

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 2231 OF 2010

Mahavir Singh

...Appellant

Versus

State of Haryana

...Respondent

J U D G M E N T

Dr. B.S. Chauhan,J.

1. This appeal has been preferred against the impugned judgment and order dated 20.1.2010, passed by the High Court of Punjab & Haryana at Chandigarh in Criminal appeal No.499-DB of 2001, affirming the judgment and order of the learned Additional Sessions Judge, Panipat dated 4.9.2001/7.9.2001, passed in Sessions Trial No.49 of 2000 by which and whereunder the appellant alongwith one Jagbir Singh stood convicted under Sections 302 and 120B of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and sentenced to imprisonment for life and a fine of Rs.5,000/- each. They had further been convicted under Section 201 IPC and sentenced to

undergo two years RI and a fine of Rs.1,000/- each. In default of payment, further undergo RI of six months.

2. Facts and circumstances giving rise to this appeal are:

A. That one Ram Chander (PW.13), brother of Suraj Mal (since deceased) alleged that his brother Suraj Mal was missing from 21.6.1995 and his dead body was found on 26.6.1995 floating in the canal after recovery of his chappal on the path to canal near the bridge. Initially, the report in this respect was lodged on 25.6.1995 as a missing person by the mother of the deceased, namely, Smt. Bharto Devi (PW.8) at Police Station, Mathlauda, Panipat. On 28.6.1995, an FIR was lodged at 8 A.M. under Sections 302/201/120B/34 IPC on the basis of complaint made by Shri Ram Chander (PW.13), brother of deceased alongwith one Balbir Singh who had also gone to search the deceased on a motorcycle and that on reaching canal bridge of Kavi village, they saw one chappal, one saw, two pieces of blade, some blood and two pieces of meat lying on the path and the dead body lying on the surface of the river.

B. Pursuant to the registration of FIR, the matter was investigated and during investigation it is alleged that Jagbir Singh, co-accused had

illicit relationship with Sudesh Rani (wife of deceased) and deceased's wife was also involved and all of them had conspired to remove the deceased from the way. The appellant also had a grudge on account of marriage of Sudesh Rani with the deceased and there had also been incident of "maar peet" between them and some cases are pending also. Thus, investigation revealed that the deceased was killed on intervening night of 21.6.1995/22.6.1995 by the appellant and Jagbir Singh, co-accused at the instance of Sudesh Rani and threw away the dead body in the canal.

C. After conclusion of the investigation, a chargesheet was filed under Sections 302/201/120B IPC against the appellant, Jagbir Singh, co-accused and Sudesh Rani. The proceedings were committed to the Sessions Court and charges were framed vide order dated 17.1.1996.

D. To prove its case, the prosecution examined 15 witnesses and on conclusion of the trial, the learned Sessions Judge, Panipat convicted the appellant alongwith Jagbir Singh, co-accused for the offences referred to hereinabove and sentenced them accordingly. However, Sudesh Rani was acquitted of all the charges.

E. Aggrieved, the appellant filed Criminal Appeal No.499-DB of 2001 before the High Court while Jagbir Singh, co-accused filed Criminal Appeal No.520-DB of 2001. Both the appellants were heard together and their appeals had been dismissed by way of impugned judgment and order.

Hence, this appeal.

3. So far as co-accused Jagbir Singh is concerned, he has filed separate appeal in this court, i.e. Criminal Appeal No.2232 of 2010, but his advocate refused to argue the case. So we have adjourned the matter to be heard in ordinary course. In such a fact-situation, the appeal of Mahavir Singh – appellant is heard.

4. Shri Sanjay Sharawat, learned counsel appearing for the appellant has submitted that there could be no motive for committing the offence so far as the appellant is concerned. It was alleged that co-accused Jagbir Singh has developed illicit relations with the wife of deceased. The courts below committed an error in applying the last seen theory. There is evidence on record to the extent that the appellant and Jagbir Singh, co-accused had been in the company of deceased on 21.6.1995, but the missing person report was lodged on

25.6.1995, and an FIR had been lodged at a subsequent stage i.e. on 27.6.1995. When there is such a long gap in the last seen and the recovery of the dead body, such a doctrine has no application whatsoever. The recovery of the clothes of the appellant as well as other incriminating material had not been proved in accordance with law. No independent witness had been examined. Therefore, the appeal deserves to be allowed.

5. Per contra, Ms. Nupur Choudhary, learned counsel for the respondent has opposed the appeal contending that there was sufficient motive on the part of the appellant's also as the appellant's family was not happy with the marriage of Sudesh Rani with the deceased as she belonged to their original village and earlier there had been criminal case between the parties wherein the appellant had thrashed the family of the deceased. As far as the question of missing independent witness is concerned, no question has been put to the Investigating Officer in this regard. Had such an issue been raised he ought to have furnished some explanation. Not only the recovery of incriminating material, but the clothes of the appellant had been recovered beneath the canal bridge on the basis of disclosure statement made by the appellant himself. The concurrent findings

recorded by two courts below do not warrant any interference. Thus, the appeal is liable to be dismissed.

6. We have considered the rival submissions made by learned counsel for the parties and perused the record.

7. There is ample evidence on record and particularly the deposition of Jai Singh (PW.6) that the appellant and Jagbir Singh, co-accused had been seen last alongwith deceased on 21.6.1995. The dead body was recovered after several days and post-mortem was conducted after about a week. However, Dr. P.K. Dhaliwal (PW.1) had opined that the deceased was murdered one week prior to conducting the post-mortem. We do not see any reason to disbelieve the said opinion. In such a fact-situation, it is evident that deceased has been done away in close proximity of time of last seen. None of the accused could furnish any explanation in their statement under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') as where did they drop him or where he had gone. In fact, Bharto Devi (PW.8), mother of deceased had deposed that one Nafe Singh (PW.9) had last seen deceased with the appellant and Jagbir Singh, co-accused on 21.6.1995. Nafe Singh (PW.9) was a

family member of deceased family and he had informed Bharto Devi (PW.8) that the deceased was seen with them. Mahavir Singh, appellant and his younger brother have assaulted Suraj Mal, deceased with a lathi and a matter was reported to the police. She has further deposed about the illicit relation between her daughter-in-law and Jagbir Singh, co-accused. The actual narration about the last seen as per Bharto Devi (PW.8) had been that Suraj Mal (deceased) had gone with Nafe Singh (PW.9) for irrigating the agricultural land, however, he returned alone. On being asked by Bharto Devi (PW.8), Nafe Singh (PW.9) replied that Suraj Mal (deceased) had been talking with Jagbir Singh and Mahavir Singh at the outskirts of the village and in the morning when deceased did not return, she called Jagbir Singh and she was told by him that there was a strike and Suraj Mal was taken away by the police along with others, so, it may take some time for him to come back.

8. As per the medical report, there were various grievous injuries on the neck and scalp of the deceased. There were multiple fractures on skull of the body of deceased.

9. So far as recovery is concerned, it was made vide Ex.PM, Ex.PN, Ex.PQ, Ex.PR and in the presence of the witnesses. At the disclosure statement of co-accused, Jagbir Singh and the appellant the recovered material also contained the chappal of deceased, blood stained shirt and pant of appellant which were found in a polythene under the bridge in Bhusalana Road on 3.7.1995. Again in Ex.PL there was another recovery memo of blood stained clothes of Mahavir Singh hidden up near the village in a pulia which had been recovered on his own disclosure statement. The said clothes were sent for FSL and as per the report it contained human blood. Blood was also found on Hexa blade, frame of Aari (saw) and traces of blood were also found on the pant recovered at the instance of the appellant.

10. Undoubtedly, it is a settled legal proposition that last seen theory comes into play only in a case where the time gap between the point of time when the accused and the deceased were seen alive and when the deceased was found dead. Since the gap is very small there may not be any possibility that any person other than the accused may be the author of the crime. In the instant case, if we examine the medical report minutely, it becomes evident that the deceased Suraj Mal had been murdered one week prior to the post mortem. Thus, it

becomes evident that he had been killed in a very proximity of time when the deceased was seen alive with the appellant and Jagbir Singh, co-accused.

It has been pointed out that there had been some discrepancies in the inquest report as well as in the depositions of the witnesses. However, no material contradictions could be brought to our notice. Minor discrepancies are bound to occur in every case.

11. This Court in **A. Shankar v. State of Karnataka**, AIR 2011 SC 2302 held:

“17. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. "Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility." Therefore, mere marginal

variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions." The omissions which amount to contradictions in material particulars, i.e., materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. Where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence.

(See also: **State of Rajasthan v. Rajendra Singh**, AIR 1998 SC 2554; **State Represented by Inspector of Police v. Saravanan & Anr.**, AIR 2009 SC 152; **Arumugam v. State**, AIR 2009 SC 331; **Mahendra Pratap Singh v. State of Uttar Pradesh**, (2009) 11 SCC 334; **Vijay alias Chineer v. State of M.P.**, (2010) 8 SCC 191; **State of U.P. v. Naresh & Ors.**, (2011) 4 SCC 324; **Brahm Swaroop & Anr. v. State of U.P.**, AIR 2011 SC 280; and **Dr. Sunil Kumar Sambhudayal Gupta & Ors. v. State of Maharashtra**, (2010) 13 SCC 657).

In view of the above, we do not see any force in the submissions so advanced on behalf of the appellant.

12. A large number of issues have been raised by learned counsel for the appellant particularly that independent witness had not been examined. Various issues have been raised regarding recovery of clothes of Suraj Mal, recovery of V-shaped chappals, serious discrepancies in the inquest report and recovery of the cloth of the appellant. In the trial court, no question had been put to Ramphal (PW.15), the Investigating Officer or Lakhpal Singh (PW.11), ASI or any other material witness who could furnish explanation for such discrepancies.

13. It is a settled legal proposition that in case the question is not put to the witness in cross-examination who could furnish explanation on a particular issue, the correctness or legality of the said fact/issue could not be raised. (Vide: **Atluri Brahmanandam (D), Thr. LRs. v. Anne Sai Bapuji**, AIR 2011 SC 545; and **Laxmibai (dead) Thr. L.Rs. & Anr. v. Bhagwantbuva (dead) Thr. L.Rs. & Ors.**, AIR 2013 SC 1204).

14. In the instant case, we had gone through the cross-examination of witnesses who could furnish an explanation for the discrepancies pointed out by learned counsel for the appellant. However, we came

to the conclusion that the defence had never put any question in these regards to the material witness who could furnish the explanation for the same. So the chain of all the circumstantial evidence is complete and no link is missing and the accused persons had an opportunity to commit the murder of the deceased.

15. Both the courts below after appreciating the evidence on record held the appellant guilty of the offences.

In view of the above, the appeal is devoid of merit and it is accordingly dismissed.

.....J.
(Dr. B.S. CHAUHAN)

.....J.
(A.K. SIKRI)

**New Delhi,
May 23, 2014**

SUPREME COURT OF INDIA



JUDGMENT