ramesh entering the house of Indrammal which is close to her house. Ramesh had relationship with the daughter of Indrammal, namely, Pappuni. The said Ramesh used to enter their house even during night. She informed the same to Indrammal's wife. She also disclosed this fact to other neighbours. According to her, on coming to know of the said incident, Indrammal and his sister beat her for which she had lodged a complaint with the police due to which they threatened that they would take revenge of it. One month after the said incident, Pappuni died by consuming poison and, thereafter, the accused Ramesh used to quarrel with her and many times threatened her. She also reported the matter to the police. With the assistance of the local people, the matter was compromised with him. However, she complained that after compromise, her son Kamlesh was missing and subsequently murdered. She narrated the motive for killing of her son by the accused persons. She also asserted that Pappu, Ramesh and Prakash had made her son disappear and according to her, they did it on account of the death of Pappuni and thereafter, murdered her son.

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11. Apart from the evidence of PWs 1 and 7 with regard to the last seen theory, prosecution examined three persons, namely, Moolchand (PW-3), Gautam Chand (PW-4) both are goldsmiths and Biglaram (PW-10). In his evidence, PW-3 has stated that he was known to Leeladhar, Ramesh and Prakash.

A He further stated that on the date of the incident, in the
 B afternoon at about 12 he had seen all the accused persons
 moving towards Panchpati Circle Road on a scooter. He had
 also seen the son of Leeladhar sitting in between the three
 accused persons on the scooter. Gautam Chand (PW-4), who
 C is also a goldsmith, in his evidence has stated that on the date
 of the incident at about 12.15 he had seen the accused moving
 in a scooter along with the small boy. Though both PWs 3 and
 4 did not identify the accused persons in the identification
 parade, in view of their assertion, we are satisfied that the
 prosecution has succeeded in establishing the circumstance
 of last seen theory.

12. The next witness relied on by the prosecution to
 support the last seen theory is Bijlaram (PW-10). In his
 evidence, he stated that on 15.04.1998, he had gone to
 D Sujesar Hillock for collecting firewood. While he was returning
 on Gelu Road, he saw the accused along with a boy moving
 towards the Hillock. The boy was wearing black pant and white
 shirt and black shoes. He further narrated that all the three
 accused and the child moved towards the Hillock. He identified
 E all the accused in the Court. He also admitted that he was
 known to all the three accused persons and the child. He was
 cross-examined at length but nothing was elicited disproving
 his statement relied on by the prosecution. The prosecution very
 much relied on by PWs 3, 4 and 10 to prove the last seen
 F theory and the courts below rightly accepted their version.

13. The analysis of the above evidence discussed so far
 clearly show that the prosecution has succeeded in
 establishing that the relations between the family of Leeladhar
 and the appellants-accused were hostile. In fact, Ramesh Khatri,
 G one of the accused had threatened Leeladhar and his wife of
 finishing their family. We are satisfied that the prosecution has
 proved motive on the part of the appellants for committing the
 murder of Kamlesh, son of PWs 1 and 7.

H 14. It is true that counsel appearing for the appellant

pointed out the discrepancy in the evidence of PWs 11, 12, 16 and 21 about the condition of the dead body. It is relevant to point out that these prosecution witnesses are villagers and further the body was recovered only on 20.04.1998 whereas the incident occurred on 15.04.1998. In fact, PWs 9 and 11 cattle grazers have deposed that the dead body was partly eaten by dog. In view of the same, merely because the prosecution witnesses were not consistent in describing the dead body of 14 year old boy, the entire prosecution case cannot be disbelieved.

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15. In the course of investigation and in pursuance of the information given by A-1, pant and shirt stained with blood of Ramesh were recovered from his house in the presence of PWs 21 and 23. The pant and shirt were seized and sealed in a packet marked as S-8. It is further seen that as per FSL report, Exh.P-86, the presence of blood on the pant and shirt are of human origin.

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16. In the light of the above discussion, we hold that the prosecution has established all the circumstances by cogent and acceptable evidence and if we consider all the circumstances it leads to a conclusion that it was the appellants/accused who kidnapped and committed the murder of the deceased Kamlesh. We are satisfied that the trial Court has rightly accepted the prosecution case and awarded life sentence which was affirmed by the High Court. We fully concur with the said conclusion. Consequently, the appeals fail and the same are dismissed.

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R.P.

Appeals Dismissed.