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MAHAVIR SINGH

v.

STATE OF HARYANA

(Criminal Appeal No. 2231 of 2010)

MAY 23, 2014

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[DR. B.S. CHAUHAN AND A.K. SIKRI, JJ.]

Penal Code, 1860 – ss. 302, 120B and 201 – Conviction under – Prosecution case that accused and co-accused killed the deceased at the instance of deceased's wife and threw away the body in the canal – Conspiracy among accused, co-accused and wife of the deceased to do away with the deceased – Wife acquitted but accused and co-accused convicted u/ss. 302, 120B and 201 and sentenced accordingly by the courts below – On appeal, held: Courts below after appreciating the evidence on record rightly held the accused persons guilty of the offences – Chain of all the circumstantial evidence complete – No link missing and accused persons had an opportunity to commit the murder of the deceased – Evidence.

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Evidence – Last seen theory – When comes into play – Held: In a case where the time gap is small between the point of time when the accused and the deceased were seen alive and when the deceased was found dead.

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Evidence – Witness – Non-cross-examination on a particular issue – Effect of – Held: When 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.

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According to the prosecution, it is alleged that co-accused 'JS' had illicit relationship with the wife of the deceased; and the appellant had a grudge on account of

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the marriage of 'SR' with the deceased. The appellant and 'JS' killed the deceased at the instance of deceased's wife and threw away the body in the canal. PW 13-brother of the deceased alongwith 'BS' filed a complaint alleging that his brother who was missing for past few days, was found dead in the canal. FIR was lodged. Investigation was carried out. The deceased's wife was acquitted of all the charges, however, the appellant and 'JS' were convicted sections 302 and 120 B and section 201 IPC and sentenced accordingly. The High Court upheld the order. Hence the instant appeal.

Dismissing the appeal, the Court

HELD: 1.1. 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. Both the courts below after appreciating the evidence on record held the appellant guilty of the offences. [Paras 14, 15] [381-H; 382-A]

1.2. There is ample evidence on record and particularly the deposition of PW.6 that the appellant and 'JS', 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, PW.1 opined that the deceased was murdered one week prior to conducting the post-mortem. There is no 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 as where did they drop him or where he had gone. In fact, PW.8, mother of deceased had deposed that PW.9, a family member had last seen deceased with the appellant and 'JS', co-accused on 21.6.1995. The

A appellant and his younger brother have assaulted the deceased with a lathi and a matter was reported to the police. She further deposed about the illicit relation between her daughter-in-law and 'JS', co-accused. [Para 7] [377-G-H; 378-A-D]

B 1.3. 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. [Para 8] [378-F]

C 1.4. The recovery was made vide Exhibits, and in the presence of the witnesses. At the disclosure statement of co-accused, 'JS' and the appellant the recovered material contained the chappal of deceased, blood stained shirt and pant of appellant. The said clothes were
D sent for FSL and as per the report it contained human blood. Blood was also found on Hexa blade, frame of Aari (saw). [Para 9] [378-G-H; 379-B]

E 1.5. Last seen theory comes into play only in a case where the time gap is small 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. On examination of the medical report minutely, it
F becomes evident that the deceased 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 'JS'. [Para 10] [379-C-E]

G 1.6. There had been some discrepancies in the inquest report as well as in the depositions of the witnesses. However, no material contradictions were brought to notice. Minor discrepancies are bound to
H occur in every case. [Para 10] [379-F]

A. *Shankar v. State of Karnataka* AIR 2011 SC 2302:2011 (6) SCR 999; *State of Rajasthan v. Rajendra Singh* AIR 1998 SC 2554:2009 (11) SCC 106; *State Represented by Inspector of Police v. Saravanan* AIR 2009 SC 152:2008 (14) SCR 405; *Arumugam v. State*, AIR 2009 SC 331:2008 (14) SCR 309; *Mahendra Pratap Singh v. State of Uttar Pradesh* (2009) 11 SCC 334:2009 (2) SCR 1033; *Vijay alias Chinee v. State of M.P.* (2010) 8 SCC 191:2010 (8) SCR 1150; *State of U.P. v. Naresh & Ors.* (2011) 4 SCC 324:2011 (4) SCR 1176; *Brahm Swaroop v. State of U.P.* AIR 2011 SC 280:2010 (15) SCR 1; *Dr. Sunil Kumar Sambhudayal Gupta v. State of Maharashtra* (2010) 13 SCC 657:2010 (15) SCR 452 - relied on.

1.7. 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. In the instant case, on going through the cross-examination of witnesses who could furnish an explanation for the discrepancies, it is concluded that the defence had never put any question in these regards to PW.15, the Investigating Officer or PW.11, ASI or any other material witness who could furnish the explanation for the same. [Paras 13, 14] [381-E-G]

Atluri Brahmanandam (D) Thr. LRs. v. Anne Sai Bapuji AIR 2011 SC 545: 2010 (14) SCR 339; *Laxmibai (dead) Thr. L.Rs. & Anr. v. Bhagwantbuva (dead) Thr. L.Rs. & Ors.* AIR 2013 SC 1204: 2013 (1) SCR 632 – relied on.

Case Law Reference:

AIR 2011 SC 2302	Relied on	Para 11
AIR 1998 SC 2554	Relied on	Para 11
AIR 2009 SC 152	Relied on	Para 11

A	AIR 2009 SC 331	Relied on	Para 11
	(2009) 11 SCC 334	Relied on	Para 11
	(2010) 8 SCC 191	Relied on	Para 11
B	(2011) 4 SCC 324	Relied on	Para 11
	AIR 2011 SC 280	Relied on	Para 11
	(2010) 13 SCC 657	Relied on	Para 11
C	AIR 2011 SC 545	Relied on	Para 13
	AIR 2013 SC 1204	Relied on	Para 13

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2231 of 2010.

D From the Judgment and Order dated 20.01.2010 in CRL Appeal No. 499-DB of 2001 of the High Court of Punjab & Haryana at Chandigarh.

Sanjay Sharawat, Balraj S. Malik for the Appellant.

E Nupur Choudhary, Samir Ali Khan, Sanjay Jain for the Respondent.

The Judgment of the Court was delivered by

F **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/

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- 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

A 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.

B 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
C acquitted of all the charges.

E 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
D dismissed by way of impugned judgment and order.

Hence, this appeal.

E 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.

F 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
G 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

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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 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
B 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
C 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
D 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
E 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 strike and Suraj Mal
was taken away by the police alongwith others, so, it may take
some time for him to come back.

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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.

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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
H 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

- A *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,*
- B *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*
- C *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*
- D *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*
- E *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,*
- F *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*
- G *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 Chinee v. State of M.P.*, (2010) 8 SCC 191; *State of U.P. v. Nàresh & 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.

- A 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.

- B Nidhi Jain Appeal dismissed.