

PREM THAKUR

v.

STATE OF PUNJAB

November 17, 1982

[Y.V. CHANDRACHUD, C.J. AND O. CHINNAPPA REDDY, J.]

Evidence—Circumstantial evidence—How evaluated—Circumstances relied upon as establishing involvement of accused must clinch the issue of guilt.

The prosecution case against the appellant was that he, along with five workers migrated from Nepal and that at the time of occurrence all of them were working in Pujnab as agricultural labourers. Out of a large sum of money earned by them as wages they spent a part and the balance was left with one of the five deceased. On the evening prior to the day of occurrence the appellant was found by the employer cooking food for himself and his companions but when he went to his field the following morning he noticed the five dead bodies of the co-workers were smouldering in the pit of his tube well. Post-mortem examination of the dead bodies revealed several ante-mortem injuries, most of which were lacerated wounds. From that day onwards the appellant was found missing.

The trial Court, accepting the circumstantial evidence, convicted and sentenced the appellant to death. The High Court affirmed the conviction on three grounds : (i) since the money was not found on the person of the deceased with whom it was kept, the motive was theft ; (ii) the appellant was last seen in the company of all the deceased and (iii) the appellant absconded thereafter to conceal his presence.

Allowing the appeal,

HELD: It is impossible to believe that the crime was committed in the manner alleged by the prosecution or that the appellant could possibly have committed it in the circumstances alleged. [826 C-D]

In a case which depends wholly upon circumstantial evidence, the circumstances must be of such a nature as to be capable of supporting the exclusive hypothesis that the accused is guilty of the crime of which he is charged. That is to say, the circumstances relied upon as establishing the involvement of the accused in the crime must clinch the issue of guilt. Very often, circumstances which establish the commission of an offence in the abstract are identified as circumstances which prove that the prisoner before the Court is guilty of a crime imputed to him. An *a priori* suspicion that the accused has committed

the crime transforms itself into a facile belief that it is he who has committed the crime. Human mind plays that trick on proof of the commission of a crime by resisting the frustrating feeling that no one can be identified as the author of that crime. [826 G-H]

In the instant case the circumstances attendant upon the incident militate entirely against the conclusion that the five murders were committed by the appellant. The fact that the assailant robbed the victims of the money cannot necessarily lead to the conclusion that it was the appellant who robbed them of their money. That the appellant and his co-workers were paid a fairly large sum of money was known to others apart from the appellant and his companions. No part of the money was traced to the appellant and therefore he could not be connected with the crime. [825 C-E]

Assuming that the deceased were administered liquor, medical evidence did not show that the liquor consumed would have induced such stupor verging upon hypnosis. It is also incredible that the five persons done to death by a single individual were under such a heavy spell of sleep that none of them woke up when the other or others were attacked. [826 D-F]

The fact that the appellant was last seen in the company of the deceased and that he was not present at the place from which the dead bodies were recovered the next morning are equivocal circumstances on which it is hazardous to base the conviction. [827 D]

The circumstance that the appellant absconded from the place of occurrence does not lead to the conclusion that he had made himself scarce in order to conceal his presence. If he was found by the team of investigating officers in Nepal going about openly, it is difficult to hold that he had absconded to Nepal. [825 G-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 187 of 1982.

Appeal by special leave from the judgment and order dated 7.10.81 of the Punjab and Haryana High Court in Criminal No. 466-DB/81.

N.K. Agarwala Amicus Curiae for the Appellant.

Ashwani Kumar and *D.D. Sharma* for the Respondent.

The Judgment of the Court was delivered by

CHANDRACHUD, C.J. The appellant, Prem Thakur, was convicted by the learned Sessions Judge, Rupnagar, under sections

A 302 and 201 of the Indian Penal Code and was sentenced to death for the former offence. The conviction and sentence having been upheld by the High Court of Punjab and Haryana, the appellant has filed this appeal by special leave.

B The charge against the appellant is that he committed the murder of five co-labourers on the night between the 8th and 9th November, 1980 in the village of Rolu Majra. The case of the prosecution is that the appellant came to India from Nepal in search of work along with his companion workers and a few others. They worked with one Mohinder Singh for about 14 days for which they were paid a sum of Rs. 2,900. The appellant and his co-workers spent a sum of Rs. 800 therefrom and the balance of Rs. 2100 was kept with Rama Nand who was one of the five co-workers of the appellant. The appellant and his companions thereafter went to the village of Rolu Majra where they worked in the field of Ujjagar Singh. On the evening of the day following Diwali, Ujjagar Singh saw the accused cooking meals for himself and his five companions. When Ujjagar Singh went to the field next morning at 8.00 a.m., he noticed that smoke was coming out of the pit of his tubewell. When he peeped into the well he saw five dead bodies smouldering. Ujjagar Singh lodged information of the offence with A.S.I. Jarnail Singh. The post-mortem examination on the five dead bodies revealed several ante-mortem injuries, most of which were in the nature of lacerated wounds.

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F Since Ujagar Singh had seen the appellant in the company of five deceased persons and the appellant was not to be seen anywhere, the suspicion of the police naturally fell upon him. The case of the prosecution is that on December 1, 1980, the appellant was arrested while he was working near the tubewell of Sohan Singh.

G There is no direct evidence to connect the appellant with the five murders. In support of the charges levelled against him, the prosecution relied upon circumstantial evidence which consisted of : (i) motive for the offence ; (ii) the fact that the appellant was seen last in the company of the deceased on the evening preceding the discovery of the dead bodies ; (iii) the fact that the accused had absconded ; (iv) the extra-judicial confession of the appellant ; (v) the recovery of a 'Tangli' in pursuance of the statement made by the appellant ; (vi) the recovery of the dead bodies from the pit near the tubewell of Ujjagar Singh ; and (vii) a

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false statement made by the appellant to Ram Ishar, the son of one of the deceased; Rama Nand, that the latter would return to the village after Puran Mashi. A

The learned Sessions Judge accepted some of these circumstances as proved and convicted the appellant for the five murders on the basis of those circumstances. The High Court has relied upon three circumstances, namely, (i) motive, (ii) the fact that the appellant was seen last in the company of the deceased and (iii) the conduct of the appellant after the occurrence. B

As regards motive, the High Court observes in its judgment that since no money was found on the dead bodies, theft was obviously the motive for the crime. That may be so, but we are unable to understand how the fact that theft was the motive for the crime can connect the appellant with the crime. It is quite likely that whosoever committed the five murders robbed the victims of the money which they had on their person, but that cannot necessarily lead to the conclusion that it is the appellant who robbed the deceased of their money. The fact that a fairly large sum was paid to the appellant and his co-workers by way of their wages would be known to others apart from the appellant and his companions. No part of the money was traced to the appellant and therefore, we are unable to accept that the accused can be connected with the crime merely because the motive for the crime was theft. C

The circumstances that the appellant was last seen in the company of the deceased can be accepted as proved but no inference can arise therefrom that the appellant had committed their murder. The appellant was working with the deceased and others and there was nothing unnatural in the appellant being in the company of his companions on the evening before the murders were committed. D

In so far as the allegation that the accused had absconded is concerned, it is not easy to rely upon that circumstance as leading to the conclusion that he had made himself scarce in order to conceal his presence. The story of the prosecution that he was arrested in Punjab itself has been disbelieved by the High Court according to which, the appellant was brought from Nepal by the team of Investigating Officers. The appellant belongs to Nepal and if he was found in Nepal going about openly, it is difficult to accept the charge that he had absconded to Nepal. E

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A The circumstance that the appellant told Ram Ishar that the latter's father Rama Nand would return to the village after Puran Mashi cannot clinch the issue unless one starts with the presumption that the appellant had committed the crime. But then one cannot put the cart before the horse. At the highest, what the appellant said to Ram Ishar may raise a cloud of suspicion but nothing more.

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C We have considered carefully the entire evidence in the case and the various facts attendant upon the five murders. It seems to us quite impossible to believe that the crime was committed in the manner alleged by the prosecution or that the appellant could possibly have committed it in the circumstances alleged. It is said that the five deceased persons were administered liquor, that after drinking liquor they lapsed into a deep spell of sleep, that while they were asleep they were killed, that they were carried one by one to the bottom of a 35 ft. tubewell and that thereafter, they were set on fire. The post-mortem notes and the medical evidence show that the liquor consumed by the deceased could not have produced unconsciousness. How it could induce such stupor verging upon hypnosis is more than one can reasonably imagine. The prosecution case requires for its success the incredible assumption that the five persons done to death by a single individual were under such a heavy spell of sleep that none of them woke up when the others were attacked. When the first of the five victims was attacked, he would have shrieked or shouted and thereby the others would be aroused from their sleep. They were young, able-bodied labourers. It puts quite some strain on our credulity to accept that a single person could have finished off his five companions in the fiction-like manner alleged by the prosecution.

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G The High Court could not but be aware of the principle that in a case which depends wholly upon circumstantial evidence, the circumstances must be of such a nature as to be capable of supporting the exclusive hypothesis that the accused is guilty of the crime of which he is charged. That is to say, the circumstances relied upon as establishing the involvement of the accused in the crime must clinch the issue of guilt. Very often, circumstances which establish the commission of an offence in the abstract are identified as circumstances which prove that the prisoner before the court is guilty of the crime imputed to him. An *a priori* suspicion that the accused has committed the crime transforms itself into a facile belief

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that it is he who has committed the crime. Human mind plays that trick on proof of the commission of a crime by resisting the frustrating feeling that no one can be identified as the author of that crime. In the case before us, there is no doubt that five persons were murdered. Unquestionably, every effort had to be made to find out who committed those murders. But the duty is not done by holding someone or the other guilty somehow or other. In the instant case, the circumstances attendant upon the incident militate entirely against the conclusion that the five murders were committed by the appellant. The very pattern of the crime belies that conclusion. We are unable to share the High Court's view that the evidence showing "that the appellant was present with the deceased persons on the evening of November 8, 1980 and he was then missing from there on the next morning proves the offences alleged against the appellant beyond any shadow of doubt". In support of its conclusion that the appellant had committed the murders, the High Court has even pressed into service the circumstances that the appellant was not present "at the place from which the dead bodies were recovered" the next morning. These are equivocal circumstances on which it is hazardous to base the conviction.

In the result we allow the appeal, set aside the conviction of the appellant on all the counts and the sentences imposed upon him including the sentence of death and acquit him of all the charges. He shall be released forthwith.

P.B.R.

Appeal allowed.