

PETITIONER:
SARDAR SINGH ETC. ETC.

Vs.

RESPONDENT:
STATE (DELHI ADMINISTRATION, DELHI)

DATE OF JUDGMENT 23/02/1993

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
MOHAN, S. (J)

CITATION:
1993 AIR 1696 1993 SCR (2) 65
1993 SCC Supl. (2) 393 JT 1993 (4) 534
1993 SCALE (1) 681

ACT:
Indian Evidence Act, 1872. Section 3.
Indian Penal Code, 1860. Sections 302/34 and 201/34.
Murder-Causing the evidence of the Commission of the offence
to disappear-Conviction based on circumstantial
evidence--Validity of.

HEADNOTE:

The appellant, A-1, his wife, A-2, and his brother's wife, A-3, were prosecuted under Sections 302/34 and 201/34 of the Indian Penal Code. The entire case was based on the circumstantial evidence : (a) the deceased had illicit relations with A-2 and A-3; (b) the deceased was last seen on the night when he went to sleep in his house and thereafter his dead body was found buried in the house of A-1; (3) during interrogation A-1 made a disclosure statement and consequently lead the police party to his sitting room where he pointed out a spot covered by a cot and thereafter he dug the floor and, the dead body of the deceased was recovered from a five feet deep pit; and (4) recovery of a woodcutter from his possession bearing the same human blood group as that of the deceased. Relying upon these circumstances the trial court convicted A-1 and A-2 on both the counts and sentenced them to imprisonment for life on the first count and for five years on the second count but acquitted A-3. The High Court dismissed the appeal of A-1. However, it acquitted A-2 on the ground that there was no evidence to connect her with the commission of the murder but maintained her conviction and sentence under sections 201/34 on the ground that she being the inmate of the house was in the know of the fact that the dead body was buried in the house with a view to causing the disappearance of evidence and she must have been necessarily involved in the process of digging a grave of five feet deep, the filling of the grave and erasing the traces etc. Both the accused filed appeals in this Court.

Dismissing the appeal of A-1 and allowing the appeal of A-2, this Court,

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HELD: 1. The chain of circumstances relied upon by the prosecution and accepted by the Courts below leaves no

manner of doubt that A-1 committed the murder. Accordingly his conviction and sentence is upheld. [68B]

2. There is not an iota of evidence on the record not even a whisper to the effect that it was A-2 who helped in concealing or causing the evidence of the commission of the offence to disappear. Simply because she is the wife of A-1 and as such is supposed to be living in the same house, It cannot be assumed that she was guilty of the offence under section

201/34. A-1 may or may not have taken help of his wife in concealing the dead body. Her being wife of A-1 by itself is not sufficient to prove the charge under section 201/34. She is accordingly acquitted of that charge.

[68H, 69A-B]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 645 of 1989.

From the Judgment and Order dated 17.3.89 of the Delhi High Court in Criminal Appeal No. 270/85.

AND

Criminal Appeal No. 534 of 1989.

A.P. Mohanty and S.K. Sabharwal for the Appellants.

K. Lahri, V.C. Mahajan, Mrs. Indra Sawhney and B.K. Prasad for the Respondent.

The Judgment of the Court was delivered by

KULDIP SINGH, J. Sardar Singh, his wife Saraswati and his brother's wife Savitri were charged under Sections 302/34 and 201/34, Indian Penal Code (IPC) for the murder of one Charanjit. The trial Court convicted Sardar Singh and his wife Saraswati on both the counts and sentenced them to imprisonment for life on the first count and for five years on the second count. Accused Savitri was, however, acquitted by the trial Court. The High Court dismissed the appeal filed by Sardar Singh. Saraswati was acquitted of the charge under Sections 302/34, IPC but her conviction and sentence Under Section 201/34 IPC was maintained by the High Court. These two appeals are by Sardar Singh and Saraswati against the judgment of the High Court.

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Sardar Singh, appellant and one Tara Chand are real brothers. Both of them were residing in village Jhatikara. They were living in adjoining houses. Deceased Charanjit was living in a house adjacent to their houses. Charanjit's wife had died about ten years ago and he was living in the house by himself. Deceased Charanjit had developed illicit relation with Savitri wife of Tara Chand and also with appellant-Saraswati.

The prosecution case in a nut-shell is that deceased Charanjit was having illicit relations with both Saraswati and Savitri and used to visit them during night for the last so many years. On March 31, 1983 the deceased had gone to sleep in his house in the evening and did not appear thereafter. On April 4, 1983 Lakhmi Chand, brother of the deceased, lodged report with the police expressing suspicion against the appellants and Savitri. It is alleged that during the course of interrogation Sardar Singh-appellant made a disclosure statement and consequently led the police party to his sitting room where he pointed out a spot covered by a cot. Sardar Singh, thereafter, dug the floor and the dead body of the deceased was recovered from a five feet deep grave. Thereafter, at the pointing out of the appellant Sardar Singh, the police also seized doe (wood

cutter) and knife contained in a canvas bag hanging in the adjacent room. The dead body was tied with a rope and was wrapped in three gunny bags. The recovered knife had no blood stained while the doe was found stained with blood. On examination by the Serologist the blood stains on the doe were found to be human and of the same group as that of the deceased.

The entire case of the prosecution is based on circumstantial evidence. The circumstances relied upon by the prosecution are as under:

(1) The deceased had illicit relations with Saraswati and Savitri, wife and brother's wife of appellant Sardar Singh.

(2) The deceased was last seen on the night of March 31, 1983 when he went to sleep in his house and thereafter his dead body was found buried in the appellants' house.

(3) Sardar Singh appellant, on interrogation made a disclosure statement leading to the recovery of the dead body from a five feet deep pit in the sitting room of the appellants.

(4) Recovery of doe from the possession of the appellant which was

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found to bear the same human blood group as that of the deceased.

Relying upon the above mentioned circumstances the trial Court and the High Court have convicted the appellants. So far as appellant-Sardar Singh is concerned, the chain of circumstances relied upon by the prosecution and accepted by the courts below leaves no manner of doubt that it was he who committed the murder of Charanjit. We have been taken through the judgments of the trial Court and that of the High Court. We agree with the reasoning and the conclusions reached therein. We, therefore, uphold the conviction and sentenced of appellant-Sardar Singh and dismiss his appeal. So far as appellant-Saraswati is concerned the High Court dealt with her case in the following manner:

"Before we part with this order, there is one more fact which needs our consideration. In this case, the disclosure that led to the recovery of the dead body has been made by Sardar Singh appellant. There is no evidence direct or indirect to connect the appellant Saraswati with the commission of murder, though it can safely be said that she being the inmate of the house was in know of the fact that the dead body was buried in the house with a view to cause the disappearance of evidence. In our view, the process of digging a grave of 5 feet deep and of the size of the deceased in length, the filling of the grave and then erasing the traces of the same is a long process and she must have been necessarily involved in the same. since, in our view, there is no evidence to connect her with the commission of murder we acquit the appellant Saraswati of the charge under Section 302/34 IPC but maintain her conviction and sentence under Section 201/34 IPC."

We are of the view that the reasoning adopted by the High Court in acquitting Saraswati of the charge under Section 302/34 IPC is equally applicable to the charge against her under Section 201/34 IPC. It may be correct that the process of digging a grave of five feet deep, the filling of the grave and then erasing the traces etc. may not have been done by Sardar Singh alone but there is not an iota of

evidence on the record not even a whisper to the effect that it was Saraswati who helped him in

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concealing or causing the evidence of the commission of the offence to disappear. Simply because she is the wife of appellant Sardar Singh and as such is supposed to be living in the same house, it cannot be assumed that she was guilty of the offence under Section 201/34 of the Indian Penal Code. According to the Prosecution Saraswati was having illicit relation with the deceased for several years. Sardar Singh may or may not have taken her help in concealing the dead body. Her being wife of Sardar Singh by itself is not sufficient to prove the charge under Section 201/34 IPC against her. We, therefore, give benefit of doubt to Saraswati, allow her appeal and acquit her of the charge under Section 201/34, Indian Penal Code. She is already on bail. Her bail-bonds are cancelled.

T.N.A.

Crl. A. No.645/89 dismissed.

Criminal Appeal No. 534/89 allowed.

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