A VIVEK KALRA

v.

STATE OF RAJASTHAN

(Criminal Appeal No. 221 of 2007)

B FEBRUARY 15, 2013.

[A.K. PATNAIK AND CHANDRAMAULI KR. PRASAD, JJ.]

Penal Code, 1860 – s. 302 – Murder – Circumstantial evidence – Medical evidence that 2 of the 9 injuries on the C *deceased could not have been caused by the alleged weapon of offence – Courts below on the basis of the motive and circumstances of the case convicted the accused – On appeal, held: Motive not proved – But absence of motive would not affect the prosecution case where the chain of other* D *circumstances establish beyond reasonable doubt that the accused and accused alone committed the offence – Circumstances of the present case prove the prosecution case beyond reasonable doubt – As per the medical evidence, majority of the injuries were stated to have been caused by* E *the weapon of crime and were sufficient in the ordinary course to cause death – The general good behaviour of the accused has no nexus with the offence alleged – Conviction upheld.*

The appellant-accused was prosecuted for killing 13-14 years old boy. The prosecution case is based on F **circumstantial evidence. The motive for murder was that the accused took revenge from his uncle by killing the deceased (deceased being son of the uncle) because the uncle as a guardian to him was not giving him an amount of Rs. 80,000/ which was in a fixed deposit in his name.** G **Trial court convicted him u/s. 302 IPC. High Court affirmed the conviction.**

In appeal to this Court, appellant-accused contended that motive could not be said to have been proved; that

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PW5 deposed that the accused had a good behaviour and had no bad habit; and that as per the medical evidence, injury Nos. 8 and 9 on the person of the deceased could not have been caused by the weapon of offence i.e. *'dantli'*, and therefore prosecution failed to establish its case beyond reasonable doubt.

Dismissing the appeal, the Court

HELD: 1. Where prosecution relies on circumstantial evidence only, motive is a relevant fact and can be taken into consideration under Section 8 of the Evidence Act, 1872 but where the chain of other circumstances establish beyond reasonable doubt that it is the accused and accused alone who has committed the offence and this is one such case, the Court cannot hold that in the absence of motive of the accused being established by the prosecution, the accused cannot be held guilty of the offence. [Para 6] [1076-D-E]

Ujjagar Singh v. State of Punjab **(2007) 13 SCC 90: 2007 (13) SCR 653 – relied on.**

2. In the instant case, the dead body of the deceased was found on the morning of 08.06.1997 at around 8.00 a.m. and it is clear from the evidence of PW-5 and PW-6 that the appellant had taken the deceased in a scooter between 7.00 p.m. and 9.00 p.m. on 07.06.1997 on the pretext of getting a cassette. PW-28 has confirmed that between 8.00 p.m. and 8.30 p.m. the appellant had come to his cassette shop and taken the cassette. It is also clear from the evidence of PW-5 and PW-6 that neither the appellant nor the deceased returned on the evening of 07.06.1997. From the evidence of PW-26 and PW-7, it is clear that the blood-stained *dantli* has been recovered from the place of occurrence and the blacksmith, PW-13, has confirmed that he had sold that particular *dantli* to the appellant. [Para 7] [1076-G-H; 1077-A-B]

A **3. PW-22, the doctor has said in his evidence that injury nos. 1 to 7 could have been caused by the *dantli* and that the death of the deceased has been caused from shock and haemorrhage with blood oozing from all the injuries. The number and nature of the injuries together**
B **are enough in the ordinary course to cause death and have been caused by *dantli* purchased by the appellant. Hence, merely because the prosecution has not been able to prove that injury Nos. 8 and 9 have been caused by *dantli*, it cannot be held that it is not the appellant who has caused**
C **the death of the deceased. [Para 8] [1077-C-E]**

4. The general good behaviour of the appellant and the fact that he had no bad habit as stated by PW-5 have no nexus with the offence alleged against the appellant and are not relevant when other circumstances have
D **established beyond reasonable doubt that it is the appellant and the appellant alone who has committed the murder of the deceased. [Para 9] [1078-B]**

Vikramjit Singh alias Vicky v. State of Punjab **2006 (12)**
E **SCC 306: 2006 (9) Suppl. SCR 375 – relied on.**

Case Law Reference:

2007 (13) SCR 653	**Relied on**	**Para 6**
2006 (9) Suppl. SCR 375	**Relied on**	**Para 9**

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 221 of 2007.

From the Judgment & Order dated 25.10.2004 of the High
G Court Judicature for Rajasthan at Jaipur Bench, Jaipur in DBCRL No. 602 of 2002.

Vidya Dhar Gaur for the Appellant.

Sonia Mathur, Sushil Kumar Dubey, Pragati Neekhra for
H the Respondent.

The Judgment of the Court was delivered by

A.K. PATNAIK, J. 1. This is an appeal against the judgment dated 25.10.2004 of the Rajasthan High Court, Jaipur Bench, in D.B. Criminal Appeal No. 602 of 2002, maintaining the conviction of the appellant under Section 302 of the Indian Penal Code, 1860, (for short 'the IPC') and the sentence of life imprisonment and fine of Rs.1,000/- for the offence.

2. The facts very briefly are that on 08.06.1997 at about 8.30 a.m., one Lal Singh, who was running a tea shop at By-pass Road, Sedariya Tiraha, lodged an FIR with Police Station Adarsh Nagar, Ajmer. In the FIR, he stated that at about 8.00 a.m. on 08.06.1997 one truck driver told him that ahead of Shantinath Dharm Kanta, on the wall of *pulia* (small bridge) one boy has been murdered and laid down and he went there to see and found that one boy, aged about 13-14 years, was lying dead in a pool of blood and several persons have gathered there. The police registered a case under Section 302, IPC, and after investigation, the police filed a charge-sheet against the appellant under Section 302, IPC.

3. At the trial, the prosecution did not examine any eye-witness to the murder of the deceased, but produced circumstantial evidence to establish that the appellant had committed the murder of the deceased and the trial court convicted the appellant. On appeal, the High Court held in the impugned judgment that after the death of his father the appellant was living with his uncle, Gurcharan Kalra, and there was a fixed deposit in his name of Rs.80,000/-, but as Gurcharan Kalra decided to utilize the fixed deposit only at the time of marriage of the appellant, in order to take revenge, the appellant purchased a *dantli,* took Ankit Kalra, the son of Gurcharan Kalra, in a Scooter on the evening of 07.06.1997 to get a cassette, and committed the murder of Ankit Kalra, left the scene of incident, reached Jaipur and got himself admitted to a hospital there on 08.06.1997 for treatment saying that he has met with an accident.

A 4. Learned counsel for the appellant submitted that the finding of the High Court in the impugned judgment on the motive of the appellant to commit the offence is based on the evidence of Gurcharan Kalra, PW-11, about the fixed deposit of Rs.80,000/- of the appellant, which the appellant used to B demand, but from this evidence the High Court could not have come to the conclusion that the motive of the appellant was to take revenge by killing the deceased. He next submitted that PW-5 has admitted in his evidence that the appellant had a good behaviour and had no bad habit and, therefore, it is quite C probable that the appellant has not committed the offence. He further submitted that PW-5 has clearly said that when he made the enquiry from the appellant about the deceased Ankit, he had told him that he had been assaulted by Munna and his 2 to 4 associates and caused injuries. He submitted that it is quite D possible that Munna may have killed the deceased and that the appellant had not committed the murder. He further submitted that the medical evidence of PW-22, Dr. B.K. Mathur, is clear that the injury nos. 8 and 9 could not have been caused by *dantli*. He submitted that since the prosecution case is that the E appellant used a *dantli* to cause the death of the deceased, this medical evidence creates sufficient doubt on the prosecution case.

5. Learned counsel appearing for the State, on the other hand, supported the impugned judgment of the High Court by F relying on the following circumstances:

(i) PW-6 has stated that in the evening of 07.06.1997 when his parents had gone to the market and he was playing with the deceased, the appellant came G to their house and took the deceased with him saying that they will come back after getting a cassette, but thereafter the deceased did not come back home.

(ii) PW-5, the father of PW-6, has corroborated the H evidence of PW-6 that at about 7.00 p.m. in the

evening of 07.06.1997, he and his wife had gone to the market for shopping and when they came back home at about 9.00 p.m., PW-6 told them that the appellant took the deceased on a scooter on the pretext of taking a cassette.

(iii) PW-28 has deposed that he used to work at V.K. Video Movies, Plaza Road, and on 07.06.1997 between 8.00 p.m. and 8.30 p.m. a person by the name of Vivek Kalra (the appellant) came to their shop and took one cassette of picture Judwaa and deposited Rs.100/- in advance and his name has been entered in the register of the shop, but the cassette was never received back.

(iv) PW-7 is a witness to the *panchnama* of the dead body of the deceased (Ext. P-6) which bears his signatures at points A to B and he has said that one *dantli* was lying on the ground near the *pulia* which had a wooden handle and was taken possession of by the police vide memo Ext. P7, which bears his signatures at points A to B and he has also stated that the *dantli* was blood- stained.

(v) PW-13 is a blacksmith and he has said before the Court that the appellant had come to purchase a *dantli* from his shop and he agreed to pay a price of Rs.110/- out of which he paid advance of Rs.10/- to him and on the next day he came to the shop and took the sharp edged *dantli* and he had paid the balance of Rs. 100/- to him and the seized *Dantli* was produced before PW-13 as Article-1 and PW-13 identified Article-1 as the one that was purchased by the appellant from him.

(vi) PW-22, Dr. B.K. Mathur, has given his opinion that he conducted the postmortem on the deceased on

A 09.06.1997 at 9.30 a.m. and that the injuries no. 1 to 7 could be caused by the *dantli*.

Learned counsel for the State submitted that considering all these circumstances established by the prosecution, there can be no doubt that it is the appellant and the appellant only who B has committed the murder of the deceased.

6. We have considered the submissions of the learned counsel for the parties and we agree with the learned counsel for the appellant that from the evidence of PW-11 one could C not hold that the appellant had committed the murder of the deceased to take revenge on his uncle (PW-11), who had not given him Rs.80,000/- kept in fixed deposit. We are, however, of the opinion that where prosecution relies on circumstantial evidence only, motive is a relevant fact and can be taken into D consideration under Section 8 of the Indian Evidence Act, 1872 but where the chain of other circumstances establish beyond reasonable doubt that it is the accused and accused alone who has committed the offence and this is one such case the Court cannot hold that in the absence of motive of the accused being E established by the prosecution, the accused cannot be held guilty of the offence. In *Ujjagar Singh v. State of Punjab* [(2007) 13 SCC 90], this Court observed:

> "It is true that in a case relating to circumstantial evidence motive does assume great importance but to say that the F absence of motive would dislodge the entire prosecution story is perhaps giving this one factor an importance which is not due and (to use the cliché) the motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy."

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7. In this case, the dead body of Ankit was found on the morning of 08.06.1997 at around 8.00 a.m. and it is clear from the evidence of PW-5 and PW-6 that the appellant had taken Ankit in a scooter between 7.00 p.m. and 9.00 p.m. on H 07.06.1997 on the pretext of getting a cassette. PW-28 has

confirmed that between 8.00 p.m. and 8.30 p.m. the appellant had come to his cassette shop and taken the cassette of the film *Judwaa*. It is also clear from the evidence of PW-5 and PW-6 that neither the appellant nor the deceased returned on the evening of 07.06.1997. From the evidence of PW-26 and PW-7, we also find that the blood-stained *dantli* has been recovered from the place of occurrence and the blacksmith, PW-13, has confirmed that he had sold that particular *dantli* to the appellant at a price of Rs.110/-.

8. Dr. B.K. Mathur, PW-22, has said in his evidence that injury nos. 1 to 7 could have been caused by the *dantli* and that the death of the deceased has been caused from shock and haemorrhage with blood oozing from all the injuries. We find that injury nos. 1, 2, 3, 4, 5, 6 and 7 are cut wounds on the left of the face, left of the neck, back of the neck, on the left muscles and specula bone intestine and on the left of the waist. The number and nature of these injuries together are enough in the ordinary course to cause death and have been caused by *dantli* purchased by the appellant. Hence, merely because the prosecution has not been able to prove that injury nos. 8 and 9 have been caused by *dantli*, we cannot hold that it is not the appellant who has caused the death of the deceased.

9. It is true that PW-5 has stated that the appellant had a good behaviour and had no bad habit. Section 8 of the Indian Evidence Act, 1872, however, provides that the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent to it. Hence, any behaviour or conduct of the appellant would be relevant if it had nexus with the offence under Section 302 alleged to have been committed by him. This Court has held in *Vikramjit Singh alias Vicky v. State of Punjab* [2006 (12) SCC 306] at page 314:

> ".....Conduct of an accused must have nexus with the crime committed. It must form part of the evidence as

A regards his conduct either preceding, during or after the commission of the offence as envisaged under Section 8 of the Evidence Act...."

The general good behaviour of the appellant and the fact that he had no bad habit have no nexus with the offence alleged B against the appellant and are not relevant when other circumstances have established beyond reasonable doubt that it is the appellant and the appellant alone who has committed the murder of the deceased.

C 10. In the result, we find no merit in the appeal and we dismiss the same.

K.K.T. Appeal dismissed.