STATE OF HARYANA

v.

SHER SINGH & ORS.

February 24, 1981

[O. CHINNAPPA REDDY AND BAHARUL ISLAM, JJ.]

Code of Criminal Procedure 1973, S. 154, Indian Penal Code 1860, S. 302 and Indian Evidence Act 1872, S. 103—Trial for murder—Accused convicted for murder by Sessions Court—Acquittal by High Court—Interference by Supreme Court—Whether F.I.R. to contain details of the occurrence—Prosecution whether bound to prove motive—Burden of proof of alibi whether on the accused.

The two deceased were the two younger half brothers of the first respondent. A day before the day of the murder of the two deceased, the brothers had divided the family properties and started living separately. P.W. 3, the wife of one of the deceased, in the F.I.R. given to the police, stated that on the day of the occurrence when the two deceased and she went to the *bagichi* for milking the cattle, the first respondent and his sons surrounded the two deceased in the court-yard, the first respondent dealt a blow on the head of her husband with a *gandasi* while the others gave lathi blow on the second deceased. Both of them succumbed to the injuries. It was also stated in the F.I.R. that P.W. 4, the sister of the deceased, was with her at the time of the occurrence and that when they screamed, the assailants asked them to keep quiet on pain of death to them. The assailants, it was alleged, thereafter dragged the two dead bodies and burnt them in the nearby heap of cow-dung cakes after pouring kerosene on the heap. The defence of the two accused was *alibi*.

All the accused, who were charged of offences under section 302 read with section 34 of the Penal Code were sentenced ; the first respondent to death and the others to imprisonment for life.

On appeal, the High Court set aside the conviction and sentences and acquitted all of them.

Allowing the State's appeal,

HELD : 1. When an accused pleads *alibi*, the burden of proof under section 103 of the Evidence Act is on the accused. The plea of all the accused that they were elsewhere at the time of the offence is not true. [4-G, 5-C]

2. The guilt of the two respondents had been established beyond all reasonable doubt. The High Court rejected the evidence of P.W. 10 on the ground that he had not stated in the statement before the police that in the partition of the family properties among the brothers, there was a hitch. The prosecution is not bound to prove motive of any offence in a criminal case, for motive is known only to the perpetrators of the crime and may not be known to others. If the motive is proved by the prosecution, the Court has to consider it and see whether it is adequate. [11E, 6 B-C]

A In the instant case the motive proved is apparently inadequate, although it might be possible. [6 C]

3. The High Court had taken a wrong view in rejecting the evidence of P.Ws. 3 and 4 on the ground that they were close relations of the deceased ; that it was highly improbable that P.W. 3 who was in advance stage of pregnancy would go to the place of occurrence. [8F; 9F-G]

B

4. Although both the witnesses P.Ws. 3 and 4 were close relations of the deceased, their evidence could not be rejected solely on that ground. They were also related to the respondents and there is nothing on record to show that they were inimically disposed towards the respondents to falsely implicate them in the murder. Secondly, it was a pure conjecture of the High Court when it said that *panchas* and *sarpanchas* and other respectables of the village took an opportunity to implicate the respondents. It was also a conjecture on the part C of the High Court to say that the deceased were murdered by unknown culprits and that the respondents were falsely implicated by the village respectables. The High Court found as a fact that the respondents and the deceased slept in the *bagichi* during nights to keep watch over the cattle. Had the murder been perpetrated by unknown persons, the respondents would have intervened and informed the neighbours. [8F—9B]

D 5. The fact that P.W. 3 did not mention in the F.I.R. that she had informed some persons of the village before the lodging of the F.I.R. and that for this reason her statement could not be relied on is not correct. The F.I.R. need not contain all details of the occurrence nor does the omission to mention the name of persons whom she informed in the village detract from the credibility of the report. The omission is a mere omission of details and not a contradiction. [9 C]

E 6. The High Court was not right in disbelieving the evidence of P.W. 4 on the ground that had she been present at the scene of occurrence, she would have out of love for her real brothers, intervened and tried to save them. There is nothing unnatural if she had out of a sense of self preservation at the threat of the assailant refrained from attempting to save the two deceased from the murder. P.W. 3 must have been dazed at the brutal murder of her husband and brother-in-law. In such a situation she could not be expected to mention all the F details, in the F.I.R. and therefore, the High Court was not right in rejecting the evidence of P.W. 10 solely on the ground that no mention of the extra-judicial confession of Respondent No. 1 had been made in the F.I.R. [9H-10B; 10D-E]

7. In view of the fact that the conviction and sentence were passed by the Session Judge in July, 1974 and the High Court passed the order of acquittal in 1975, the extreme penalty of death given to the first respondent is not called for G now ; ends of justice will be met if all the respondents are sentenced to imprisonment for life. [11 G]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 320/75.

Appeal by special leave from the Judgment and Order dated H 2.4.1975 of the Punjab and Haryana High Court in Criminal Appeal No. 1044/74 and Murder Reference No. 50/74.

K.G. Bhagat and *R.N. Poddar* for the Appellant. A

Mrs. Urmila Sirur for the Respondents.

The Judgment of the Court was delivered by

BAHARUL ISLAM, J. This appeal by special leave by the State of Haryana is directed against the judgment and order of the B Punjab and Haryana High Court setting aside the conviction and and sentence passed by the Session Judge, Karnal. Respondents Balkar Singh and Dalel Singh are the sons of respondent Sher Singh. The Session Judge convicted all the three under Section 302/34 of the Penal Code, and sentenced Sher Singh to death and the other two to imprisonment for life. On a reference by the Sessions Judge C for the confirmation of the sentence of death inflicted on Sher Singh and appeal filed by the respondents the High Court set aside the order of conviction and sentence and acquitted the respondents.

2. The material facts may be stated thus : On 17th of October, 1973 at about 12 A.M. Mst. Narman, widow of Danna D (deceased) submitted the first information report to A.S.I. Ram Sarup (P.W. 12) at village Pai. Her material allegations in the first information report were that the previous day, respondent Sher Singh and his two younger half brothers, namely, Danna, her husband, and Hukmi, had effected a family partition amongst themselves and they started living separately. That day, namely 17th of E October, at about 6.00 A.M. her husband, Danna, along with his brothers Hukmi and respondents Sher Singh came to their *bagichi* nearby from the house in order to milk cattle. She followed them in order to fetch milk. Respondent Sher Singh, then along with his sons Dalel, Balkar, Keni, Prem and Parwana surrounded her husband and her husband's younger brother, Hukmi, in the court- F yard. Sher Singh had a *Gandasi* in his hand, Dalel a lathi shoded with iron blade, the other three had lathis in their hands. Sher Singh dealt a Gandasa blow on the head of her husband Danna, who immediately fell down on the ground. Dalel then dealt a blow with iron shoded lathi on the head of Hukmi who also fell down on the ground. The other accused then inflicted blows with G lathis on the persons after they had already fallen down. Respondent Sher Singh dealt another *Gandasi* blow on her husband. She has further stated in the first information report that Mst. Danni, sister of repondent Sher Singh, was also with her and witnessed the occurrence. They screamed seeing the assaults, whereupon they H were directed on pain of death to sit in the corner of the court-yard.

A Out of fear they obliged. Thereafter, it has further been alleged, the accused persons dragged the dead bodies to their nearby heap of cow-dung cakes. Sher Singh spread kerosene on the heap of the cakes and Dalel set fire to it lighting a match stick. As a result, the two bodies were charred.

B 3. P.W. 12 sent the F.I.R. to the police station where the case was registered. Police, after investigation, submitted charge-sheet and arrested the accused persons. Eventually, the accused persons were charged under Section 302/34 of the Penal Code, and tried in the court of Sessions. The accused persons pleaded not guilty to the charges. According to them the three brothers were joint in C residence, mess and cultivation till the date of the occurrence. The defence of respondent, Sher Singh, was that his two sons, Dalel and Balkar, and the deceased brothers Danna and Hukmi, used to sleep in the *Bagichi* during the night to keep watch over their cattle tetherred there. On October 16, 1973 he and his two deceased brothers were in their fields during the day and in the evening he D went to their field where cotton was ripe and he remained there to keep watch over the cotton till next morning. That field was at a distance of about $1\frac{1}{2}$ miles from their *Bagichi*. About $1\frac{1}{2}$ hours after sun rise on October 17, 1973, he returned to the *Bagichi* where he found the heap of cow-dung cakes in the enclosure of *Bagichi* burning. Police then arrested him. The defence of respondent E Dalel was that two days before the date of occurrence he went to his maternal uncle, Lalji, at Narwara to borrow a tractor. He returned home on the 17th of October, 1973 at about sun-set. He found the heap of cow-dung burning and police inside the *Bagichi* where he was arrested by the police. The defence of respondent Balkar was that he was a student of 9th class and on 16th of October, 1973 F he had been to school to witness some sports. He passed the following night in village, Diwali, where his sister was married. He returned home on October 17, 1973 and when he reached the *Bagichi* he found the heap of cow-dung burning and, he was arrested by the police there. Thus the defence of all the respondents was *alibi*.

G 4. When an accused pleads *alibi*, the burden is on him to prove it under Section 103 of the Evidence Act which provides:

> "103. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its H existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustrations : (a) A prosecutes B for theft, and wishes the court to believe that B admitted the theft to C. A must prove the admission.

B wishes the court to believe that, at the time in question, he was elsewhere. He must prove it."

In this case defence did not adduce any evidence to prove the *alibi*. On the contrary the evidence of P.W. 11, Lila, is that on 21st October, 1973, all the accused were produced by Lalji, the brother of the wife of respondent, Sher Singh in village Nand Karan Majra around 8 a.m., when they were arrested. This was in presence of of P.W. 11 and several others. Police had been there the witness says, from October 17 to 20, 1973. This evidence of P.W. 11 remains unrebutted. The plea of the respondents that they had been elsewhere at the time of the occurrence and returned to the place of occurrence by themselves on October 17, when they were arrested by police, is untrue.

5. Let us now turn to and examine the prosecution case and see whether the prosecution has proved the guilt of the accused beyond reasonable doubt.

6. The death of Danna and Hukmi is not in dispute. That the dead bodies were burnt on the cow dung heap by the side of the *Bagichi* is also not in dispute.

The only question for decision is whether Danna and Hukmi were murdered and their dead bodies were burnt by the respondents as alleged by the prosecution. The prosecution relies on the following piece of evidence :

(i) Motive of the murder ;

(ii) Direct evidence of the alleged eye witnesses, P.W. 3 and 4 ;

(iii) Extra Judicial Confession alleged to have been made by respondent Sher Singh before P.W. 10 ; and

(iv) Recoveries of incriminating articles on disclosure statements alleged to have been made by the respondents.

(i) Motive :—P.W. 3 Mst. Narman has deposed that two days before the day of occurrence, deceased Danna, Hukmi and respondent Sher Singh made an amicable partition of their property. They divided their land (except Shamlat land), house, cattle, utensils and grains. Respondent Sher Singh, however, refused to part with joint

A cash and jewellery. Danna refused to part with any share of the Shamlat land unless the cash and jewellery were divided. P.W. 4 Mst. Danni and Jhanda (P,W. 10) support, P.W. 3, It therefore, appears. that there was some sort of hitch between respondent Sher Singh on the one hand and his half brothers Danna, and Hukmi on the other. The High Court declined to accept the evidence of P.W. B 10 in as much as he had not mentioned the fact of partition in his statement before the police.

The prosecution is not bound to prove motive of any offence in a criminal case, in as much as motive is known only to the perpetrator of the crime and may not be known to others. If the motive C is proved by prosecution, the Court has to consider it and see whether it is adequate. In the instant case the motive proved was apparently inadequate, although it might be possible.

(ii) *Direct Evidence* :—P.W. 3 Mst. Narman has deposed that 15 days before the date of occurence, P.W. 4 Danni who was at her D husband's house to help her as she was expecting a child one of these days. In fact she delivered a child 12 days after the occurrence. She has supported the prosecution case in its entirety. She says that in the morning about the time of sun-rise on the date of occurrence, deceased Danna and Hukmi went to the Panchayat land where their cattle had been tethered in order to milk them. She E followed them to bring milk home. Danna also accompanied her to make cow dung cakes. At that time she found that the respondents had been standing in the Panchayat land armed with dangerous weapons. Respondent Sher Singh gave *Gandasi* blow on the head of Danna who immediately fell down on the ground. Dalel also gave a blow on the head Hukmi who also fell down. All of them F thereafter indiscriminately assaulted the two injured persons. Both of them died as a result. She and Danna began to scream whereupon the culprits asked her and Danna to keep quiet on pain of death and they asked them to sit on one side of the place. Both of them out of fear did as directed. She has further deposed that the respondents including the other miscreants dragged the two dead G bodies to the nearby heap of cow dung cakes and placed the dead bodies on it. Respondent Sher Singh then brought a tin of kerosene oil and sprinkled it on the heap of the cow dung cakes. Respondent Dalel put fire to the cow dung cakes. When the heap of the cow dung cakes was burning they set weeping there while the respondents were H scrapping the blood stains on the earth and throwing them to the burning cow dung cakes. After some time P.W. 10 Jhanda and

one Bhagtu came to the place of occurrence after the dead bodies were put to fire. They inquired of Sher Singh as to why they were burning the cow dung cakes. Sher Singh replied that he had murdered his two brothers and was burning their dead bodies. He, however threatened them to mind their own business and said that if they raised any alarm, they would be similarly murdered and put to fire. P.W. 10 Jhandu and Bhagtu then left the the place. The process of burning took about three hours. All this time the culprits were at the place of occurrence scraping the blood stained spots. They then changed their blood stained clothes, threw them to the fire and put on new clothes and left the place with weapons in hands towards village Bhana. After the departure of the culprits the witness along with P.W. 4 left for the nearby village. They narrated the occurrence to the villagers and told them as to how her husband and brother-in-law had been murdered and their dead bodies burnt. But they remarked that that was a dispute between brothers and they could not do anything. The witness then left the village for police station at Pundri to lodge an offence report. On the way falls village Pai, at the distance of about 4-5 miles from the place of occurrence, she met at village Pai a police officer and two constables to whom she narrated the occurrence. Her statement was recorded by P.W. 12, Ram Sarup, an Assistant Sub-inspector of Pundri Police Station, who was at Pai. She was then accompanied home by two constables. While P.W. 12 sent the F.I.R. to the police station for registering a case. They reached the place of occurrence, after some time. A short while after the arrival of the witness and the two constables at the place of occurrence, a senior police officer arrived at the place of occurrence. They with the help of some other persons who had gathered there in the mean time started to extinguish the fire by putting buckets of water on it.

P.W. 4 Danni corroborates P.W. 3 on the commission of murder of the two deceased by the respondents and a few others. P.W. 10 who came to the place of occurrence on seeing smoke from the heap of cow-dung cakes, inquired of Sher Singh as to what was happening. He has deposed that he was told by Sher Singh that he had killed his two brothers and was burning their dead bodies and that he was asked on pain of murder to mind his own business, and not to raise alarm. He and Bhagtu then left the place.

P.Ws. 3 and 4 were cross-examined at great length by the defence counsel but nothing significant could be brought out in order to demolish their basic aud substantial evidence given in examination-

A in-chief. Only some minor discrepancies with regard to omissions of details in their statements to the police were brought out. These omissions in our opinion were not contradictions and insignificant.

The High Court has rejected the evidence of P.Ws. 3 and 4 on the ground (a) that they were close relations of the two deceased; (b) that P.W. 3 had omitted to mention in the F.I.R. that she had informed any person of the village before leaving for the police station; (c) that it was *'highly improbable and unnatural'* that P.W. 3 would go to the place of occurrence from her home when she was in advance pregnancy; (d) that she was not accompanied to the police station by anybody; (e) that none of the villagers came to the place of occurrence; and (f) that she and P.W. 4 did not physically attempt to save the two deceased who were respectively their husband and brother. Ultimately the High Court found that "*most probably* both Smt. Narman and Danni were not present on the spot and had not witnessed the occurrence."

In our opinion the conclusion arrived at by the learned High Court is untenable. The learned High Court has taken a very unrealistic view of the situation and of the facts and circumstanes of the case. There is no evidence that P.Ws 3 and 4 could or did raise any alarm. When they were about to scream they were threatened on pain of murder, to keep quiet and sit. There is evidence that both the deceased as well as P.Ws 3 and 4 were unarmed, whereas the respondents were armed with dangerous weapons. In such a situation it will be too much to expect of P.Ws 3 and 4 to try to physically intervene and save the two deceased. Although it is true that P.Ws 3 and 4 were close relations of the two deceased, their evidence could not be rejected on that ground. They were also related to the respondents and there is nothing on record to show that they were inimically disposed to the respondents to falsely implicate the respondent in a murder case like this. They were the most natural witnesses. Although it was not the case of defence that some of the people of the Panchayat conspired with P.Ws 3 and 4 to implicate the respondents in this murder case the High Court made out its own theory to that effect. There is no evidence or circumstances from which that inference could be drawn. It was a pure conjecture that "it was best opportunity for the Panchas and Sarpanch and other respectables of the village to take special interest in bringing the culprits to book by contacting the police at the earliest if the culprits were not other persons than the appellants." The High Court has also based its finding on conjecture that the two deceased were murdered by unknown culprits and they were falsely implicated by the village

respectables" on suspicion. This hypothesis does not stand any scrutiny. Respondent Sher Singh in his statement says "It was routine for me and my two elder sons and two step brothers to sleep in the *Bagichi* during night where we used to tie our cattle." Even the High Court has found "...that they (deceased), like Sher Singh or Sher Singh's sons used to sleep in the Bagichi in the night to keep watch over them (cattle)." If that be so, had the murder been perpetrated by unknown culprits, there was no reason as to why the the respondents did not intervene and inform any of the neighbours. The learned High Court, as stated above, has rejected the evidence of P.W. 3 on the ground that she did not mention in the F.I.R. that she had informed any person of the village before she lodged the F.I.R. The F.I.R. need not contain the details of the occurrence. The omission referred to by the High Court is an omission of details and not really a contradiction. The High Court also was not right in observing that it was surprising "that as stated by Mst. Narman nobody in the village listened to her story nor did anybody go to her help when she went to Abadi land of the village after the departure of the appellants from the place of occurrence." In fact P.W. 10 had come to the place of occurrence before P.Ws 3 and 4 left the place of occurrence for the village. The way P.W. 10 was treated by respondent, Sher Singh, was sufficient to deter any other villager to come to the place of occurrence. The High Court has also found it a 'mystery' that none of the villagers came to the place of occurrence and intervened in the matter. There is no evidence on record to show that when the assaults on the deceased were in progress or the dead bodies were being burnt, any of the villagers in fact knew about the occurrence. In fact P.W. 10 and Bhagtu had seen the smokes from the cow dung cakes, and came to the place of occurrence.

The High Court has also observed that it was unlikely that P.W. 3 would go to the *Bagichi* in such an advance stage of pregnancy in order to bring milk from there at sun rise in as much as P.W. 4 had already come there to help her in domestic work. It is common experience that in villages women who regularly attend to their domestic chore and work in the field, work some time till the very moment of actual child birth. P.W. 4 was brought to help her as in her advance stage of pregnancy she could not work as briskly as before. The learned High Court has also observed that presence of P.W. 4 Danni at the place of occurrence was "not natural because had she been present there she would have out of love for her real brothers physically intervened and tried to save them from the clutches of assaults." It has been observed before that they were asked to keep

A quiet and sit on pain of murder. It cannot be forgotten that Danni was also an unarmed village women and the first instinct of a being is the instinct of self-preservation. In our opinion, therefore, it was not, "unnatural" that she would not, as she could not, attempt to save the two deceased from murder. The High Court has also observed that in any case P.W. 4 would have raised hue and B cry. She could not raise an outcry as she was told by Sher Singh that she would be murdered and burnt, if she did so. It was therefore but natural that she did not raise any hue and cry.

(iii) *Extra Judicial Confession* :—The evidence of P.W. 10 has also been referred to above. He has deposed that when seeing the C smoke he went to the place of occurrence and inquired of Sher Singh as to why they were burning the heap of cow dung cakes, he replied that he had murdered his two brothers and was burning their dead bodies. This is an extrajudicial confession so far as Sher Singh is concerned. The High Court has not accepted the evidence of P.W. 10 on the ground that this was not mentioned by P.W. 3 in the first D information report. This was an omission. That apart, it must be remembered that P.W. 4 who saw with her own eyes such a brutal murder of her husband and brother-in-law must have been dazed and at her wits end. In such a situation, it could not be expected of her to give all the details in the first information report. And on account of the omission, P.W. 10 could not be disbelieved.

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(iv) Recoveries of incriminating articles :—The last piece of evidence on which reliance has been taken by the prosecution is the recoveries of incriminating weapons. The evidence of P.W. 13, the Investigating Officer, is that respondent Sher Singh on 23rd of October, 1973 made a disclosure statement which is Exhibit PL. The F disclosure was that Sher Singh had kept concealed a *Gandasi* in the bundle of sugar cane in *his* field and he could get the same recovered. In pursuance of his disclosure the *Gandasi* Ex. P. 26 was recovered from that place. The *Gandasi* was stained with blood and was seized under seizure memo Ex. PL/1. On the same day respondent Dalel Singh made a disclosure statement Ex. PM and disclosed that he G had kept concealed a lathi to which an iron piece was attached in *his Gowar* field and he could get the same recovered. In pursuance of his disclosure, *lathi* Ex. P. 27 which was stained with blood was recovered. It was seized under seizure memo Ex. PM/1. On the same day respondent, Balkar Singh made a disclosure statement, Ex. H PN that he had kept concealed a *lathi* in *his kikar* branches fence and he could get the same recovered. In pursuance of his disclosure

statement, lathi Ex. P. 28 which was stained with blood was recovered. It was seized under seizure memo Ex. PN/1. These discoveries were made in presence of P.W. 11 Lila, who was Sarpanch of the local panchayat. The High Court declined to put any importance to the recoveries as the respondents were not interrogated by Police from October 20 to 24. In our opinion that cannot be a sufficient justification to hold that the recoveries were 'fake'. The weapons were recovered at the pointing of the respondents.

In addition the Investigating Officer seized an empty kerosene tin lying at the place of occurrence, The tin was emitting smell of kerosene oil and it was seized under seizure memo Ex. PJ which was attested by P.W. 11. In addition another circumstance tends to support the complicity of the respondents in the offence. It is the conduct of the respondents. The two deceased who had been murdered, by whomsoever it might be, were near blood relations of the respondents. If the murder had been committed by some others, as supposed by the High Court, they would not have kept quiet. Of course, they have stated in their defence that they were away from home in some other places and returned to the place of occurrence on 17th October, 1973 which has been found by us to be untrue. This conduct of the respondents is incriminating.

7. As a result of the above discussions we, hold agreeing with the learned Sessions Judge, that the guilt of the respondents has been established by the prosecution beyond all reasonable doubt. In the result we allow, the appeal, set aside the judgment and order of acquittal of the High Court and convict the respondents under Section 302/34 of the Penal Code.

8. Now comes the question of sentence. The murder is ghastly and brutal. Respondent Sher Singh deserved the extreme penalty provided by law, The learned Sessions Judge was right in imposing death sentence on him. But in view of the fact that the learned Sessions Judge passed the order of conviction and sentence as early as 27th July, 1974 and the High Court passed the order of acquittal as early as 2nd of April, 1975, we refrain from visiting respondent Sher Singh with the extreme penalty provided by law for murder. We sentence all the respondents to imprisonment for life. We are told that respondents Balkar Singh and Dalel Singh are on bail. Their bail bonds are cancelled. They shall surrender forthwith to serve out their sentences.

N.V.K. *Appeal allowed.*