

PETITIONER:
SARBIR SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT 11/02/1993

BENCH:
SINGH N.P. (J)
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SINGH N.P. (J)
REDDY, K. JAYACHANDRA (J)

CITATION:
1993 SCR (1) 1027 1993 SCC Supl. (3) 41
JT 1993 (2) 159 1993 SCALE (1) 573

ACT:
Indian Penal Code, 1860-Section 302-Conviction under-Murder-
Proof of-Circumstantial evidence-Appreciation of evidence by
Court-Duty of Court-Evidence adduced by prosecution clear
and unambiguous-Effect of.

HEADNOTE:

The prosecution case was that the appellant and the deceased were intimate friends. The appellant nursed a grudge against the deceased, as he misbehaved with the wife of the appellant.

On July 8, 1979 in the morning the deceased accompanied the appellant to Mohali, where the appellant wanted to do business. At Mohali, the appellant went to the brother of his wife (P.W. 11) and borrowed a bicycle, leaving the deceased at a shop. later both left the shop on the bicycle. The deceased was pedalling the bicycle while the appellant was sitting behind on the carrier of the bicycle. P.W. 5 saw them going by the side of the Gurdwara, Sahib Singh Sabha. At about 2.45 P.M. on the same day, P.W. 5 when went to the Gurdwara, one Om Parkash came there and told P.W.5 that an injured Sikh gentleman was lying on the ground in the campus of the Gurdwara. P.W. 5 accompanied by one Balwinder Singh came to the spot. He identified the victim lying on the ground bleeding profusely. The members of the Gurdwara Committee were summoned. The members who were available reached. The victim succumbed to the injuries in the meantime. P.W. 5 accompanied by one Chatter Singh lodged the First Information Report at 4.00 p.m., the same day.

The prosecution case was based solely on the circumstantial evidence and it could prove the chain events beyond reasonable doubt by the evidences of its witnesses. The appellant was convicted under section 302 of the Indian Penal Code and was sentenced to undergo imprisonment for life by the trial Court.

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Dismissing the appeal, this Court,

HELD : 1.01. It is said that men lie but circumstances do not. Under the circumstances prevailing in the society today, it is not true in many cases. Sometimes the

circumstances which are sought to be proved against the accused for purpose of establishing the charge are planted by the elements hostile to the accused who find out witnesses to fill up the gaps in the chain of circumstances.

[1031D]

1.02. In countries having sophisticated modes of investigation, every trace left behind by culprit can be followed and pursued immediately. Unfortunately it is not available in many parts of this country. That is why Courts have insisted (i) the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established; (ii) all the facts so established should be consistent only with the hypothesis of the guilt of the accused and should be such as to exclude every hypothesis but the one sought to be proved; (iii) the circumstances should be of a conclusive nature; and (iv) the chain of evidence should not have any reasonable ground for a conclusion consistent with the innocence of the accused.

[1031E-F]

1.03. If at a trial the prosecution adduces direct evidence to prove the charge, the Court is primarily concerned whether the witnesses who have testified about the role of the accused are reliable. Once the Court is satisfied that the witnesses who Pre said to have seen the occurrence are trustworthy and inspire confidence, the finding of guilt has to be recorded, if otherwise the accused has to be acquitted. But in a case based on circumstantial evidence neither the accused nor the manner of occurrence is known to the persons connected with the victim. [1031B-C]

1.04. Suspicion and conjecture should not take place of legal proof. It is true that the chain of events proved by the prosecution must show that within all human probability the offence has been committed by the accused, but the Court is expected to consider the total cumulative effect of all the proved facts along with the motive suggested by the prosecution which induced the accused to follow a particular path. The existence of a motive is often an enlightening factor in a process of presumptive reasoning in cases depending on circumstantial evidence. [1032C-D]

1.05. The evidence adduced on behalf of the prosecution is clear,

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unambiguous and in unmistakable terms establish that the appellant is the perpetrator of the crime and nothing has been brought to Court's notice which leaves any gap in the circumstances to establish the guilt of the appellant

[1036B]

Reg v. Hodge, (1838) 2 Lewin 227; Hanumant Govind Nargundkar v. State of Madhya Pradesh AIR 1952 SC 343; Deonandan Mishra v. The State of Bihar, AIR 1955 SC 801; Govinda Reddy v. State of Mysore, AIR 1960 SC 29; Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622; Ashok Kumar Chatterjee v. State of Madhya Pradesh, AIR 1989 SC 1890 and State of U. P. v. Ashok Kumar Srivastava, AIR 1992 SC 840, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 918 of 1981.

From the Judgment and Order dated 10.8.81 of the Punjab & Haryana High Court in Crl. A. No. 417 DB of 1980.

U.R. Lalit, M. Qmaruddin and Mrs. M. Oumaruddin for the

Appellant.

Ranbir Singh Yadav and R.S. Suri (NP) for the Respondent.

The Judgment of the Court was delivered by

N.P. SINGH, J. The appellant has been convicted under Section 302 of the Indian Penal Code and has been sentenced to undergo imprisonment for life, for causing the murder of Paramjit Singh.

It is said that the appellant and the deceased were intimate friends and they used to visit frequently each other's house. But Paramjit Singh (hereinafter referred to as 'deceased') misbehaved with the wife of the appellant and because of that the appellant had nursed a grudge. On July 8, 1979 in the morning the appellant asked the deceased to accompany him to Chandigarh and Mohali where he wanted to take some suitable shop for his business. They boarded a bus of the Road Transport Corporation at Patiala for Chandigarh at about 9.59 A.M. Gurcharan Singh (PW-8) also came to Chandigarh by the same bus. The appellant and the deceased reached Chandigarh at about 11.30 A.M. and after staying there for some time they boarded a local bus for Mohali Gurdev Singh (PW- 23) accom-

panied them in the bus from Chandigarh to Mohali. At Mohali after getting down from the bus the appellant went to Raj Kumar Singh (PW-711) brother of his wife and borrowed a bicycle from him. During this period the deceased was sitting at a shop and taking aerated water. Shortly thereafter, the appellant arrived with the bicycle at the said shop and both left on the bicycle. The deceased was pedalling the bicycle and the appellant sat behind on the carrier. Both were seen going on the bicycle by Jaimal Singh (PW-5) by the side of the Gurdwara, Sahib Singh Sabha, Mohali. Jaimal Singh (PW-5) after taking his meals went to Gurdwara Sahib Singh Sabha at about 2.45 P.M. the same day. One Om Parkash, came there and told him that a Sikh gentleman was lying on the ground in the campus of the said Gurdwara in an injured condition. Jaimal Singh (PW-5) accompanied by Balwinder Singh, Sewadar, came to the spot and found the victim lying on the ground and bleeding profusely. He identified him to be the same person whom he had seen earlier on the bicycle. The victim could not speak. Jaimal Singh (PW-5) left Om Parkash and Balwinder Singh, Sewadar, at the spot and summoned members of the Gurdwara Committee. Some of the members who were available reached. But in the meantime the victim succumbed to the injuries. They searched for the assailant. Thereafter Jaimal Singh (PW-5) accompanied by Chatter Singh went to the Police Station Mohali and lodged the first information report at 4.00 P.M. the same day.

It is further the case of the prosecution that near about the time of the occurrence the appellant was seen coming from the side of the Gurdwara Sahib Singh Sabha and was noticed on the way by Joginder Singh (PW-9) with blood on his hand. On being asked the appellant gave out that he had a fight with someone. and he was going to the hospital to get his injuries dressed. Gurdev Singh (PW-23) on his way back from the hotel also saw the appellant going on the bicycle and found him puzzled. He also saw the hand of the appellant stained with blood and blood marks on his clothes as well. On query the appellant said that he had got the injury through barbed wire and was going to the doctor to get his wounds dressed. Last in the chain of events, the appellant reached the house of Raj Kumar Singh (PW-11) and returned him his bicycle.

It is also the case of the prosecution that next day on July

9, 1979, the appellant made over the his shirt to Ram Gopal (PW-6), Dry Cleaner, 1031

asking him to remove the stains from it. A copy of the receipt prepared in connection with the aforesaid shirt was produced during the trial. The doctor who held the post mortem examination found several incised wounds on the person of the deceased including injury on the abdomen. There is no dispute that the prosecution case is based solely on the circumstantial evidence. If at a trial the prosecution adduces direct evidence to prove the charge, the Court is primarily concerned whether the witnesses who have testified about the role of the accused are reliable. Once the Court is satisfied that the witnesses who are said to have seen the occurrence are trustworthy and inspire confidence, the finding of guilt has to be recorded, if otherwise the accused has to be acquitted. But in a case based on circumstantial evidence neither the accused nor the manner of occurrence is known to the persons connected with the victim. The first information report is lodged only disclosing the offence, leaving to the investigating agency to find out the offender.

It is said that men lie but circumstances do not. Under the circumstances prevailing in the society today, it is not true in many cases. Sometimes the circumstances which are sought to be proved against the accused for purpose of establishing the charge are planted by the elements hostile to the accused who find out witnesses to fill up the gaps in the chain of circumstances. In countries having sophisticated modes of investigation, every trace left behind by the culprit can be followed and pursued immediately. Unfortunately it is not available in many parts of the this country. That is why Courts have insisted (i) the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established; (ii) all the facts so established should be consistent only with the hypothesis of the guilt of the accused and should be such as to exclude every hypothesis but the one sought to be proved; (iii) the circumstances should be of a conclusive nature; and (iv) the chain of evidence should not have any reasonable ground for a conclusion consistent with the innocence of the accused.

A note of caution has also been struck regarding the role of imagination. In the case of Reg v. Hodge, (1838) 2 Lewin 227, it was said:

"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one

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connected while; and the more ingenious the mind of the individual, the more likely was it, considering such matter, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete.'

It has been impressed that suspicion and conjecture should not take place of legal proof. It is true that the chain of events proved by the prosecution must show that within all human probability the offence has been committed by the accused, but the Court is expected to consider the total cumulative effect of all the proved facts along with the

motive suggested by the prosecution which induced the accused to follow a particular path. The existence of a motive is often an enlightening factor in a process of presumptive reasoning in cases depending on circumstantial evidence.

Coming to the facts of the present case, Pritam Kaur (PW-12), mother of the deceased, has deposed that the appellant went to her house in the morning and took the deceased with him saying that he will be accompanying him to Mohali because the appellant had to select a suitable shop. Thereafter both of them left together. There does not appear to be any reason on the part of the mother of the victim to falsely state about the deceased going along with the appellant in the morning of July 8, 1979. Gurcharan Singh (PW-8) has testified that at 9.30 A.M. he saw the appellant and the deceased at the bus stand. He exchanged greeting with them. They told him that they were going to Chandigarh or Mohali. The deceased purchased two bus tickets for Chandigarh in his presence. Gurcharan Singh (PW-8) travelled in the same bus with the appellant and the deceased and all the three came out from the bus at Chandigarh together. Sahib Chand (PW-24), an employee of the Punjab Roadways Transport Corporation, had sold two tickets. The yard control register was produced before the Court to prove in respect of sale of the two tickets which were recovered from the person of the deceased at the time to the post mortem examination. The two tickets were recovered on July 8, 1979, on the date of occurrence itself before the appellant had been located as the culprit of the crime. The two tickets recovered from the person of the deceased

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establish that the deceased had travelled from Patiala along with one another person who was close to him because the deceased was keeping both the tickets in his pocket. This circumstance corroborates the evidence of Pritam Kaur (PW-12) as well as of Gurcharan Singh (PW-8).

The other circumstance in the chain of events, according to the prosecution, is that the appellant and the deceased boarded a local bus at Chandigarh for Mohali reaching there at about 1.30 P.M. Gurdev Singh (PW-23), who was then employee in Colonization Department, Sector 22, Chandigarh, and residing at Badheri, also travelled in the same local bus. He belonged to Patiala. Gurdev Singh (PW-23) saw the appellant and the deceased getting down from the local bus at Mohali. They also exchanged greetings with him and on being asked the appellant told him that they were going to select a shop. They walked together for a short distance and thereafter Gurdev Singh (PW-23) went to take his meals at a dhaba. Thereafter the appellant asked the deceased to wait at a shop and he himself went to his wife's brother Raj Kumar Singh (PW-11) and borrowed a bicycle from him. Raj Kumar Singh (PW-11) although a close relation of the appellant has testified that the appellant took his red bicycle from his house at about 1.30 P.M. Jaimal Singh (PW-5) saw the deceased taking aerated water at the shop and later saw the appellant and the deceased both going together on a red bicycle. The deceased was pedalling the bicycle and the appellant was sitting on the carrier. Gurdev Singh (PW-23) aforesaid who had left the appellant and the deceased while going to the dhaba for taking his meals, after taking his meals, at about 2.30 P.M. again saw the appellant coming on the same bicycle alone. The appellant appeared to be puzzled and his hands were stained with blood. There were also blood spots on his clothes. Gurdev Singh (PW-23) asked

him. as to what had happened to him. The appellant without stopping the bicycle said that he got entangled in the were and were rushing to some doctor to get himself bandaged.

Yet another witness Joginder Singh (PW-9) who had gone to Mohali in search of some plot saw the appellant at about 2.15 P.M. coming on a red colour bicycle. He also noticed the hand of the appellant stained with blood. On query the appellant told Joginder Singh (PW-9) that he had a fight with some person and was going to hospital for dressing of his wounds. Thereafter the appellant went to Raj Kumar Singh (PW-11) his brother-in-law to hand over the bicycle aforesaid.

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It may be mentioned that in the Court Raj Kumar Singh (PW-11) stated that this appellant had gone to his house at about 1.30 P.M. and taken his red colour bicycle which he returned the same day later. But he denied that he had stated during investigation that he had seen injuries on the hand of the appellant. He also denied that he had told the police during investigation that the appellant was mentally agitated. Still the fact that the appellant had taken from him his red colour bicycle at about 1.30 P.M. which the appellant returned to him later the same day has been testified by him. If this part of the evidence of Raj Kumar Singh (PW-11) is accepted which we find no reason to doubt then his evidence corroborates the evidence of Jaimal Singh (PW-5) and Gurdev Singh (PW-23) that the appellant was going with the deceased on a red colour bicycle at about 1.30 P.M. and about 2.30 P.M. the appellant was seen coming on the bicycle alone. Jaimal Singh (PW-5) has also stated that he had seen the accused and the deceased going on the bicycle at a place which was 500 yards from the local Gurdwara Singh Sabha. Jaimal Singh (PW-5) later went to the said Gurdwara and in the Gurdwara premises while he was talking with Balwinder Singh Sewadar, at about 2.45 P.M. one Om Parkash came there and informed that a Sikh gentlemen was lying on the ground in an injured condition. All of them went towards the place where the injured was lying. Jaimal Singh recognised the victim to be the same person whom he had seen earlier taking aerated water at the shop and later on the bicycle along with the appellant. Blood was coming out from his abdominal region. The victim was not in a position to speak. Jaimal Singh (PW-5) went to call the members of the Gurdwara Committee. Two members of the Gurdwara reached the spot. But by that time victim had succumbed to his injuries. Therefore they went to the Police Station Mohali where Jaimal Singh (PW-5) lodged the first information report at 4.00 P.M. Jaimal Singh (PW-5) did not know either the name of the appellant or that of the deceased but he stated in the first information report that he had gone to Dhaba and at about 1.30 P.M., while taking meals he saw a fair complexioned Sardar taking aerated water in the adjoining 'shop. After taking meals when he was going on the road, again he saw the same Sardar pedalling a cycle going towards Gurdwara Singh Sabha Mohafi and behind him a young Hindu Mona was sitting on the cycle. Then he gave the details as to how then at the Gurdwara, at about 2.45 P.M., one Om Parkash told him that one Sardar was lying in a corner of Gurdwara in an injured

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condition. He went and-identified that he was the same young man whom he had seen taking aerated water at the shop and then on the bicycle. The first information report was lodged within one-and-a-half hours of the occurrence giving the aforesaid details. The statements made in the first

information report corroborate fully the testimony of Jaimal Singh (PW-5) in Court. Once the evidence of Jaimal Singh is accepted, it supports and corroborates the evidence of Gurdev Singh (PW-23) who had travelled with the appellant and deceased in local bus from Chandigarh to Mohali and had got down at Mohali at 1.30 P.M. He later saw the appellant at about 2.30 P.M. returning on the bicycle with injuries on hand and blood on clothes. Gurdev Singh (PW-23) knew the appellant as well as deceased from before.

Apart from the evidence of the witnesses, who have proved the different links in the chain of events, the shirt which the appellant was wearing and on which blood had been noticed by witnesses as already mentioned above was recovered from the laundry of Ram Gopal (PW-6). According to Ram Gopal (PW-6) on July 9, 1979 the appellant had given that shirt to remove certain stains. He had issued a receipt to the appellant and one chit was tagged with the shirt for identification. The third was kept by way of record. The shirt was seized and sent to the chemical examiner who found human blood on the said shirt. The shirt as well as the bicycle were produced as exhibits before the Trial Court and have been identified by the witnesses who were examined on behalf of the prosecution. None of the witnesses examined on behalf of the prosecution appear to have been set up or planted by any inimical source. They are neither interested in the deceased nor have any bias against the appellant.

So far the motive which impelled the appellant to commit the murder, it has been suggested on behalf of the prosecution that the appellant and the deceased were intimate friends but the appellant had a suspicion that the deceased was misbehaving with his wife, for which the appellant had a resentment. The resentment was never allowed to be surfaced by the appellant by way of strong protest or confrontation. However, he had mentioned this to Darshanjit Singh (PW-13), Kanwaljit Singh (PW-14) and Sarup Lal (PW-15). Three witnesses aforesaid have deposed as to how the appellant was carrying a suspicion and was tense from inside in respect of the conduct of the deceased. There is nothing on the record to show that the aforesaid three witnesses were either inimical to the appellant or

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interested in the deceased because of that they could have concocted a motive for commission of the crime by the appellant.

According to us the evidence adduced on behalf of the prosecution is clear, unambiguous and in unmistakable terms establish that the appellant is the perpetrator of the crime and nothing has been brought to our notice which leaves any gap in the circumstances to establish the guilt of the appellant. The facts of the case stands the scrutiny and tests as laid down by this Court in the cases of Hanumant Govind Nargundkar v. State of Madhya Pradesh, AIR 1952 SC 343; Deonandan Mishra v. The State of Bihar, AIR 1955 SC 801; Govinda Reddy v. State of Mysore, AIR 1960 SC 29; Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622; Ashok Kumar Chatterjee v. State of Madhya Pradesh, AIR 1989 SC 1890 and State of UP v. Ashok Kumar Srivastava, AIR 1992 SC 840.

The appeal is accordingly dismissed.

V.P.R.

Appeal dismissed.

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JUDIS