A VARUN CHAUDHARY

v.

STATE OF RAJASTHAN

(Criminal Appeal No. 705 of 2008)

OCTOBER 29, 2010

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[DR. MUKUNDAKAM SHARMA AND ANIL R. DAVE, JJ.]

PENAL CODE, 1860:

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s.302 – Conviction under, by courts below, based on circumstantial evidence –Held: In the case of circumstantial evidence, there must be a complete chain of evidence which would lead to a conclusion that the accused was the only person, who could have committed the offence and nobody D *else – In the instant case, there is nothing to show that the accused had committed the offence – Judgments of courts below set aside and the accused acquitted – Evidence – Circumstantial evidence – Test Identification parade.*

E *EVIDENCE:*

Identification of vehicle – A motor cycle recovered as the vehicle used in the offence – Held: Unless tyre marks are lifted from the place of occurrence and upon its comparison with the tyre marks of the motor cycle recovered, are found to F *be the same, it cannot be said that the motor cycle recovered was used in the offence – In the instant case, there is no such evidence – Penal Code, 1860 – s. 302.*

The father of P.W. 11 was found dead in the night of G **22.8.2000 at a place near his residence. In the course of investigation, the appellants (A-1 and A-2) and A-3 were arrested. A knife from A-1 and blood-stained clothes of A-3 were recovered. The trial court, in view of recovery of the knife from A-1, the incised wounds found on the**

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body of the deceased, and the evidence of PW-3 and PW-6, held A-1 guilty and convicted him u/s 302 IPC. A-1 filed an appeal against his conviction; whereas the State appealed against acquittal of A-2 and A-3. The High Court dismissed the appeal of A-1, allowed that of the State and convicted and sentenced A-2 and A-3 also u/s 302 read with s. 34 IPC. Aggrieved, A-1 and A-2 filed the appeals.

Allowing the appeals, the Court

HELD: 1.1 It was a case of circumstantial evidence as nobody had seen the commission of the offence. It is a settled legal position that in the case of circumstantial evidence, there must be a complete chain of evidence which would lead to a conclusion that the accused was the only person, who could have committed the offence and none else. In the instant case, there is nothing to show that the accused had committed the offence and on the basis of the material on record, it would be dangerous to convict the accused. [para 3 and 24] [302-C; 309-D-E]

G. Parashwanath vs. State of Karnataka, 2010 (10) SCR 377 = (2010) 8 SCC 593; *C. Chenga Reddy v. State of A.P.* 1996 (3) Suppl. SCR 479 = (1996) 10 SCC 193 - relied on.

1.2 The Home Guard, PW-3, who was on duty near the place of the incident on the date of occurrence, stated that he had seen three persons on a motor cycle around midnight. However, he stated that he could not identify the persons on the motor cycle. Similarly, the Police Constable, PW-6, had stated that around 12 midnight on 22.8.2000, he had seen three persons on a motor cycle and he whistled so as to stop the said motor cyclist but it did not stop. It is pertinent to note that these two witnesses did not say that they had seen any of the

A accused. They did not even see the faces of the three persons, who were on the motor cycle. In these set of circumstances, having identification parade would be futile and, therefore, there was no test identification parade. Thus, nobody had seen any of the accused. [para B 5, 6 and 20] [302-F-H; 303-A; 307-E-F]

1.3 So far as identification of the motor cycle is concerned, PW-6 merely stated that he saw one digit of registration number of the motor cycle, which was '9'. It would be dangerous to believe that the motor cycle C recovered, which also had digit '9' in its number, was used in the offence. On such scanty evidence it cannot be said that the accused had been identified or the motor cycle which had been recovered was the one which was used by the accused at the time of the offence. [para 20] D [307-F-H]

1.4 The so-called recovery of knife and blood stained clothes would not help the prosecution. Recovery of the motor cycle cannot be said to be proved because PW-9 E admitted the fact that he had signed the recovery panchnama in the police station; whereas another witness, P.W.25, could not establish recovery of the knife as he was not present while the knife was recovered. Moreover, the knife was never produced before the court F nor was it shown to the accused and, therefore, the said evidence could not have been relied upon by the courts below for passing the order of conviction. [para 21] [308-A-C]

Abdulwahab Abdulmajid Baloch vs. State of Gujarat, G 2009 (4) SCR 956 = 2009 (11) SCC 625; and *Mohd. Abdul Hafeez v. State of Andhra Pradesh,* AIR 1983 SC 367 – referred to.

1.5 So as to establish the presence of the motor cycle at the place of the offence, the prosecution must show H that the tyre marks which were found at the place of the

offence were that of the motor cycle used by the accused. There is no evidence and not even a reference to the fact that any one from Forensic Science Laboratory or from the police personnel had lifted marks of the motor cycle tyre from the place of the offence so that the same could be compared with the tyre marks of the motor cycle alleged to have been used in the offence. Therefore, it cannot be said that the motor cycle recovered was used in the offence. It is pertinent to note that marks of the motor cycle tyre which were received by the FSL were not in a sealed condition. These facts clearly denote that the marks of the motor cycle tyre could not have been relied upon either by the trial court or by the High Court for establishing that the motor cycle having particular tyre marks was used in the alleged offence. [para 22] [308-C-G]

1.6 It is also pertinent to note that the prosecution could not establish the purpose for which the deceased was murdered by the accused. Of course, it is not necessary that in every case the motive of the accused should be proved. However, in the instant case, where there is no eye witness nor any scientific evidence to connect the accused with the offence, the prosecution ought to have established that there was some motive behind commission of the offence of murder. It was the case of the prosecution that the deceased, an Income Tax Officer, had raided the premises belonging to some scrap dealers and, therefore, he had received some threats from such scrap dealers. It is an admitted fact that the accused are not scrap dealers nor is there anything to show that they had been engaged by scrap dealers to commit the offence. Thus, there was no motive behind the commission of the offence so far as the accused are concerned. [para 23] [308-G-H; 309-A-C]

Surinder Pal Jain v. Delhi Administration 1993 Crl.L.J. 1871 = 1993 SCC (Crl.) 1096 and *Tarseem Kumar vs. Delhi*

A *Administration* **1994 (2) Suppl. SCR 740 =1994 Sup. (3) SCC 367 – referred to.**

1.7 The conclusion reached by the courts below is not correct. On the basis of such scanty evidence, which is practically no evidence at all in the eyes of law, the B **courts below could not have passed the order of conviction. The orders convicting the accused-appellants in both the appeals are not justified and are, therefore, set aside. [para 26] [310-D-E]**

C **Case Law Reference:**

2009 (4) SCR 956	**referred to**	**para 12**
AIR 1983 SC 367	**referred to**	**para 14**
1993 Crl.L.J. 1871	**referred to**	**para 15**
D **1994 (2) Suppl. SCR 740**	**referred to**	**para 15**
2010 (10) SCR 377	**relied on**	**para 24**
1996 (3) Suppl. SCR 479	**relied on**	**para 25**

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 705 of 2008.

From the Judgment & Order dated 14.11.2007 of the High Court of Judicature for Rajasthan at Jaipur in D.B. Criminal Appeal No. 935 of 2005.

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WITH

Crl. Appeal No. 561 of 2008.

Sanjay R. Hegde, Ramesh Kr. Mishra, Krutin Joshi, G Ramesh S. Jadhav, Vikrant Yadav, J.S. Sodhi, Sawaran S. Saran for the Appellant.

Dr. Manish Singhvi, AAG, Devanshu Kumar Devesh, Milind Kumar for the Respondent.

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The Judgment of the Court was delivered by

ANIL R. DAVE, J. 1. Being aggrieved by the Judgment delivered in Criminal Appeal No.935 of 2005 and in Criminal Appeal No. 798 of 2006 by the Rajasthan High Court, Criminal Appeal No.705/2008 and Criminal Appeal No.561 of 2008 have been filed respectively. The appellants in both the appeals have been convicted under the provisions of Section 302 of the Indian Penal Code to suffer imprisonment for life and a fine of Rs.1,000/-, in default 3 months' simple imprisonment. As the appellants in both the afore-stated appeals were involved in the same offence, both the appeals were heard together and they are disposed of by this common judgment.

2. Facts giving rise to the appeals referred to above in a nutshell are as under:-

(a) Bhawani Singh (deceased) was an Income Tax Officer who was posted at Ajmer and was a member of a search party, function of which was to conduct raids on certain persons' premises to find out whether the concerned persons had evaded payment of income-tax.

(b) In the evening of 22nd August, 2000, the deceased had left his residence for going to Ajmer Club with an intimation to his son Ajit Singh(P.W.11), that he would return by 10 p.m. As Bhawani Singh did not return till midnight, Ajit Singh (PW-11) had enquired from Vasudev (P.W.5), as to why the deceased had not returned. Vasudev (P.W.5), had thereupon informed Ajit Singh (P.W.11), that he had given lift to the deceased from Ajmer Club and had dropped him near Ricoh circle, which was near his residence. In the circumstances, Ajit Singh (P.W.11) had gone to make inquiry near the residence of Vasudev (P.W. 5), but in the meantime it was informed that body of the deceased was lying near Ricoh circle which was not quite far from the residence of the deceased. Incised wound on left side of chin and stab wounds were found on his body and it was found that the deceased died as somebody had attacked him.

A In the circumstances, First Information Report (Ext.P.15) was lodged around 2 a.m. and thereafter necessary investigation was made by the Investigation Officer (P.W. 26). In the course of investigation, Varun Chaudhary- Accused No.1, Sudhir @ Bunty –Accused no.2 and Himmat Singh @ Bobby –accused B no.3 were arrested.

3. It was the case of the prosecution that the afore-stated accused had committed the offence of murder by inflicting serious injuries upon the deceased. It was a case of circumstantial evidence as nobody had seen the commission C of the offence. It was, however, recorded in the evidence that immediately after arrest of accused no.1 on 1st September, 2000, and arrest of accused no.2, a knife had been recovered from accused no.1 whereas blood-stained clothes of Himmat Singh, accused no.3 had been recovered.

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4. The trial court had considered the facts and on the basis of evidence recorded, accused no.1 was found to be guilty of having committed an offence under Section 302 of the IPC and was sentenced to undergo life imprisonment and pay a fine of E Rs. 1,000/-, in default three months simple imprisonment whereas accused Nos. 2 and 3 were acquitted.

5. The Trial Court had considered the fact that a knife had been recovered from accused no.1 and in view of the fact that incised wounds were found on the body of the deceased, it F came to the conclusion that accused No.1 was guilty of the offence under the provisions of Section 302 of the IPC. The trial court considered the evidence of Pawan Kumar, Home Guard (P.W.3), who was on duty near the Ricoh Circle. He had seen three persons riding on a motor cycle around midnight. G However, he could not identify the persons who were on the motor cycle.

6. Pooran Singh (P.W.6) , a police constable, had also seen around same time three persons going on a motor cycle H and as there were three persons on a motor cycle, he had given

an indication to stop them by blowing his whistle but the motorcyclist did not stop and he could not record the full number of the motor cycle but he noticed that one of the digits was '9' in the number of the motor cycle.

7. Post Mortem of the body of the deceased revealed that the following injuries had been inflicted on the deceased:

(i) Incised wound of 3 x 0.5 cm muscle deep on left side of chin.

(ii) Stab wound 2.5 x 0.5 cm on the lower part of the chest on the left side.

8. The said injuries were caused with a sharp edged weapon and in the opinion of the doctor, the said injuries were sufficient to cause death of the deceased. (Post Mortem Report – Ext. 21).

9. The trial court was of the view that the chain of circumstances had been completed and on the said basis, the order of conviction was passed.

10. Being aggrieved by the order of conviction, an appeal had been filed by accused No.1, whereas against the order of acquittal, so far as accused Nos. 2 and 3 are concerned, state had filed an appeal in the High Court. The appeals had been heard together and ultimately, after considering the submissions made on behalf of the learned advocates and upon perusal of the evidence, the High Court confirmed the order of conviction of accused No.1. So far as accused Nos. 2 and 3 are concerned, the High Court came to the conclusion that they were also guilty of the offence for which they were charged and, therefore, the appeal filed by the State had been allowed and the findings of acquittal rendered by the Trial Court in favour of accused Nos. 2 and 3 had been set aside and the said accused were also convicted under the provisions of Section 302 read with Section 34 of the Indian Penal Code to suffer imprisonment for life and a fine of Rs. 1,000/-, in default to

A suffer simple imprisonment for three months.

Being aggrieved by the aforesaid order passed by the High Court, the aforesaid two appeals have been filed by accused Nos.1 and 2.

B 11. Criminal Appeal No.705 of 2008, which pertains to the conviction of A-1 - Varun Chaudhary, was argued by Mr. U.U. Lalit, learned senior counsel and Criminal Appeal No.561 of 2008 was argued by learned counsel Mr. Sanjay R. Hegde. The learned counsel vehemently submitted that the order of C conviction is bad in law for the reason that there was no eye-witness and there was no complete chain of events, which would lead to the only conclusion that the accused were guilty of the offence referred to hereinabove and there was no possibility of their being innocent. In a case of circumstantial D evidence, it must be established beyond doubt that except the accused, nobody else could have committed the offence and the chain of events must be complete in such a manner that one can come to the conclusion that the accused was the only person who could have committed the offence and none else. E To substantiate their case, they submitted that there was no eye witness and only evidence which a police constable (P.W.6) had given was that he had seen three persons going on a motor cycle. Though he could not see the full number of the motor cycle, he could notice no.'9' as one of the digits in the number F of the motor cycle. The said witness specifically stated that he could not recognize any of the accused. There was no identification parade so as to identify as to whether the three accused had been noticed by the Home Guard (P.W.3) and the Police Constable (P.W.6), who had seen three persons on the G motor cycle.

12. Thereafter, they submitted that recovery of knife and blood stained clothes could not have been relied upon by the trial court or by the High Court. The said recovery had not been duly proved for the reason that witness Madanlal (PW.25), who H had made an effort to prove the recovery had admitted in his

cross examination that he had remained outside the premises from which the knife and the blood stained clothes (Ext. P-7) had been recovered. It was specifically stated by the P.W.25 that when A-1 - Varun Chaudhary had taken the police party and the witnesses to show the place where the knife had been hidden, he was asked to remain outside the premises and the police and accused no.1 had gone in the premises and returned with a knife and blood stained clothes. Another witness, Bhanwar Singh, PW.9, who was supposed to prove recovery of the motor cycle had admitted that recovery Panchnama was signed by him in the police station. In view of the said fact, the trial court should not have relied upon the said witnesses. They further submitted that the knife which was alleged to have been recovered was never shown to the accused or was never produced in the court. According to them, as law laid down by this Court in *Abdulwahab Abdulmajid Baloch vs. State of Gujarat,* 2009 (11) SCC 625, the weapon recovered ought to have been produced before the court and should have been shown to the accused but admittedly, neither the weapon was produced before the Court nor it was shown to the accused at any point of time.

13. So far as the evidence, which pertains to the tyre marks of the motor cycle, which was alleged to have been used in the offence is concerned, they submitted that there was no evidence that the marks of the tyre had been compared with the marks which were found at the place of the offence. In fact there was nothing to show that tyre marks at the place of the offence and tyre marks found by FSL Report were same.

14. They further submitted that even at the time when the accused were questioned by the court under the provisions of Section 313 of the Code of Criminal Procedure, the weapon and the blood stained clothes had not been shown to the accused. They relied upon the judgment delivered by this Court in *Mohd. Abdul Hafeez v. State of Andhra Pradesh,* AIR 1983 SC 367, to substantiate their case that the articles recovered

must be shown to the accused during the trial or at the time when his statement under Section 313 of Cr.P.C. is recorded.

15. They further submitted that no motive was attributed against the accused. They fairly admitted that though motive is not important in each and every case, according to the learned counsel, even if one relies upon the statement made by the son of the deceased, the deceased might have some enmity with persons dealing in scrap as the deceased had raided premises of some scrap dealers and due to the said fact, some threats had also been received by the deceased from persons dealing in scrap. The accused were neither dealers in scrap nor there was any evidence that at the behest of the scrap dealers, the accused had murdered the deceased. According to the learned counsel, in absence of any motive, in a case which is based only on circumstantial evidence, it would not be just and proper to convict the accused, especially when there was no material to come to a conclusion that the accused had committed the offence. So as to substantiate the above submission, they relied on the Judgments delivered by this Court in *Surinder Pal Jain v. Delhi Administration* 1993 Crl.L.J. 1871 = 1993 SCC (Crl.) 1096 and *Tarseem Kumar vs. Delhi Administration* 1994 Sup.(3) SCC 367, respectively.

16. For the aforestated reasons, they submitted that the order convicting the accused could not have been passed and, therefore, the appeals should be allowed and the accused should be acquitted.

17. On the other hand, the learned public prosecutor made an effort to support the judgments delivered by the High Court whereby the accused have been convicted. He submitted that the evidence recorded by the trial court was properly appreciated by the High Court and looking to the reasons given by the High Court, interference with the Order of the High Court was not called for.

18. We have heard the learned counsel and have

considered the submissions referred to hereinabove and relevant record. A

19. Upon going through the judgments relied upon by the counsel appearing for the appellants and looking to the evidence adduced before the trial court, we are in agreement with the submissions made by the learned counsel appearing for the appellants. B

20. Home Guard, Pawan Kumar (PW-3), had seen three persons on a motor cycle. However, he stated that he could not identify the persons on the motor cycle. Similarly, police C constable Pooran Singh (PW- 6) had stated that around 12 midnight on 22nd August, 2000, he had seen two persons going on motor cycle and one of them was the deceased. After sometime he had seen another motor cycle which was Suzuki, but he could not read complete number of the motor cycle, but D he could read one of the digits, namely No. '9'. He whistled so as to stop the said motor cyclist but the motor cyclist did not stop. Thereafter, he had seen another motor cycle, being Hero Honda which had hit a dog near Santoshi Mata Temple. It is pertinent to note that the afore-stated two witnesses did not say E that they had seen any of the accused. Possibly even they did not see faces of the three persons, who were on the motor cycle. Possibly, in these set of circumstances, having identification parade would be futile and, therefore, there was no test identification parade. Thus, nobody had seen any of the F accused. So far as identification of the motor cycle is concerned, PW-6 merely stated that he saw one digit of registration number of the motor cycle, which was '9'. In our opinion, on the basis of one digit of the registered number, it would be dangerous to believe that the motor cycle recovered, G which also had digit '9' in its number, was used in the offence. In our opinion, on such a scanty evidence it cannot be said that the accused had been identified or the motor cycle which had been recovered was the one which was used by the accused at the time of the offence.

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A 21. In our opinion, so called recovery of knife and blood stained clothes would not help the prosecution. Recovery of the motor cycle can not be said to be proved because Bhanwar Singh, PW-9 admitted the fact that he had signed the recovery panchnama in the police station whereas another witness, B Madan Lal, P.W.25 could not establish recovery of the knife as he was not present at the time and place from which the knife had been recovered. Moreover, the knife was never produced before the court and was never shown to the accused and, therefore, in our opinion, the said evidence could not have been C relied upon by the courts below for passing the order of conviction.

22. It is pertinent to note that there is no evidence or even there is no reference to the fact that any one from Forensic Science Laboratory or from the police personnel had lifted D marks of the motor cycle tyre from the place of the offence so that the same can be compared with the tyre marks of the motor cycle alleged to have been used in the offence. Unless tyre marks are lifted from the place of the offence and upon comparison with the tyre marks of the motor cycle recovered E are found to be the same, it cannot be said that the motor cycle recovered was used in the offence. So as to establish the presence of the motor cycle at the place of the offence, the prosecution must show that the tyre marks which were found at the place of the offence were that of the motor cycle used F by the accused. It is also pertinent to note that marks of the motor cycle tyre which were received by the FSL were not in a sealed condition. Aforestated facts clearly denote that the marks of the motor cycle tyre could not have been relied upon either by the Trial Court or by the High Court for establishing G that the motor cycle having particular tyre marks was used in the alleged offence.

23. It is also pertinent to note that the prosecution could not establish the purpose for which the deceased was murdered by the accused. Of course, it is not necessary that in every case H

motive of the accused should be proved. However, in the instant case, where there is no eye witness or where there is no scientific evidence to connect the accused with the offence, in our opinion, the prosecution ought to have established that there was some motive behind commission of the offence of murder of the deceased. It was the case of the prosecution that the deceased, an Income Tax Officer had raided the premises belonging to some scrap dealers and, therefore, he had received some threats from such scrap dealers. It is an admitted fact that the accused are not scrap dealers or there is nothing to show that the accused had been engaged by scrap dealers to commit the offence. Thus, there was no motive behind the commission of the offence so far as the accused are concerned.

24. It is a settled legal position that in case of circumstantial evidence, there must be a complete chain of evidence which would lead to a conclusion that the accused was the only person, who could have committed the offence and none else. In the instant case, there is nothing to show that the accused had committed the offence and on the basis of the aforestated material, in our opinion, it would be dangerous to convict the accused. In the case of *G. Parashwanath vs. State of Karnataka,* (2010)8 SCC 593, para 24, it has been stated that "in deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved..... 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

A must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court".

B 25. In another case of *C. Chenga Reddy v. State of A.P.*, reported in (1996) 10 SCC 193, this Court has held that "In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be C complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."

D 26. Due to the above stated facts, in our opinion, the conclusion reached by the courts below is not correct. On the basis of such scanty evidence, which is practically no evidence at all in the eyes of law, the courts below could not have passed the order of conviction. For the reasons stated hereinabove, we E are of the view that the orders convicting the accused-appellants in both the appeals are not justified and, therefore, the appeals are allowed. The impugned orders are quashed and set aside. The accused-appellants shall be released immediately, if not required in any other offence.

R.P. Appeals allowed.