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KANHAIYA LAL

v.

STATE OF RAJASTHAN

(Criminal Appeal No. 595 of 2014)

MARCH 13, 2014

B

[T.S. THAKUR AND C. NAGAPPAN, JJ.]

PENAL CODE, 1860:

C

ss. 302 and 201 - Murder - Circumstantial evidence - Dead body recovered from the well belonging to accused-appellant - Appellant and deceased stated to have been last seen together previous night - Witness declared hostile - Held: In the instant case, circumstance of last seen together does not by itself and necessarily lead to the inference that it was appellant who committed the crime - Mere non-explanation on the part of appellant, by itself cannot lead to proof of guilt against him - Motive is not established - Conviction of appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct -- Conviction and sentence imposed on appellant are set aside and he is acquitted of the charge, by giving him benefit of doubt - Evidence - Circumstantial evidence.

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The appellant (accused A-2) and accused A-1 were prosecuted in connection with the murder of the brother of PW4. The prosecution case was that at about 9 p.m. on 31-08-2003, the appellant-accused and the deceased visited PW4 and bought a bottle of liquor. When the deceased did not reach his home till the morning, his wife (PW10) went to the house of PW4, who told her about the visit of the deceased and A-2 on the previous night. When PW10 accompanied by PW11 went to the house of A-2 and did not find the deceased there, she lodged a report about the missing of her husband. The villagers

found the belongings of the deceased floating in the well of A-2. PW3 lodged another report at the Police station. Police took out the body of the deceased and registered a case of offenses punishable u/ss 302 and 201 IPC. A-2 and A-1 were arrested. The trial court convicted A-2 u/s 302 and 201 IPC and sentenced him to imprisonment for life and 3 years RI respectively under the two counts. A-1 was acquitted of the charge. The High Court affirmed the conviction and sentences of A-2.

Allowing the appeal, the Court

HELD: 1.1 From the medical evidence it is clear that the deceased suffered a homicidal death. However, nobody witnessed the occurrence and the case rests on circumstantial evidence. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. [para 8 and 10] [749-G-H; 750-A-B, G]

1.2 The primary, if not the solitary basis of the conviction of the appellant is on the theory of last seen, as the deceased along with accused A-2 visited the house of PW4 at 9.00 pm on 31.8.2003. PW4 did not fully support the prosecution case and was declared hostile. He has stated that on the occurrence night A-2 and the deceased came to his house and he gave one bottle of liquor and they returned together. It is the testimony of PW10 that her husband did not return home on the occurrence night and in the morning she went to the house of PW4 and inquired and came to know from him

A about the visit of her husband along with accused A-2 to his house in the night. Though PW4 was treated as hostile witness, the above testimony of him is corroborated by the testimony of PW10. [para 11] [750-G-H; 751-A-D]

B 1.3 The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the appellant who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part
C of the appellant, by itself cannot lead to proof of guilt against him. [para 12] [751-D-E]

D 1.4 The alleged illicit intimacy of the appellant with the wife of PW3, the brother of the deceased, is said to be the cause for the occurrence. According to PW3, his wife left him four years back and was residing with her parents in a different village. PW3 and PW10 have categorically stated in their testimonies that there was no dispute between the deceased and the appellant and they had cordial relationship. Thus, the motive alleged by the
E prosecution that the deceased, as elder of the family dissuaded the appellant to sever his illicit relationship with his sister-in-law had triggered the murder, is not established. [para 13] [751-E-F; 752-A-C]

F 1.5 The conviction of the appellant cannot be maintained merely on suspicion, however strong it may be, or on his conduct. These facts assume further importance on account of absence of proof of motive particularly when it is proved that there was cordial
G relationship between the appellant and the deceased for a long time. In the circumstances, it is not possible to sustain the impugned judgment of conviction and sentence. The conviction and sentence imposed on the appellant/accused A-2 are set aside and he is acquitted of the charge by giving him benefit of doubt. [para 14-15]
H [752-C-F]

Madho Singh vs. State of Rajasthan (2010) 15 SCC 588 A
- referred to.

Case Law Reference:

(2010) 15 SCC 588 referred to **para 14** B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 595 of 2014.

From the Judgment and Order dated 17.04.2012 of the
High Court of Judicature for Rajasthan at Jodhpur in D.B.
Criminal Appeal No. 515 of 2004. C

Mohd. Adeel Siddiqui, B.K. Jha, Mohd. Irshad Hanif, N.A.
Usmani for the Appellant.

Ruchi Kohli, Nidhi Jaswal for the Respondent. D

The Judgment of the Court was delivered by

C. NAGAPPAN, J. 1. Leave granted.

2. This appeal is preferred against the judgment of the
High Court of Judicature for Rajasthan at Jodhpur, in D.B. CrI.
Appeal No.515 of 2004. E

3. The appellant herein Kanhaiya Lal, is accused No.2 in
Sessions Trial No.01 of 2004 on the file of Additional District
& Sessions Judge, Fast Track No.1, Dungarpur, and he was
tried for the alleged offences under Section 302 and 201 IPC
and on being found guilty was convicted and sentenced to
undergo imprisonment for life and to pay fine of Rs.1000 in
default to undergo simple imprisonment for 6 months for the
offence under Section 302 IPC and further sentenced to
undergo 3 years Rigorous Imprisonment and to pay a fine of
Rs.500 in default to undergo simple imprisonment for 3 months
for the offence under Section 201 IPC, and the sentences were
ordered to run concurrently. Accused No.1 Raman Lal was also
tried along with accused No.2 Kanhaiya Lal for the alleged H

- A offence under Section 201 IPC and was acquitted of the said charge. Challenging the conviction and sentence, accused No.2 Kanhaiya Lal preferred the appeal in D.B. Criminal Appeal No.515 of 2004 and the High Court by judgment dated 17.4.2012 dismissed the appeal. Challenging the same the
- B appellant Kanhaiya Lal has preferred the present appeal.

4. The case of the prosecution in a nut shell is as follows: PW10 Smt. Shantibai is the wife of deceased Kala. PW3 Kama is the younger brother of Kala. Accused Kanhaiya Lal is the brother of PW4 Hurma. They are all residents of Gesu ka bagh
- C village. PW4 Hurma returned home at 8.00 p.m. on 31.8.2003. At about 9.00 p.m. accused Kanhaiya Lal and Kala came to his house and demanded Daru and PW4 Hurma gave one bottle and received a sum of Rs.15/- from the accused Kanhaiya Lal. Thereafter, both of them went away together. Kala
- D did not return home in the night and in the morning PW10 his wife Shantibai along with PW11 Dhula went to the house of PW 4 Hurma and inquired about her husband. PW4 Hurma told them about Kala visiting his house with Kanhaiya Lal the previous night and their returning together from his house. PW
- E 10 Shanti Bai and PW 11 Dhula went to the house of the accused Kanhaiya Lal and he was not found there. PW10 Shantibai lodged a report at the Police Station about the missing of her husband. The villagers found Muffler, shoes and tobacco pouch floating in the well of accused Kanhaiya Lal.
- F PW3 Kama lodged Ex.P10 written report before the Police Station Bichhiwara. Police took out the body of Kala from the well and a case came to be registered in Ex.P10 FIR No.230 of 2003 for the alleged offences under Section 302 and 201 IPC. PW12 Fateh Singh Chauhan took up the investigation.
- G Ex.P11 is the spot map. Ex.P13 is the Panchayatnama. Ex.P14 is the seizure Memo of shoes, Muffler and tobacco pouch.

5. PW1 Dr. Rajesh Sharma along with Dr. Kanti Lal conducted the post-mortem and found the following injuries:

- H "External injuries:

1. Abrasion 5 x 2 cm on the left side of the neck.

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2. Bruise 3 x 2 cm on the parietal aspect of the neck in the right side and all these injuries were anti mortem.

On the internal examination he found the fracture of Hyoid bone anteriorly."

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They expressed opinion that the cause of death of Mr. Kala is due to neurogenic shock as well as haemorrhagic shock and the time of death was from 36 to 48 hours prior to the post-mortem.

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Ex.P10 is the post-mortem report issued by them.

6. The accused were arrested and on completion of the investigation final report came to be filed. In order to prove the case, the prosecution examined 15 witnesses and marked 26 documents. No witness was examined on the side of the defence. The accused were questioned under Section 313 Cr.P.C. and their answers were recorded. The trial court found accused No. 2 Kanhaiya Lal guilty of the charges under Sections 302 and 201 IPC and sentenced him as narrated above. The trial court found accused No.1 Ramam Lal not guilty of the charge and acquitted him. Accused No.2 Kanhaiya Lal preferred the appeal and the High Court dismissed the appeal by confirming the conviction and sentence imposed on him. Aggrieved by the same he has preferred the present appeal.

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7. We heard the learned counsel appearing on behalf of the appellant and the learned counsel appearing for the respondent State.

8. The prosecution case is that the appellant/accused Kanhaiya Lal committed the murder of Kala by strangulation and threw the body in the well. Nobody witnessed the occurrence and the case rests on circumstantial evidence. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can

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A be justified only when all the incriminating facts and
 circumstances are found to be incompatible with the innocence
 of the accused or the guilt of any other person. The
 circumstances from which an inference as to the guilt of the
 accused is drawn have to be proved beyond reasonable doubt
 B and have to be shown to be closely connected with the principal
 fact sought to be inferred from those circumstances.

9. The prosecution in order to prove its case mainly relied
 on the following circumstances :

- C i) The death of Kala was homicidal in nature;
- ii) Kala was last seen with accused Kanhaiya Lal when
 both of them visited the house of PW4 Hurma on
 the occurrence night.
- D iii) Kala objected to the illicit intimacy of accused
 Kanhaiya Lal with the wife of his younger brother
 PW3 Kama and that led to the occurrence.

10. The autopsy on the body of Kala was conducted by
 E two doctors and one of them namely Dr. Rajesh Sharma has
 been examined as PW1. According to him two external injuries
 were found on the neck namely an abrasion 5x2 cm on the left
 side of the neck and bruise 3x2 cm on the parietal aspect of
 the neck in the right side and on its internal examination he
 F noticed the fracture of vertebrae c3 & c4 and the fracture of
 Hyoid bone anteriorly and all the injuries were anti mortem. It
 is opined that the cause of death of Kala is due to neurogenic
 shock as well as hemorrhagic shock. Ex.10 is the post mortem
 report. Accepting the medical evidence it is clear that Kala
 G suffered a homicidal death.

11. The primary, if not the solitary basis of the conviction
 of the appellant is on the theory of last seen, as the deceased
 Kala along with accused Kanhaiya Lal visited the house of PW4
 Hurma at 9.00 pm on 31.8.2003. PW4 Hurma did not fully
 H support the prosecution case and was declared hostile. In his

examination-in-chief he has stated that on the occurrence night he returned home at 8.00 pm and about 9.00 pm accused Kanhaiya Lal and Kala came to his house and demanded Daru and he gave one bottle and received a sum of Rs.15/- from the accused Kanhaiya Lal and they returned together and the next day morning wife of Kala PW10 Shantibai came and inquired him about her husband Kala and he told her about the visit of Kala with accused Kanhaiya Lal to his house the previous night. It is the testimony of PW10 Shantibai that her husband Kala did not return home on the occurrence night and in the morning she went to the house of PW4 Hurma and inquired and came to know from him about the visit of her husband along with accused Kanhaiya Lal to his house in the night. Though PW4 Hurma was treated as hostile witness, the above testimony of him is corroborated by the testimony of PW10 Shantibai.

12. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.

13. The alleged illicit intimacy of the accused Kanhaiya Lal with Kamli, wife of PW3 Kama, is said to be the cause for the occurrence. According to PW3, his wife Kamli left him four years back and is residing with her parents in Sanchiya village. PW 10 Shantibai also in her testimony has confirmed that Kamli has been living in village Sanchiya for 4-5 years. It reveals that they were not living together for a number of years. It is the further testimony of PW 3 Kama that he has never seen Kamli and accused Kanhaiya Lal together and no person in the village told him so and it is only his brother Kala who informed him about the illicit intimacy between them. In this context it is relevant to point out that wife of Kala namely PW10 Shantibai in her testimony has not alleged any illicit relationship between Kamli

A and accused Kanhaiya Lal. In such circumstances it is doubtful
as to whether there was any illicit intimacy between them as
alleged. Further PW3 Kama and PW10 Shantibai have
categorically stated in their testimonies that there was no
dispute between the deceased Kala and accused Kanhaiya Lal
B and they had cordial relationship. Thus the motive alleged by
the prosecution that Kala, as elder of the family dissuaded
accused Kanhaiya Lal to sever his illicit relationship with his
sister-in-law Kamli had triggered the murder, is not established.

C 14. The theory of last seen – the appellant having gone with
the deceased in the manner noticed hereinbefore, is the
singular piece of circumstantial evidence available against him.
The conviction of the appellant cannot be maintained merely
on suspicion, however strong it may be, or on his conduct.
D These facts assume further importance on account of absence
of proof of motive particularly when it is proved that there was
cordial relationship between the accused and the deceased for
a long time. The fact situation bears great similarity to that in
Madho Singh vs. State of Rajasthan (2010) 15 SCC 588.

E 15. In view of the aforesaid circumstances, it is not possible
to sustain the impugned judgment and sentence. This appeal
is allowed and the conviction and sentence imposed on the
appellant/accused Kanhaiya Lal are set aside and he is
acquitted of the charge by giving benefit of doubt. He is directed
F to be released from the custody forthwith unless required
otherwise.

R.P.

Appeal Allowed.