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JARNAIL SINGH AND ANR. ETC.

v.

STATE OF HARYANA

JANUARY 20, 1993

B

[K. JAYACHANDRA REDDY AND N.P. SINGH, JJ.]

*Criminal Law:*

*Indian Penal Code, 1860:*

C

*Sections 302, 149 and 148—Motive—Relevancy of—Held where positive evidence is cogent, clear and reliable motive is of no importance—Family members—Eye-witnesses—Whether independent evidence required.*

*Evidence Act, 1872:*

D

*Chapter IX—Murder—Evidence of family members as eye-witnesses—Reliability of.*

E

The first appellant in Criminal Appeal No. 192/1980 and his four sons were convicted under Section 302 read with Section 149 of the Indian Penal Code, 1908 and sentenced to undergo rigorous imprisonments for life. They were also convicted and sentenced to one year's rigorous imprisonment under Section 148 of the Code.

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According to the prosecution, a son of the first appellant and a daughter of P.W. 4 fell in love with each other but due to opposition from P.W. 4's husband, their marriage could not take place and both of them committed suicide, and therefore, the first appellant and his four sons had a grudge that P.W. 4's husband was responsible for the death of the first appellant's son; that two months thereafter when P.W. 4's husband and his elder brother were returning to the village from town in a bullock-cart along with P.W. 4, P.W. 5, her daughter and P.W. 6, her son-in-law, the five accused, who were coming in a truck from the opposite direction got down from the truck, chased P.W. 4's husband and his elder brother, who were running away, and assaulted them with Gandasa and Lathies and after boarding the truck, drove the truck over the two brothers, that when P.W. 4 to 6 went near the two brothers they found them dead and a First Information Report was lodged, and a post-mortem was held.

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On the basis of the evidence adduced on behalf of the prosecution, including that of PWs 4 to 6, the Session Judge came to the conclusion that the charges levelled against the five accused were fully established. This finding was upheld by the High Court.

In the appeal before this Court, on behalf of the accused persons it was contended that a false case had been set up against them by PW 4, who had not seen the occurrence but having learnt the death of her husband and his elder brother, became an eye-witness along with PWs 5 and 6, her daughter and son-in-law respectively, only to implicate the accused persons, that there was no immediate motive for commission of such a serious offence in the facts and circumstances of the case, that it would not be proper to accept the motive alleged on behalf of the prosecution and that the eye-witnesses being only the members of the family, some independent evidence was required.

Dismissing the appeals, this Court,

**HELD:** 1.1. Where the positive evidence against the accused is clear, cogent and reliable, the question of motive is of no importance. But, at the same time, motive behind a crime is a relevant fact and normally prosecution is expected to adduce evidence in respect thereto. Experience shows that one or other motive moves the culprit to a certain course of action.

*Gurcharan Singh v. State of Punjab*, A.I.R. 1956 S.C. 460; *Narayan Nathu Naik v. The State of Maharashtra*, A.I.R. 1971 S.C. 1656; *Podda Narayana v. State of A.P.*, A.I.R. 1975 S.C. 1252; *Faquira v. State of U.P.*, A.I.R. 1976 S.C. 915 and *Molu v. State of Haryana*, A.I.R. 1976 S.C. 2499, relied on.

1.2. Normally there is a motive behind every criminal act and that is why the investigating agency as well as the Court while examining the complicity of an accused, first try to ascertain as to what was the driving force which compelled the accused to commit the crime in question. But with complex growth of society and which has also produced complex characters, the actions and reactions of person either on the accuse side or on the prosecution side are not very easy to ascertain and judge. It is a matter of common experience that even a small or trifle incident has different reaction on different persons. That is why it is not always easy for the Court to weigh and judge as to whether under the circumstances

- A brought on record by the prosecution, in normal course the accused concerned could have acted as alleged by the prosecution.

B 1.3. In cases where prosecution is not able to establish a motive behind the alleged crime it assumes importance specially in cases where the prosecution rests on circumstantial evidence or on witnesses who have an inimical background. Proof of motive on the part of the accused persons to commit an offence satisfies the judicial mind about the likelihood of the authorship but in its absence it is only proper on the part of the Court to have a deeper search. But if the Court is satisfied that evidence adduced, oral or circumstantial, establishes the charge against the accused, the prosecution case cannot be rejected saying that there was no immediate impelling motive on the part of the accused persons to commit the crime.

D 1.4. In the present case, the son of the first appellant committed suicide two months before the date of occurrence because of the attitude taken by PW 4's deceased husband. It can be said that there was no immediate motive which impelled the accused persons to commit the murder of the two brothers in broad day light in such cruel manner. But the death of the son in a tragic circumstance must have shaken the family and there is nothing unnatural or unusual that because of that, the first appellant and his four sons having seen the deceased coming to village on bullock-cart decided to eliminate him.

F 1.5. That apart, if the evidence adduced on behalf of the prosecution is accepted, then whether there was immediate motive for committing the offence loses all significance. The present case has many special features which weigh heavily against the accused persons and it is not easy on their part to dislodge them. In cases relating to murder the time taken in lodging the F.I.R. assumes special significance. The fact that P.W. 4 lodged the F.I.R. within an hour of the occurrence giving the details of the manner of occurrence lends corroboration to her testimony in Court regarding the participation of the accused persons in the present occurrence. The manner of occurrence disclosed by P.W. 4 in the F.I.R. was fully corroborated by the post-mortem examination reports. The two doctors during post-mortem examinations found that injury No. 7 on the chest of P.W. 4's husband and injury No. 11 on his brother could have been caused by the wheel of the truck passing over the chest of P.W. 4's

husband and any blunt part of the truck striking against the body of his brother. This not only corroborates the version disclosed by P.W. 4 in the F.I.R. but goes a long way to establish the correctness thereof. A

1.6. The members of the family, if present at the time of occurrence are the most natural witnesses. The version disclosed in the F.I.R. has been supported by 3 eye-witnesses P.W. 4, P.W. 5 and P.W. 6. There is no reason to doubt their testimony only on the ground that they were closely related to the victims. There is no evidence to show that any person after the occurrence appeared at the scene to engineer the present case against them. P.W. 4, whose husband and elder brother of her husband had succumbed to the injuries, was left alone to pursue the post occurrence steps without help or assistance from anyone else. B C

1.7. There is no reason to interfere with the finding recorded by the trial court and affirmed by the High Court.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 192-193 of 1980. D

From the Judgment and Order dated 4.9.1979 of the Punjab and Haryana High Court in Criminal Appeal Nos. 760 and 759 of 1977.

R.L. Kohli, U.R. Lalit and K.K. Mohan for the Appellants. E

A.M. Singhvi, Ms. Renu George, Ms. Indu Malhotra and I.S. Goyal for the Respondent.

The Judgment of the Court was delivered by F

N.P. SINGH, J. These appeals have been filed on behalf of five accused persons, who have been convicted under section 302 read with section 149 of the Penal Code for committing murder of Gurbux Singh and Wasava Singh and have been sentenced to undergo rigorous imprisonments for life. They have also been convicted under section 148 of the Penal Code and have been sentenced to undergo rigorous imprisonment for one year. G

It is the case of the prosecution that Rulwant Kaur, the daughter of Gurbux Singh (deceased) and Raghbir Singh, son of Jarnail Singh, one of the accused fell in love with each other. As the marriage could not materialise due to opposition, two months prior to the date of occurrence, H

A both of them committed suicide. It is said that accused Jarnail Singh and his four sons who are the other four accused had a grudge against Gurbux Singh that the latter was responsible for the death of Raghbir Singh aforesaid.

B On 25.9.1974 before noon Gurbux Singh, his elder brother Wasava Singh along with Surjit Kaur (PW 4) the wife of Gurbux Singh, Sukhwant Kaur (PW 5) the daughter of Gurbux Singh, and Surinder Singh (PW 6) son-in-law of Gurbux Singh were returning to their village from Sirsa in a bullock-cart after selling green fodder and making some purchases in the market. On the way they saw from the opposite side the five accused  
C coming in a truck which stopped in front of the bullock cart. All the five accused persons got down from the truck and raised a Lalkara "DUSH-MANO KO JAN SE MAR DO JANE NA PAYEN". Accused Karma was armed with a Gandasa whereas the three brothers and Jarnail Singh were armed with lathis. Seeing the accused persons Gurbux Singh and his  
D brother Wasava Singh got down from the bullock-cart and started running away. They were chased and the accused persons assaulted both of them with their respective weapons. Ultimately they fell down. The accused persons then raised an alarm "BAHANCHOD BACH NA JAWEN TRUCK BHE UPAR PHER DO". Thereafter all the five accused persons boarded the truck. Accused Mohani sat at the steering wheel and drove  
E the truck over the bodies of two victims Gurbux Singh and Wasava Singh. After the accused persons left Surjit Kaur (PW 4), her daughter (PW 5) and son-in-law (PW 6) went near the victims and found them dead.

F The First Information Report was lodged at 12.30 P.M. A copy of the said F.I.R. reached the Magistrate concerned by 2.15 P.M. The Investigating Officer reached the place of occurrence, held inquest and recorded the statement of witnesses including the aforesaid Sukhwant Kaur and Surinder Singh. PW 2 and PW 3 are doctors who held the post mortem examination of Gurbux Singh and Wasava Singh respectively the same day  
G at 5.30 P.M. During the post mortem examination on the persons of Gurbux Singh 13 injuries were found. Injury No. 7 was contusion 14" x 7 1/4 on the front of chest. On dissection, collection of blood was found and upper seven on right side and upper eight on left side of the ribs were found to have been fractured. Both lungs were badly lacerated. Heart was also badly lacerated along with pleura. According to the opinion of the  
H Doctor (PW 2), who held the post mortem examination of the body of

Gurbux Singh, the aforesaid injury No. 7 could be caused by wheel of the truck passing over the portion of chest of the deceased. The Doctor (PW 3), who held the post mortem examination of the dead-body of Wasava Singh, found 21 injuries on his person. Injury No. 11 found on the person of Wasava Singh was raddish contusion 11" x 1 1/2 on the middle of the upper part of the chest. According to the Doctor, the said injury No. 11 could be possible by any blunt part of a truck striking against the body. During the investigation at the instance of accused Karma, the Gandasa with blood stain was recovered and lathis were also recovered from the possession of the accused persons.

In view of the evidence adduced on behalf of the prosecution including that of Surjit Kaur (PW 4), Sukhwant Kaur (PW 5) and her husband Surinder Singh (PW 6), the learned Sessions Judge came to the conclusion that the charges levelled against the five accused persons have been fully established which finding has been upheld by the High Court.

According to the appellants, a false case has been set up against them by Surjit Kaur (PW 4), the widow of Gurbux Singh, who had not seen the occurrence, but having learnt the death of Gurbux Singh and Wasava Singh became an eye witness along with her daughter and son-in-law only to implicate the accused persons. The counsel appearing for the accused aforesaid pointed out that there was no immediate motive for commission of such serious offence in the facts and circumstances of the case and it shall not be proper to accept the motive alleged on behalf of the prosecution that as the son of accused Jarnail Singh and daughter of Gurbux Singh had committed suicide, as their marriage could not materialise because of the objection raised by Gurbux Singh, accused Jarnail Singh and his four sons chased the two victims on the road, and not only assaulted them but also crushed them by the truck.

It is true that normally there is a motive behind every criminal act and that is why the investigating agency as well as the Court while examining the complicity of an accused, first try to ascertain as to what was the driving force which compelled the accused to commit the crime in question. But with complex growth of society and which has also produced complex characters, the actions and reactions of persons either on the accused side or on the prosecution side are not very easy to ascertain and judge. It is a matter of common experience that even a small or trifle

A incident has different reaction on different persons. That is why it is not always easy for the Court to weigh and judge as to whether under the circumstances brought on record by the prosecution, in normal course the accused concerned could have acted as alleged by the prosecution.

B That is why this Court has repeatedly expressed the view that where the positive evidence against the accused is clear, cogent and reliable, the question of motive is of no importance. Reference may be made to the cases of *Gurcharan Singh v. State of Punjab*, AIR 1956 SC 460, *Narayan Nathu Naik v. The State of Maharashtra*, AIR 1971 SC 1656 = [1971] 1 SCR 133, *Podda Narayana v. State of A.P.*, AIR 1975 SC 1252 = [1975] 4 SCC 153, *Faqira v. State of U.P.*, AIR 1976 SC 915 = [1976] 1 SCC 662, and *Molu v. State of Haryana*, AIR 1976 SC 2499 = [1976] 4 SCC 362. But at the same time it must be impressed that motive behind a crime is a relevant fact and normally prosecution is expected to adduce evidence in respect thereof. Experience shows that one or other motive moves the culprit to a certain course of action. In cases where prosecution is not able to establish a motive behind the alleged crime it assumes importance especially in cases where the prosecution rests on circumstantial evidence or on witnesses who have an inimical background. Proof of motive on the part of the accused persons to commit an offence satisfies the judicial mind about the likelihood of the authorship but in its absence it is only proper on the part of the Court to have a deeper search. But if the Court is satisfied that evidence adduced oral or circumstantial establishes the charge against the accused, the prosecution case cannot be rejected saying that there was no immediate impelling motive on the part of the accused persons to commit the crime.

F In the present case Raghbir Singh, the son of accused Jarnail Singh, committed suicide two months before the date of occurrence because of the attitude taken by the deceased Gurbux Singh is not in dispute. It can be said that there was no immediate motive which impelled the accused persons to commit the murder of Gurbux Singh and Wasava Singh in broad day light in such a cruel manner. But the death of Raghbir Singh in a tragic circumstance must have shaken the family and there is nothing unnatural or unusual that because of that Jarnail Singh and his four sons having seen Gurbux Singh coming to village on bullock-cart decided to eliminate him.

H Apart from that if the evidence adduced on behalf of the prosecution

is accepted then whether there was immediate motive for committing the offence loses all significance. The present case has many special features which weigh heavily against the accused persons and it is not easy on their part to dislodge them. The occurrence took place before noon. The F.I.R. was lodged at 12.30 P.M. within an hour. A copy of the F.I.R. was received by the concerned Magistrate by 2.25 P.M., the same day. The Investigating Officer reached the place of occurrence before 4 P.M. Even the post mortem examinations of the two victims were held by two doctors mentioned above by 5.30 P.M. the same day. In cases relating to murder the time taken in lodging the F.I.R. assumes special significance. The F.I.R. being the first version of the occurrence disclosed to the police acts as check on the part of the prosecution. The fact that Surjit Kaur (PW 4) lodged the F.I.R. within an hour of the occurrence, giving the details of the manner of occurrence lends corroboration to her testimony in Court regarding the participation of the accused persons in the present occurrence. The manner of occurrence disclosed by Surjit Kaur (PW 4) in the F.I.R. was fully corroborated by the post mortem examination reports. She stated in the F.I.R. at 12.30 P.M. that accused persons after having assaulted the two victims with Gandasa and Lathis, crushed them with the wheel of the truck. The two doctors during post mortem examinations found that injury No. 7 on the chest of Gurbux Singh and injury No. 11 on Wasava Singh could have been caused by the wheel of the truck passing over the chest of Gurbux Singh and any blunt part of the truck striking against the body of Wasava Singh. This not only corroborates the version disclosed by Surjit Kaur (PW 4) in the F.I.R. but goes a long way to establish the correctness thereof. It Surjit Kaur (PW 4) had not witnessed the occurrence as suggested by accused persons then how she could have mentioned in the F.I.R. that after assaulting the two victims the accused persons entered into the truck and crushed the victims with the wheel of the truck, which is supported by the post mortem examination.

The learned counsel could not point out from the evidence of Surjit Kaur (PW 4) which has been fully accepted by the Trial Court as well as the High Court as to on what ground that should be rejected. The same is the position so far the evidence of Sukhwant Kaur (PW 5) and Surinder Singh (PW 6). About Sukhwant Kaur (PW 5) it was pointed out that she was not present at the place of occurrence when the Investigating Officer reached and she came only later. However, so far Surinder Singh (PW 6) is concerned, he was present when the Investigation Officer reached the



- A place of occurrence. It was urged on behalf of the accused persons that although Surjit Kaur (PW 4) had claimed in her evidence that she had made purchases in the market before returning to the village but no such article was found in the bullock-cart. On behalf of the accused the traditional and conventional argument that the eye witnesses being only the members of the family, some independent evidence was required, was also advanced. This argument has been repeatedly rejected by this Court saying that the members of the family if present at the time of occurrence are the most natural witnesses. According to us, all these submissions are of no significance, in view of the fact that the first information report was lodged within an hour of the occurrence; a copy whereof was received by the Magistrate within two hours of the recording thereof. The version disclosed in the F.I.R. has been supported by three eye witnesses PW 4, PW 5 and PW 6. We find no reason to doubt their testimony only on the ground that they were closely related to the victims. There is no suggestion much less evidence on behalf of the accused persons to show that any person after the occurrence appeared at the scene to engineer the present case against them. It appears Surjit Kaur (PW 4) whose husband and elder brother of her husband had succumbed to the injuries, was left alone to pursue the post occurrence steps without help or assistance from anyone else.

- E We find no reason to interfere with the finding recorded by the Trial Court and affirmed by the High Court. Therefore, the appeals fail and are accordingly dismissed.

N.P.V.

Appeals dismissed.