

PETITIONER:
LEKHRAJ @ HARISINGH

Vs.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT: 22/10/1997

BENCH:
G.T. NANAVALI, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

THE 22ND DAY OF OCTOBER, 1997

Present:

Hon'ble Mr. Justice G.T. Nanavali
Hon'ble Mr. Justice V.N. Khare

S. Kulshreshtha, Adv. for the appellant
Mrs. H. Wahi, Adv. for the Respondent

J U D G E M E N T

The following Judgment of the Court was delivered:

NANAVALI, J.

This appeal arises out of the judgment of the Gujarat High Court in Criminal Appeal No.97 of 1983. The High Court reversed the acquittal and convicted the appellant under Sections 302 and 201 IPC.

The prosecution case was that the appellant, who is the elder brother of one Jarnal Singh, went to Ahmedabad with Ram Singh (deceased) and stayed in the residential quarter of Jarnal Singh between 24th December, 1981 and 26th December, 1981 and that during that period committed the murder of Ram Singh in the said premises.

There being no direct evidence the prosecution relied upon certain circumstances in order to prove its case. It relied upon the evidence of PW-14 Musafir and PW-2 Satnam Kaur wife of Jarnal Singh to prove that the accused and deceased had come together to the house of Jarnal Singh on 22.12.1981 at about 2.00 p.m. or 3.0 p.m. It also relied upon the evidence of PW-2 Satnam Kaur for establishing that both of them stayed in the same room and that on 24.12.1981 the accused had told Satnam Kaur that the other person who had come with him had left the house and that the accused also left on 26.12.1981 in the morning. The trial court believed this evidence. It further held that the body that was found from her house was that of Ram Singh. It also held that the deceased was killed "within 4 corners of family quarter No. 197/8". But in the opinion of the trial court the circumstances were not sufficient to complete the chain and lead to the reasonable hypothesis that the accused alone had caused each of the deceased. The trial court. Therefore, acquitted the accused.

The High Court taking note of the correct legal position in case of circumstantial evidence scrutinised the

evidence with care and also considered carefully the reasons given by the trial court for acquitting the accused. The High Court found that some of the findings recorded by the trial court were inconsistent and some were perverse. After carefully scrutinising the evidence the High Court held that it was clearly established by the prosecution that the accused and the deceased had come together to the house of Jarnal Singh on 22.12.1981 and that they had stayed together in one room in the said house. It further held that it was established beyond reasonable doubt that the dead body which was found from the said room on 27th morning was that of deceased Ram Singh who had come as a guest along with the accused. The High Court also held proved that the deceased was seen alive till the evening of 24th. It further held that on 25th morning the accused returned one cup of tea by saying that his companion had gone away that the accused also left on 26th morning after taking tea. It also held that soon after the guest had left the room was locked by her and it was opened on 27th morning when foul smell started coming out of it. On the basis of the medical evidence the High Court held that the probable time of death of the deceased was between 24th evening and 26th morning. The High Court then concluded that these circumstances were sufficient to prove that it was the accused who had killed the deceased and was, therefore, guilty for committing his murder.

Learned counsel for the appellant has challenged the view taken by the High Court firstly on the ground that the prosecution has failed to establish any motive for the accused to commit the murder. In support of his submission, the learned counsel relied upon the decision of this Court in *Surinder Pal Jain vs. Delhi Administration*, JT 1993 (2) SC 206, wherein it has been held that "in a case based on circumstantial evidence, motive assumes pertinent significance as existence of the motive is an enlightening factor in a process of presumptive reasoning in such a case". This Court has further observed that "The absence of motive, however, puts the Court on its guard to scrutinise the circumstances more carefully to ensure that suspicion and conjecture of not take place of legal proof". This Court has not held that in the absence of any motive an accused cannot be convicted under Section 302 IPC. Therefore, the contention raised by the learned counsel deserves to be rejected.

It was next contended by the learned counsel that there was no definite evidence to establish that the deceased had died between the evening of 24th and the morning of 26th. He submitted that the finding of the High Court that the death must have occurred 3 or 5 days prior to the performance of the postmortem examination is really a conjecture. He also submitted that the probable time of death has to be established on the basis of expert evidence. The learned counsel supported his contention by citing the decision of this Court in *Gambhir vs. State of Maharashtra*, 1982 (2) SCC 351. It is not necessary to deal with that decision as in this case probable time of death of the deceased was given by the factor who has performed the autopsy. The doctor deposed that the death had occurred 3 or 4 days before the postmortem was conducted. Thus, according to the medical evidence, the death had taken place sometime between 24th and 26th December, 1981. Therefore, the second contention is also rejected.

It was next contended that the evidence of Satnam Kaur (PW-2) is not at all reliable and trustworthy. There being sufficient accommodation in her house, there was no need for

her to go to neighbour's house and sleep there during those nights. Her evidence that the accused and the deceased had come together stands corroborated by the evidence of Musafir (PW-14) and also by the fact that the dead body was found from her house. Her explanation that the accused being the elder brother of her husband, she was afraid of him and as her husband was out of the town, she had thought it fit to sleep at night at the neighbour's place, can not be regarded as unbelievable. She was a young woman aged 28 years. She was observing 'ghunghat'. Her husband was away on duty. Under these circumstances her conduct cannot be held to be unnatural.

It was next contended that if really the deceased was killed on 24th or 25th then foul smell would have started coming out much earlier and she would have come to know it before 27th morning. This submission also deserves to be rejected. The doctor has deposed that foul smell starts coming after about 18 to 36 hours after the death. It was winter season and the dead body was inside the room. Therefore, the body might not have started giving out bad smell earlier than the morning of 27th. It was further submitted that as Satnam Kaur had even her police statement under a threat that if she did not give such a statement she would be involved in the incident, no reliance whosoever should have been placed on her evidence. It is difficult to appreciate how for this reason her evidence given in the Court can be discarded. She being the wife of the younger brother of the accused it was quite likely that she did not want to state in the Court all that she had stated before the police and, therefore, deposed about those facts which she could not have denied.

In our opinion, the High Court was right in accepting her evidence and holding that the accused and the deceased had come together to her house, had stayed together in one room, that after 24th evening the deceased was not seen and that the accused had left in the morning of 26th after closing the door of that room. The accused had denied all these facts as false. As the accused had falsely denied these facts the High Court was right in holding that it supplied the missing link in the chain and that the chain of circumstances being complete it was reasonable and safe to conclude that it was the accused who had committed murder of the deceased. As we do not find any good reason to therefore with the view taken by the High Court this appeal is dismissed.

The appellant was on bail. He is directed to surrender to custody to serve out the remaining part of the sentence. If he does not surrender, the State shall take necessary steps for the said purpose.