

ARVIND @ PAPPU

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v

STATE (DELHI ADMINISTRATION)

MAY 10, 1999

[K.T. THOMAS AND D.P. MOHAPATRA, JJ.]

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Indian Penal Code, 1860—Section 302—Murder—Circumstantial evidence—Standard of proof required—Held, the chain of evidence furnished by the circumstances relied in support of the conviction must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused—Prosecution bringing on record the different circumstances pointing to the involvement of the appellant in the killing of the deceased viz. the enmity of the deceased with the accused as a result of their past litigation; accused giving the lure of a job to the deceased in order to persuade the deceased to accompany him; accused taking the deceased to his factory and being last seen with the deceased; the conduct of the accused in absconding and not being in the factory on the morning when the body of the deceased was found—Held, the circumstances taken cumulatively point to the only hypothesis of guilt of the appellant and are within the parameters of the standard of proof required to convict a person on circumstantial evidence—There is no material on record pointing towards the innocence of the accused—Sentence awarded to the accused for the offence of murder by the Sessions Court as confirmed by the High Court—Calls for no interference.

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The appellant killed the deceased, his co-villager as a result of an old enmity between their respective families. The deceased at the material time was employed in a factory where another co-villager PW 8 used to work. A day before the date of occurrence, the appellant paid a visit to the house of PW 8 where the deceased was also putting up. The appellant persuaded the deceased to come with him promising him a job as driver. Before leaving, they had seen off PW 9, nephew of the deceased at the bus stand. The appellant took the deceased in the business premises of a firm in which the appellant was having business interest. He introduced the deceased to the employees working on the premises as his friend. The deceased was under the influence of liquor. With a view to make arrangement for putting him to rest, the appellant asked the other employees to stop working and leave the room. A temporary bed was made on the cutter's table lying in the room

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A and the deceased was made to sleep on it. On being asked by the appellant, the workers left the room leaving the appellant and the deceased together in the room. On the next morning, when PW 2 went to the room he found the deceased lying in a pool of blood with a cut injury on his neck, a pair of blood stained scissors and a tape stained with blood lying near the body and blood stains at different places in the room. The appellant was found missing from the premises. The appellant remained untraced for about one and a half years after the incident when he surrendered after the case was committed to the Sessions court and warrant was issued for his arrest.

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C The prosecution brought on record the different circumstances leading to the death of the deceased, through the workers engaged in the business premises where the deceased was killed. The Additional Sessions judge after detailed scrutiny of the evidence found the appellant guilty of the offence of murder punishable under Section 302 of the Indian Penal Code and sentenced him. On appeal, the High Court confirmed the sentence. Hence the present appeal.

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Dismissing the appeal, the Court

E HELD : 1. The assessment of the evidence by the Courts below does not suffer from any serious infirmity. The circumstances relied upon by the prosecution have been established by the evidence of the workers in the factory where the deceased was killed and the evidence of nephew of the deceased PW 9. On the facts and circumstances of the case the presence of these witnesses at the place of occurrence at the relevant time was natural. They had no axe to grind against the appellant. There is no reason why they should give false evidence against him. From their evidence the circumstances pointing to the involvement of the appellant in the killing of the deceased have definitely been established. Further the appellant was untraced from the day following the incident for about one and half years. The circumstances taken cumulatively point to the only hypothesis of guilt of the appellant. There is no material on record pointing towards his innocence. On such materials the Courts below rightly held that the prosecution had established the case against the appellant. [1223-E-H; 1224-A]

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H 2. The standard of proof required to convict a person of circumstantial evidence is now well established by a series of decisions of this Court. According to that standard the circumstances relied upon in support of the conviction must be fully established and the chain of evidence furnished by

those circumstances must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. The circumstances from which the conclusion of the guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused and should not be capable of being explained by any other hypothesis, except the guilt of the accused and when all the circumstances commulatively taken together should lead to the only irresistible conclusion that the accused alone is the perpetrator of the crime.

[1223-B-D]

Sharad Birdhichand Sarda v. State of Maharashtra, [1984] 4 SCC 116; *Balwinder Singh v. State of Punjab*, AIR (1987) SC 350; *Dhananjay Chatterjee alias Dhana v. State of West Bengal*, [1994] 2 SCC 220; *Laxman Naik v. State of Orissa*, [1994] 3 SCC 381 and *Brijlala Pd. Sinha v. State of Bihar*, [1998] 5 SSC 699, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 230 of 1991.

From the Judgment and Order dated 28.9.90 of the Delhi High Court in Crl. A.No. 149 of 1987.

U.R. Lalit, Ms. Shailly Bhasin and R.K. Maheshwari with him for the Appellant.

Ms. K. Amareshwari, (Ms. Bina Gupta) and D.S. Mehra with him for the Respondent.

The judgment of the Court was delivered by

MOHAPATRA, J. This appeal filed by the accused is directed against the judgment and order passed by the learned Additional Sessions Judge, Delhi in Sessions Case No. 1/86 which was confirmed by the Delhi High Court in Criminal Appeal No. 149/8. Both the Courts found him guilty of the offence of murder punishable under section 302 IPC and sentenced him thereunder.

The lure of a job proved fatal for Ajaib Singh the deceased. The appellant Arvind @ Pappu and the deceased Ajaib Singh being co-villagers were known to each other. In the year 1978 there had been some friction between the two families and on the basis of a report lodged by father of the appellant a criminal case was initiated against the deceased and his brother.

A The case, however, ended in an order of acquittal passed in the year 1982.

The deceased was employed in a factory at Sahibabad where another co-villager Kamlesh Kumar PW 8 used to work. On 31st March 1985 the appellant had paid a visit to the house of Kamlesh Kumar where Ajaib Singh was also putting up. The appellant persuaded the deceased to come with him to Delhi promising to get him (deceased) a job as a driver. Before leaving for Delhi they had seen off Vijay Ranjan PW-9, nephew of the deceased, at the bus stand.

The next phase of the occurrence took place on the business premises of M/s Rajesh Enterprises at Sultanpur Mazra, Delhi, which is a firm engaged in tailoring business. At about 9.00 p.m. on 31st March, 1985 the appellant accompanied by the deceased arrived at that place. The appellant introduced the deceased to the employees working on the premises as his friend. The deceased was under the influence of liquor; therefore, with a view to make arrangement for putting him to rest the appellant asked the other employees to stop working and leave the room. A temporary bed was made on the cutter's table lying in the room and the deceased was made to sleep on it. On being asked by the appellant the workers left the room leaving the appellant and the deceased together in the room. On the next morning when Anil Kumar PW-2 went to the room he found the deceased lying in a pool of blood with a cut injury on his neck, a pair of blood stained scissors and a tape stained with blood lying near the body and blood stains at different places in the room. The appellant was found missing from the premises. It may be stated here that the appellant remained untraced for about one and half years after the incident, from 1.4.85 till October, 1986, when he surrendered after the case was committed to the Session Court and warrant was issued for his arrest.

The police was informed. Statement of Anil Kumar (Exh.PW2/A) was recorded. A formal FIR (Exh.PW-12/C) was registered at about 10.10 a.m. The dead body was identified to be of Ajaib Singh by his brother Jagdish Chander PW-7. It was sent for post-mortem examination which was conducted by Dr. Bharat Singh PW-5. The Doctor found one irregular lacerated wound in the front middle area 1"x1/4"x1-1/2" which had cut the common carotid artery and jugular vein on the left side. As stated by the doctor the injury was sufficient in the ordinary course of nature to cause death and could be caused by the scissors (Ex.P-1) found besmeared with blood at the place of occurrence. The doctor further opined that the probable time of death was around 2 a.m. on

1st April 1985.

The prosecution brought on record the different circumstances leading to the death of the deceased, through the workers engaged in the tailoring factory namely Jaspal PW-1, Anil Kumar PW-2, Suresh PW-3, Daulat Ram PW-4, Ram Prasad PW-6 and Gaya Prasad PW-'18 who were present on the premises of M/s Rajesh Enterprises on the fateful night. All of them consistently supported the prosecution case the gist of which has been discussed in the foregoing paragraphs. In their testimony the witnesses have also stated that during the night they had not heard any cry of the deceased nor any sound of scuffle from the room in which the appellant and the deceased were sleeping. It may be noted here that there is no material on record to show that there was any mark of scuffle or struggle in the room where the body of the deceased was found lying.

When the circumstances appearing from the evidence of the witnesses were put to him the appellant, while admitting that he had gone to the house of Kamlesh Kumar and had met the deceased, denied his involvement in any incident leading to the death of the later. From the cross-examination of the prosecution witnesses it appears that initially the appellant took a false stand that he had no concern with the tailoring business at Sultanpur Majra but subsequently changed his stand and admitted that he had invested money in the business. It is relevant to note that there are materials on record to show that he had opened a bank account with Traders Bank in the name of M/s Rajesh Enterprises and had invested money for purchase of machinery and other materials used for tailoring business.

The learned Addl. Sessions Judge in a detailed scrutiny of the evidence found the following circumstances to have been duly established by the prosecution :

- (a) Enmity of the deceased with the accused as a result of their past litigation.
- (b) Accused went to Sahibabad and took the deceased with him to Delhi to get him a job.
- (c) The accused went with the deceased to his factory at Rajesh Enterprises, village Sultanpur Majra in a drunken state and he was last seen with the deceased.
- (d) The conduct of the accused in absconding thereafter and not

A being in the factory on the morning when the body of the deceased was found; and

(e) On the next day he went to Maharban Singh despite a sleepless night preceding.

B The learned Trial Judge has given cogent and convincing reasons for placing reliance on the testimony of the prosecution witnesses. He has decided the case on the touch-stone of the well recognised principles for proving the prosecution case based entirely on circumstantial evidence. He has also taken into account the fact that no other person either from amongst the prosecution witnesses or anybody else associated with the tailoring business had any

C motive to kill the deceased. Placing reliance on the ratio of *Balwinder Singh v. State of Punjab*, AIR (1987) SC 350 the trial judge held that the case fell within the thirdly clause of section 300 of the IPC and, therefore, the accused must be held guilty of the offence punishable under section 302 IPC. He ordered accordingly.

D On appeal the High Court on assessing the material evidence laid by the prosecution summed up the circumstances, found against the appellant in the following words :

E “The prosecution evidence is clear, cogent and convincing. The appellant was having interest in the business being run at the place of occurrence. He had been visiting the factory. On March, 31, 1985, the appellant met Ajaib Singh in the presence of Vijay Ranjan (PW-9) and asked him to come to Delhi. He assured him a job in Delhi. Both of them were last seen by Vijay Ranjan waiting for a bus. Thereafter

F the same day at about 9.00 p.m. the appellant brought Ajaib Singh to his factory. Ajaib Singh was drunk. The appellant made him lie on the cutter’s table and asked all the workers to stop work and to go to sleep. All the workers left leaving behind only the appellant and the deceased in that room. That room had a shutter. Next morning at about 8 a.m. when Anil Kumar (PW-2) opened the shutter he found

G Ajaib Singh lying dead in a pool of blood and the appellant missing. The murder had been committed at about 2 a.m. The appellant surrendered in court after about one year and six months. This is the chain of events.”

H The High Court agreed with the conclusion drawn by the trial Court that the prosecution has successfully proved the case of murder punishable

under Section 302 IPC against the appellant and accordingly dismissed the appeal. A

The standard of proof required to convict a person on circumstantial evidence is now well established by a series of decisions of this Court. According to that standard the circumstances relied upon in support of the conviction must be fully established and the chain of evidence furnished by those circumstances must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. The circumstances from which the conclusion of the guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused and should not be capable of being explained by any other hypothesis, except the guilt of the accused and when all the circumstances cumulatively taken together should lead to the only irresistible conclusion that the accused alone is the perpetrator of the crime. To quote a few decisions of this Court in this regard reference may be made to the case of *Sharad Birdhichand Sarda v. State of Maharashtra*, [1984] 4 SCC 116; *Balwinder Singh v. State of Punjab*, AIR (1987) SC 350; *Dhananjay Chatterjee alias Dhana, v. State of West Bengal*, [1994] 2 SCC 220; *Laxman Naik v. State of Orissa*, [1994] 3 SCC 381 and *Brijlala Pd. Sinha v. State of Bihar*, [1998] 5 SCC 699. B C D

Now we come to the question whether the evidence in the case on hand satisfies the principles and tests laid down in the aforementioned decisions. We have carefully perused the judgments of the Sessions Court and the High Court confirming the same. We have also perused the evidence of the witnesses, to satisfy ourselves that the assessment of the evidence by the Courts below does not suffer from any serious infirmity. As noted earlier the circumstances relied upon by the prosecution have been established by the evidence of the workers in the factory including Jaspal PW-1, Anil Kumar PW-2, Suresh PW-3, Daulat Ram PW-4, Ram Prasad PW-6, Gaya Prasad PW-18 and the nephew of the deceased Vijay Ranjan PW-9. On the facts and circumstances of the case the presence of these witnesses at the place of occurrence at the relevant time was natural. They had no axe to grind against the appellant. There is no reason why they should give false evidence against him. From their evidence the circumstances pointing to the involvement of the appellant in the killing of the deceased have definitely been established. Further the appellant was untraced from the day following the incident for about one and half years. The circumstances taken cumulatively point, to the E F G H

A only hypothesis of guilt of the appellant. There is no material on record pointing toward's his innocence. On such materials the Courts below rightly held that the prosecution had established the case against the appellant. The judgment of the Sessions Judge as confirmed by the High Court warrants no interference. Accordingly the appeal is dismissed.

B M.P.

Appeal dismissed.