STATE OF U.P. A

v.

BABU RAM

APRIL 11, 2000

[K.T. THOMAS AND Y.K. SABHARWAL, JJ.] B

Evidence Act, 1872—Section 8—Motive—Evidentiary value—Failure to prove motive—Consequences of—Whether prosecution case would fail for its failure to prove the motive—Held, No—Whether inability to prove motive would weaken prosecution to any perceptible limit—Held, No. C

Indian Penal Code, 1860—Section 302—Triple Murder—Case of patricide-cum-matricide-cum-fraticide—Circumstantial evidence—Conviction based on—Sustainability upheld—Unmerited acquittal passed by High Court set aside in appeal—Sentence of death altered to imprisonment for life.

D

The respondent was prosecuted for committing triple murder of his father, mother and brother. The trial Court convicted him for the offence u/S. 302 Indian Penal Code, imposing the extreme penalty of death. However, on appeal, respondent was acquitted by a Division Bench of the High Court. This appeal by special leave had been filed by the State challenging the order of acquittal. E

The Prosecution case based on circumstantial evidence was that the respondent, the eldest son in the family was pestering his parents to part with a portion of their landed property in his favour but as that demand was not acceded to, he killed his parents and younger brother; that at the time of the incident, respondent and the three murdered were in the house and all the deceased were found absent in the house; that the respondent told that the three deceased persons had gone to attend the festival in a temple and later, he told his brothers and sisters that they were killed by him in association with 4 other persons and dead bodies were buried in a pit dug on the verandah and the respondent pointed out the spot wherefrom the dead bodies disinterred and when the Investigating Officer questioned the respondent he told about concealment of the spades and a bloodstained cloth which were recovered. F G

The Sessions Judge convicted the accused relying upon these circum- H

A stances but the Division Bench of the High Court acquitted him holding that the prosecution had failed to prove strong motive; that the site plan prepared by the Investigating Officer did not give particulars or details of place from where three dead bodies were disinterred and other material details were also missing and that the conduct of the Investigating Officer in not interrogating the accused as soon as he saw him created grave doubt B regarding the genuineness of extra judicial confession as well as the statement leading to the recovery of the article and the prosecution case. Hence this appeal by the State. The question raised for consideration was whether the High Court was justified in acquitting the accused by not placing any reliance on the prosecution evidence.

C

Allowing the appeal, this Court

HELD : 1.1. Motive is a relevant factor in all criminal cases whether based on the testimony of eye witness or on circumstantial evidence. No doubt, if the prosecution proves the existence of a motive it would be well D and good for it, particularly in a case depending on circumstantial evidence, for, such motive could then be counted as one of the circumstances. However, it is generally a difficult area for any prosecution to bring on record what was in the mind of the accused. Even if the Investigating Officer would have succeeded in knowing it, through interrogations that E cannot be put in evidence by them due to ban imposed by law. [1207-C-E]

Nathuni Yadav v. *State of Bihar,* [1998] 9 SCC 238 and *State of H.P.* v. *Jeet Singh,* [1999] 4 SCC 370, relied on.

1.2. The present is not a case of complete dearth of motive. Respond- F ent himself said about the motive and PW-6 confirmed it. Such a motive may appear to some persons as inadequate for liquidating one's own parents. But any rancour burgeoning in the mind of an offender can foment wicked thoughts which may even flame up to flash point. So it could not be held that the motive factor had weakened the prosecution G case. [1208-B-C]

1.3. The reasons of the Division Bench of the High Court for dropping down a sturdy circumstance of disinternment of the three dead bodies at the instance of the respondent were flimsy and tenuous. It is not possible to understand the rational of the reasoning that if the investigating officer did H not instruct the person who drew up the site plan to note down certain

details that would render the testimony of material witnesses unreliable. [1208-G-H; 1209-A]

1.4. Regarding the circumstance that the respondent had first tried to mislead the people by saying that the three deceased persons had gone to attend the temple festival, the Division Bench commented that as the said version was not believed by others as a probable version the respondent too would not have chosen to give such a version to the witnesses. An offender who attempts to mislead others need not necessarily arm with a ready fool proof explanation to any cross question from his listeners. Quite often such offenders might try to advance explanations which strike them momentarily when they are compelled to explain incongruous aspects. If the explanation offered by the offender appeared incredible to the listeners that is hardly a ground to conclude that the offender would not have given such explanation. [1209-B-D]

1.5. An Investigating Officer may have his own reasons for not interrogating the accused as soon as he saw him. Court cannot overlook the realities that investigating officer, who is otherwise a police officer, has to attend to umpteen engagements and even in the investigation of the particular case itself he may have to observe a number of formalities. [1210-A-B]

1.6. No witness is entitled to get better treatment merely because he was examined as a prosecution witness or even as a court witness. It is judicial scrutiny which is warranted in respect of the depositions of all witnesses for which different yardsticks cannot be prescribed as for those different categories of witnesses. [1211-A-B]

Dudh Nath Pandey v. *State of U.P.*, [1981] 2 SCC 166, relied on.

1.7. The trial court rightly appreciated the circumstances presented by the prosecution through the evidence and found them reliable and on the basis of such circumstances reached the conclusion that the respondent was responsible for the murder of his parents and brother. Hence the conviction passed by the trial court is restored by setting aside the unmerited acquittal by the High Court. However, the extreme penalty chosen by the trial court is not imposed. Hence the respondent is sentenced to imprisonment for life under Section 302 of the IPC. [1211-E-F]

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 279-281 of 1995.

From the Judgment and Order dated 23.4.94 of the Allahabad High Court in Crl.A. Nos. 498, 506/93 and Ref. No. 3 of 1993.

B Prashant Kumar, A.S. Pundir and Y.P. Singh for the Appellant.

Ms. N.P. Midha and Bharat Sangal for the Respondent.

The Judgment of the Court was delivered by

THOMAS, J. Whoever was the assailant it was a hatrick for him when C three persons of the same house were slaughtered in one operation. If respondent was the assailant it was a case of patricide-cum-matricide-cum-fratricide. In the realm of homicidal crimes such episodes rarely happen. So the task is heavy for the prosecution to carry conviction of the truth of the allegation against the respondent. That perhaps may be the factor which influenced the High Court in giving benefit of doubt to this respondent.

D

Babu Ram - the respondent was found by the trial court to have committed such a triple murder of his father, mother and brother and buried the corpses inside their own courtyard. The Sessions Judge chose the extreme penalty for him for the offence under Section 302 IPC. But he got a clean chit from the High Court of Allahabad when a Division Bench exonerated E him of the offence. The State of U.P. now challenges the order of acquittal in this appeal filed by special leave.

The victims of the triple slaughter were Devi Dayal and his wife Champa Devi and their son Sitaram. The ill-fated parents Devi Dayal and Champa Devi had 5 children - 3 sons and 2 daughters. Respondent Babu Ram F was the eldest among the children and Sitaram was the second son. The third among the sons - Radheshyam - was not living with the parents during the tragic night. Two daughters of the parents were Tarawati and Chakrawati. Both of them were married away and they were living with their husbands in their respective nuptial homes. Devi Dayal and Champa Devi were living G in their house at Kuri Lawa, Barabanki. Babu Ram and his brother Sitaram were also staying with them in the same house. The third son Radheyshyam used to live in the house of his sister Chakrawati.

Prosecution case is that Babu Ram was pestering his parents to part with a portion of their landed property in his favour but that demand was not H acceded to. He, therefore, turned against his parents and the wicked thought

of eliminating them burgeoned in his mind in due course of time. He nurtured it and it was on 25.11.1990 that he could accomplish his plan. According to the prosecution case the respondent did the operation extermination with the help of 4 other companions and killed not only his parents but the other remaining brother who was staying with them. He buried the dead bodies in a pit on the verandah of his house and covered the pit with red sand and straws, to make it appear differently.

The further case of the prosecution is that respondent held out to all others concerned that his parents had gone to a temple with his brother Sitaram on the previous day and that they did not return yet. PW-1 Ram Saharey (brother of Devi Dayal) expressed doubt as to the said version of the respondent. The same doubt was expressed by respondent's sisters and brothers-in-law also. They therefore confronted the respondent with some inconvenient queries and then the respondent had burst out and made a shrift of the whole episode to his listeners. When he was asked to spot out the place where the corpses were interred he moved to the spot and disinterred all the three dead bodies.

Devi Dayal's brother (Ram Saharey) went to Mohammedpur Police Station and lodged a complaint at 11.30 A.M. and on its basis an FIR was made. PW-5 Police Officer reached the house without much delay and during interrogation of the respondent he knew about the concealment of two spades of different lengths. They were recovered by the police.

The case was sought to be built up only on the basis of circumstantial evidence. Prosecution presented the following circumstances against the respondent: (1) Appellant and three murdered persons were the only inmates of the house on the crucial night. All the deceased were found absent in the house on 25.11.1990. (2) Appellant told the neighbours as well as his kith and kin that all the 3 deceased persons had gone to attend the festival in a particular temple. (3) Later, when he was cornered, he told his siblings that the 3 deceased were killed by him in association with 4 other persons and the dead bodies were buried in a pit dug on the verandah. (4) Respondent pointed out the spot wherefrom the dead bodies were disinterred. (5) When PW-5 questioned the respondent he told him about concealment of the spades and a bloodstained cloth.

If the prosecution was able to establish the above circumstances with reliable evidence there is no scope for contending that the cumulative effect of those circumstances would be insufficient to point to the appellant as the

culprit. So the task of the prosecution was to establish such circumstances which are enumerated above. No doubt Pw-1 - Ram Saharey who lodged the FIR turned hostile and so was PW-2 Ram Sumiran who was cited to speak to an extra judicial confession. So their evidence became unavailable to the prosecution. However, PW-6 (Tarawati - sister of the respondent) and PW-7 (brother-in- law of the respondent) stuck to their version, the substance of which is the following:

On hearing the news about the missing of all the three deceased from the house the two witnesses reached the house along with the other remaining brother Radheyshyam (who was living with PW-6 Tarawati then). When respondent Babu Ram was confronted with the query as to how the deceased could have gone to attend the festival of the temple when they had never gone to such a place earlier, he could not withstand such cross questions and he wept bitterly, and thereafter he owned that the three were murdered by him. Respondent then took those persons to the spot where the dead bodies were buried and disinterred those bodies after removing mud and bundles of rice crops heaped thereon.

Close to the above evidence is the testimony of PW-5 the Station House Officer of the local police. What has come out materially in his evidence is that the accused told the police that he had concealed one Kudal (a small spade) and Fawara (a still larger spade) and another vestment, and those articles were recovered by the police on being lead to the spot where they were concealed.

The Sessions Judge found that the said items of evidence were reliable but the Division Bench of the High Court expressed reservation in acting on the evidence of the same persons. The premier reason advanced by the Division Bench against the prosecution was the failure of the prosecution to make out a strong motive. Learned judges have stated thus on that aspect:

> "Existence of motive may not be very much material in a case which is based on direct evidence as it may be argued that motive is hidden in the heart and mind of the accused, and it would be difficult for the prosecution in every case to extract the said motive and to bring the same on record. However, in a case which is based on circumstantial evidence, motive plays an important role and absence of motive would go a long way to weaken the prosecution case..... In

this case the accused has been charged for committing murders of his parents and younger brother. The only whisper made in this case on behalf of the prosecution was that the accused wanted his father to give his share in the property but his father had told him that he would do so after marriage of his daughters and the younger son. There is, however, no convincing evidence on this point to hold that the accused wanted partition to which his father did not agree."

We are unable to concur with the legal proposition adumbrated in the impugned judgment that motive may not be very much material in cases depending on direct evidence whereas motive is material only when the case depends upon circumstantial evidence. There is no legal warrant for making such a hiatus in criminal cases as for the motive for committing the crime. Motive is a relevant factor in all criminal cases whether based on the testimony of eye witnesses or circumstantial evidence. The question in this regard is whether a prosecution must fail because it failed to prove the motive or even whether inability to prove motive would weaken the prosecution to any perceptible limit. No doubt, if the prosecution proves the existence of a motive it would be well and good for it, particularly in a case depending on circumstantial evidence, for, such motive could then be counted as one of the circumstances. However, it cannot be forgotten that it is generally a difficult area for any prosecution to bring on record what was in the mind of the respondent. Even if the Investigating Officer would have succeeded in knowing it through interrogations that cannot be put in evidence by them due to the ban imposed by law.

In this context we would reiterate what this court has said about the value of motive evidence and the consequences of prosecution failing to prove it, in *Nathuni Yadav* v. *State of Bihar*, [1998] 9 SCC 238 and *State of Himachal Pradesh* v. *Jeet Singh*, [1999] 4 SCC 370. Following passage can be quoted from the latter decision:

"No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be

A construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended."

The present is not a case of complete dearth of motive. Respondent B himself said about the motive and PW-6 confirmed it. Such a motive may appear to some persons as inadequate for liquidating once own parents. But any rancour burgeoning in the mind of an offender can foment wicked thoughts which may even flame up to flash point. So we are unable to concur with the High Court's view that the motive factor has weakened the prosecu- C tion case.

The Division Bench of the High Court hesitated to place reliance on the circumstance relating to the disinternment of three dead bodies from the verandah for which learned judges advanced the following reasons: First is that in the site plan prepared by the Investigating Officer he did not give D particulars or details of that place. Second is that the Investigating Officer did not mention about the amount of "mud and morang" noticed near the pit. The third is he did not take into custody the wooden planks or the mud from the said place. The last is he did not indicate in the site plan that blood was found at that place nor did he take the bloodstained earth therefrom. After highlight- E ing the above lapses of the Investigating Officer the Division Bench concluded thus:

> "These omissions would, therefore, in our opinion clearly negative the theory set up by the prosecution that three dead bodies were buried in the verandah of the house of the accused. By examining F the statements of these two witnesses, namely, Tarawati and Shital Prasad, in the light of these circumstances, we would not be able to persuade ourselves to accept the statements of these two witnesses thought they are the sister and brother-in-law of the accused."

The above reasons of the Division Bench for dropping down such a sturdy G circumstance (disintenment of the three dead bodies at the instance of the respondent) are flimsy and tenuous. It is apparent that the Division Bench had strained to ferret out some fragile grounds for sidelining such a highly incriminating circumstance. The very approach of the High Court in this regard does not merit approval. It is not possible to understand the rationale H of the reasoning that if an Investigating Officer did not instruct the person

who drew up the site plan to note down certain details that would render the testimony of material witnesses unreliable. A

Regarding the circumstance that respondent had first tried to mislead the people by saying that the three deceased persons had gone to attend the temple festival, the Division Bench commented that as the said version was not believed by others as a probable version the respondent too would not have chosen to give such a version to the witnesses. B

An offender who attempts to mislead others need not necessarily arm with a ready foolproof explanation to any cross-question from his listeners. Quite often such offenders might try to advance explanations which strike them momentarily when they are compelled to explain incongruous aspects. If the explanation offered by the offender appeared incredible to the listeners that is hardly a ground to conclude that the offender would not have given such explanation. That apart, in this case it is pertinent to point out that even when the respondent was examined by the trial court under Section 313 of the Code of Criminal Procedure he has stated that the three deceased had gone to the temple to participate in the festival. If that was his own stand even at the last stage, what is the need for the High Court to say that respondent would not have stated so to PW-6 and PW-7? C D

The High Court has chosen to sidestep another incriminating circumstance which is based on Section 27 of the Evidence Act. On the strength of the statement made by the respondent two spades and a bloodstained "sadari" were recovered by the Investigating Officer. The reason advanced by the Division Bench is the following: E

> "The Investigating Officer had come to know that the accused had allegedly made extra judicial confession but for the reasons best known to him he did not think it proper to interrogate the accused, who was present throughout on the spot. The accused was interrogated after midnight i.e. in the night of 25/26.11.90 and on the basis of this statement the Investigating Officer had recovered the articles, mentioned above. This conduct of the Investigating Officer creates grave doubt regarding the genuineness of extra judicial confession as well as the statement leading to the recovery of the articles." F G

We are unable to appreciate the said reasoning for dispelling the evidence which otherwise is a circumstance positively inculpating the re- H

A spondent. An Investigating Officer may have his own reasons for not interrogating the accused as soon as he saw him. Court cannot overlook the realities that Investigating Officer, who is otherwise a police officer, has to attend to umpteen engagements and even in the investigation of the particular case itself he may have to observe a number of formalities, even it is assumed
B that he had only one case to investigate at that time.

The High Court in reaching a conclusion in favour of the accused took into account the post-mortem findings regarding the condition of the stomach of the three deceased. "According to the prosecution, murder took place in the night before 11 P.M. The post-mortem reports indicated that the stomachs
C of the three deceased were empty, large and small intestines contained faecal matter and gases." According to the High Court, these facts would go to indicate that "murder must have taken place in the very early morning and not in the night."

D We bear in mind that prosecution has fixed up the time of murder as 11 P.M. on surmises. Perhaps the actual time of murder would have been later in the night or the last meals would have been consumed by the deceased much earlier. By any stretch of imagination, on the facts of this case, absence of any food materials in the stomach cannot be counted as a circumstance in favour of the assailant.
E

Shri N.P. Midha, learned counsel for the respondent, submitted written submissions over and above the oral arguments addressed by him. One of the contentions adverted to by the learned counsel is pertaining to the evidence of the defence witness (DW-1 Moharam Ali). Counsel contended that if the
F evidence of DW-1 Moharam Ali can be believed it is sufficient to shake the basic structure of the prosecution evidence. Shri N.P. Midha invited our attention to the following observations contained in the decision of this Court in *Dudh Nath Pandey* v. *State of Uttar Pradesh* [1981] 2 SCC 166:

> G "Defence witnesses are entitled to equal treatment with those of the prosecution; and courts ought to overcome their traditional instinctive disbelief in defence witnesses".

We may quote the succeeding sentence also from the said decision for the sake of completion of the observations of their Lordships on that score.
H It is this: "Quite often they tell lies but so do the prosecution witnesses."

Depositions of witnesses, whether they are examined on the prosecution side or defence side or as court witnesses, are oral evidence in the case and hence the scrutiny thereof shall be without any predilection or bias. No witness is entitled to get better treatment merely because he was examined as a prosecution witness or even as a court witness. It is judicial scrutiny which is warranted in respect of the depositions of all witnesses for which different yardsticks cannot be prescribed as for those different categories of witnesses.

In this case, DW-1 Moharam Ali claimed to have gone to the house of the deceased on getting information about the murders. He said that he found 3 dead bodies lying there but also saw the police beating the accused. This evidence of DW1, even if believed, would not affect the core of the prosecution case or its evidence. Nonetheless, we may consider his evidence from other angles.

In cross-examination DW1 said that he did not divulge what he saw to any police officer or to any other officer. He further admitted that he was affected by paralysis and could not move from one place to another on his own. The trial court declined to place any reliance on his evidence and the High Court also did not consider it worthy of credence. We also agree that the evidence of DW-1 could not inspire confidence in judicial mind. Hence the said evidence of DW1 does not affect the prosecution case at all.

The trial court rightly appreciated the circumstances presented by the prosecution through the evidence and found them reliable and on the basis of such circumstances reached the conclusion that the respondent was responsible for the murder of his parents and brother. We have no other option but to interfere with the unmerited acquittal passed by the High Court. Hence we do so and restore the conviction passed by the trial court. However, we do not impose the extreme penalty which was chosen by the trial court. Hence the respondent is sentenced to imprisonment for life under Section 302 of the IPC.

We direct the Sessions Judge, Barabanki, to take necessary steps to get the respondent back into custody if he is not already in jail.

R.A. Appeal allowed.