

A

MAJOR SINGH AND ANR.

v.

STATE OF PUNJAB

OCTOBER 19, 2006

B

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Penal Code, 1860—Section 302 read with Section 34—Murder—Prosecution case supported by version of eye-witness and medical evidence—Motive for the offence was suspicion of accused against deceased that he had caused death of their sister (wife of deceased)—Conviction and death sentence by trial court—Confirmed by High Court—On appeal, held: In the facts of the case, accused rightly convicted—However, death sentence reduced to life imprisonment.

C

D

Principle—Principle of 'Falsus in uno falsus in omnibus'—Applicability—Held: It is not an acceptable principle.

Criminal Trial—Minor discrepancies in prosecution case—Effect of—Held: Such discrepancies not a good ground for rejecting the entire prosecution case.

E

Criminal Law—Motive—Evidentiary value of—Held: Motive is not very material in a case of direct evidence—It assumes importance in a case of circumstantial evidence—Evidence.

F

The appellants-accused herein along with their brother were alleged to have caused death of a person by severing his head from the body. The incident was seen by PW-4 and 'C'. Medical evidence corroborated the version of the eyewitness. The motive for murder was that the accused suspected that the deceased had caused death of their sister, who was married to the deceased 12 years ago, within two months of the marriage. Trial Court found the appellants guilty of offence under Section 302/34 IPC and sentenced them to death. Co-accused were acquitted. Conviction as well as sentence was confirmed by High Court.

G

In appeal to this Court, appellants contended that it was a case of false implication as the incident was not seen by anyone due to lack of light; that

H

they had no motive to kill the deceased; and that acquittal of the co-accused shows that the prosecution case is false. A

Disposing of the appeal, the Court

HELD: 1.1. There is no reason to set aside the conviction of the accused. Motive is not very material in a case of direct evidence but it is very important in a case of circumstantial evidence. Since, there is direct evidence in this case, the court is not inclined to go into the motive in the present case. Although, it is true that in the month of January usually it becomes dark at 7.30 p.m. but in the present case there was electric light by which the witnesses recognized the assailants. From the statement of PW5 SDC, Punjab State Electricity Board it is clear that there was uninterrupted electric supply in the village in question at the relevant time. It has come in evidence that the witnesses identified the assailants in the electric light fixed on a bamboo pole. The medical evidence also corroborates the prosecution version. B C

[491-F; 490-C-D]

1.3. Even if assumed that 'C' was not a witness of the incident, there is no reason to disregard or disbelieve the evidence of PW 4 who was an eye witness to the incident. He is a natural witness and he has clearly deposed about the incident in question in detail. [490-H; 491-A] D

1.4. Minor discrepancies and minor defects in the prosecution case is not a good ground for rejecting the entire prosecution case. [491-B] E

1.5. Merely because the co-accused have been acquitted the entire prosecution case cannot be rejected. The principle of *falsus in uno falsus in omnibus* is not an acceptable principle. It is well known fact that in our country very often the prosecution implicates not only real assailants but also implicates innocent persons so as to spread the net wide. The court can always discriminate and find out that who were the real assailants and who were not. F [491-E]

2. However, in the facts and circumstances of the case and considering the fact that there was probably some enmity due to suspicion about death of the sister of the accused two years after her marriage to the deceased which could have a motive for the crime, the sentence awarded to both the accused from death sentence is reduced to life sentence under Section 302 IPC. G

[491-F-G]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1231 of 2005.

H

A From the Final Judgment and Order dated 1.7.2005 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 575-DB of 2004.

K.B. Sinha, Kawaljeet Kochar, D. Jha, Kusum Chaudhary for the Appellants.

B D. Mahesh Babu, Sanjay Jain and Arun K. Sinha for the Respondent.

The Judgment of the Court was delivered by

C **MARKANDEY KATJU, J.** This appeal has been filed against the impugned judgment of the Punjab and Haryana High Court dated 1.7.2005 by which the death sentence awarded to the accused Major Singh and Baldeo Singh under Section 302/201 IPC has been upheld.

Heard learned counsel for the parties and perused the record.

D The facts as narrated in the record of the case are that the sister of the appellants Major Singh and Baldev Singh, Sukhwinder Kaur had been married to the deceased Kashmir Singh about 12 years prior to the date of the incident. Sukhwinder Kaur died after two years of marriage with Kashmir Singh, and the accused had the suspension that Kashmir Singh had murdered Sukhwinder Kaur. It is alleged that this was the motive for which the accused murdered Kashmir Singh in the incident in question.

E On 24.1.1999, Kashmir Singh was returning on a bicycle to his house after delivering the milk in the milk dairy and Lakhbir Singh PW4 was sitting on the carrier holding a small container meant for milk in his hand. At about 7.30 p.m. they reached near the transformer of the village and there in the light of the electric bulb which was on they found Major Singh armed with a 'Kirpan' and Baldev Singh armed with 'Kapa' sitting along with their third brother Shingara Singh. Shingara Singh had raised a *lalkara* that Kashmir Singh had come in their grip and he should not be allowed to go away alive. Thereupon Lakhbir Singh had jumped from the carrier of the cycle. The deceased in turn had thrown his cycle and fled into the fields of the wheat crop being followed by the appellants. It is alleged that in the presence of the witness, Baldev Singh had given a blow from the sharp side of his 'Kapa' on the left wrist of the deceased while Major Singh gave blows with Kirpan one after the other, as a result of which Kashmir Singh fell down. Shingara Singh then caught hold of the deceased by his hair, who had tried to catch hold of the Kirpan of Major Singh and in that process he had received injuries

H

on the fingers of his left hand. Thereafter, Baldev Singh caught hold of the arm of the deceased and Major Singh severed his head with a blow of the Kirpan. An alarm was raised by Lakhbir Singh, which attracted Chanan Singh to the spot and in his presence the accused ran away from the spot taking away the severed head of the deceased. On account of nervousness, the accused had left the Kirpan, turban and blanket at the spot. After leaving Chanan Singh at the place of occurrence near the dead body, Lakhbir Singh went to call his cousin Jagir Singh and thereafter both of them proceeded to police post Behak Pachharian to lodge an FIR. On the way, they met ASI Satnam Singh PW7 along with other police officials at the Bus Stand of village Behak Pachharian where they were holding a Naka. Lakhbir Singh made a statement Ex.P6 before the ASI, who after making his endorsement Ex.P6/A had sent the same to the Police Station, Zira, on the basis whereof formal FIR Ex.P6/B was recorded under Section 302 read with Section 34 IPC.

ASI Satnam Singh and the other police officials in the meantime had accompanied Lakhbir Singh to the spot, where a headless body of the deceased was lying. He prepared an inquest report and sent the body through Mehtab Singh and Daljit Singh, Constables for post mortem to Civil Hospital, Zira along with application Ex.P3. On 25.1.1999, ASI Satnam Singh inspected the spot and prepared a rough site plan Ex.P14. He collected blood stained earth and ordinary earth from the scene of occurrence and put the same in two separate plastic boxes which were converted into parcels and were eventually sealed with the seal 'SS'. The sealed parcels were taken into possession through recovery memo Ex.P7. The Investigating Officer, recovered the Kirpan, turban and blanket from the spot. He prepared rough sketch of the Kirpan and took the same into possession. The blanket and turban were also taken into possession separately and both parcels were sealed by him and were taken into possession through memo Ex.P9. The bicycle of the deceased was also taken into possession. After autopsy, the post mortem report was handed over to the police. According to the same, the injuries on the body of the deceased were found to be sufficient to cause death in the ordinary course of nature. The clothes of the deceased were also taken into possession and parcels containing blood stained earth, ordinary earth, kirpan, blanket and turban were sent to the Chemical Examiner on 24.2.1999.

The trial court after detailed consideration of the evidence found the accused guilty and sentenced them on 12.6.2004 to death, and also to pay a fine of Rs. 5000/- each and in default further rigorous imprisonment for two years under Section 302 IPC. They were also awarded punishment of three

A years rigorous imprisonment and a fine of Rs.1000/- and in default of which further six months rigorous imprisonment under Section 121 IPC.

In appeal the High Court upheld the judgment of the trial court and dismissed the appeal. Hence the present appeal.

B Learned counsel for the appellant submitted that in fact no one had seen the incident as it was in the night, and it was a case of false implication. Learned counsel also repeatedly stressed that the appellants could have no motive for murdering Kashmir Singh. It is well settled in Criminal Law that motive is not very material in a case of direct evidence but it is very important in a case of circumstantial evidence. Since, there is direct evidence in this case, we are not inclined to go into the motive in the present case. Although, it is true that in the month of January usually it becomes dark at 7.30 p.m. but in the present case there was electric light by which the witnesses recognized the assailants. From the statement of PW5 Kuldeep Singh, SDC, Punjab State Electricity Board it is clear that there was uninterrupted electric supply in the village in question on 24.1.1999 from 2.30 p.m. to midnight. It has come in evidence that the witnesses identified the assailants in the electric light fixed on a bamboo pole. The medical evidence also corroborates the prosecution version.

E It has come in the prosecution version that Kashmir Singh had caught the Kirpan of Major Singh and when Major Singh pulled back the Kirpan, four fingers of the Major Singh were injured. In the post mortem of Kashmir Singh there are such injuries on the fingers of the deceased. This also corroborates the prosecution version.

F Learned counsel for the appellant submitted that there was no trail of blood at the scene of the incident. In this connection we have perused the evidence of ASI Satnam Singh who has mentioned in his statement that he had found a Kirpan stained with blood on the spot which he had taken into possession, and he had also found blood stained earth which was put in two separate boxes and sealed. He also took into possession one bicycle make G Hero on the carrier of which a hook was fixed and a drum was tied. One small drum was lying at a distance from the bicycle and he took that also in possession and then prepared a rough site plan. Thus the evidence of the In-charge of the Police Station, Satnam Singh also corroborates the prosecution version.

H Even assuming that we accept the defence version that Chanan Singh

was not a witness of the incident, we see no reason to disregard or disbelieve the evidence of Lakhbir Singh who was an eye witness to the incident. Lakhbir Singh is a natural witness and he has clearly deposed about the incident in question in detail. We see no reason to disbelieve his evidence. A

Learned counsel for the appellant has referred to certain minor defects and minor discrepancies in the prosecution case. It is well settled that minor discrepancies and minor defects in the prosecution case is not a good ground for rejecting the entire prosecution case. B

There is clear evidence of Lakhbir Singh that Baldev Singh caught hold of the deceased by his arm and Major Singh severed his head from body by Kirpan. The medical evidence, the police inspector's evidence, etc. corroborate this version. C

Learned counsel for the appellant submitted that co-accused Jagga Singh and Shingara Singh have been acquitted. He contended that this shows that the prosecution case is false. D

We cannot accept the contention of the learned counsel for the appellant that merely because Jagga Singh and Shingara Singh have been acquitted the entire prosecution case has to be rejected. It is well settled that the principle of *falsus in uno falsus in omnibus* is not an acceptable principle. It is well known fact that in our country very often the prosecution implicates not only real assailants but also implicates innocent persons so as to spread the net wide. The court can always discriminate and find out that who were the real assailants and who were not. E

Thus, we see no reason to set aside the conviction of the accused Major Singh and Baldev Singh. F

However, in the facts and circumstances of the case and considering the fact that there was probably some enmity due to suspicion about Sukhwinder Kaur's death two years after her marriage to Kashmir Singh which could have a motive for the crime, we reduce the sentence awarded to both the accused from death sentence to life sentence under Section 302 IPC. This appeal is disposed of accordingly. G

K.K.T.

Appeal disposed of.