

## RAJINDER KUMAR AND ANOTHER

1962

v.

May 4.

## THE STATE OF PUNJAB

(J. L. KAPUR, K. C. DAS GUPTA and  
RAGHUBAR DAYAL, JJ.)

*Murder—Motive not established—Want of proof of motive, not a reason for doubting evidence of crime—Indian Penal Code (Act 45 of 1860), ss. 201, 302.*

The first appellant was convicted under s. 302 of the Indian Penal Code for the murder of a three and a half year old boy, T, and sentenced to death, while his father, the second appellant, was convicted under s. 201 for having concealed T's dead body. The prosecution case was that on January 5, 1961, between 3-30 p.m. and 4 p.m. when T was at the house of the appellants and the other inmates of the house were away, the first appellant killed T by stuffing his mouth with a cloth and kept the dead body in the garage in their house; and that on that very night he and his father buried the dead body in the compound after putting it in a gunny bag. The evidence showed that a few days before January 5, 1961, relations between the first appellant and T's father had become strained because the first appellant had talked to T's mother in a way which her husband did not like and the latter asked the first appellant to stop his visits to their house; and T who used to be a frequent visitor to the first appellant stopped his visits for some days, but resumed them three or four days before January 5; and that on that date T was last seen alive at about 3-30 p.m. in the first appellant's house playing with him. Both the trial court and the High Court found that the prosecution case was fully established by the evidence. It was contended for the appellants that the findings of the lower courts were not justified, and that no reasonable motive for the crime had been proved.

*Held*, that the appellants had been rightly convicted; that though the motive for the murder does not appear from the evidence, that can be no reason for doubting the conclusion which flows clear from the circumstances. The motive behind a crime is a relevant fact of which evidence can be given; absence of motive is also a relevant circumstance. That has to be considered along with other circumstances. It often happens that only the culprit knows the motive behind his action.

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*Rajinder Kumar**State of Punjab*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 182 of 1961.

Appeal by special leave from the judgment and order dated September 7, 1961, of the Punjab High Court, Chandigarh in Criminal Appeal No. 595 of 1961 and Murder Reference No. 56 of 1961.

*A. S. R. Chari, Om Prakash Passey and K. R. Chaudhri*, for the appellants.

*Gopal Singh and P. D. Menon*, for the respondent.

1962. May 4. The Judgment of the Court was delivered by

*as Gupta J.*

DAS GUPTA, J.—Three and a half year old Tonny, son of Ravindernath Goyal was last seen alive on January 5, 1961. A month later on February 5, 1961, his dead body was discovered, buried in the compound of the house of Goyal's next door neighbour Jagdish Chander and Rajinder Kumar. These two, Jagdish Chander and Rajinder Kumar are father and son. Tonny's body was found in a gunny bag with a blood-stained piece of cloth stuffed in the mouth; a blood-stained towel was also found in the bag. When the cloth stuffing the mouth was removed the tongue was found pushed to the left side backward locking the throat. The Civil Surgeon, Bhatinda, who held the post-mortem examination has given his opinion that the death of the child was due to asphyxia resulting from suffocation caused by packing the mouth with the cloth.

Rajinder Kumar has been convicted under s. 302 of the Indian Penal Code for the murder of Tonny and sentenced to death. The father Jagdish Chander has been convicted under s. 201 of the Indian Penal Code for having concealed the dead body of Tonny.

The prosecution case is that on January 5, 1961, between 3-30 p. m. and 4 p. m. when Tonny was at the house of Jagdish and Rajinder and the other inmates of the house were away Rajinder killed Tonny by stuffing his mouth with a cloth and kept the dead body in the Garage in their house; and that that very night he and his father buried the dead body in the compound after putting it in a gunny bag. For the entire month after the child was found missing and before his body was discovered frantic efforts had been made by the distracted parents and grand-father of Tonny to trace him but in vain. Indeed, according to the prosecution, the two accused made a show of taking part in the search for the boy.

The details of the prosecution story are best told by enumerating the circumstances on which the prosecution relied to prove its case that Rajinder killed Tonny.

(1) A few days before January 5, 1961 relations between Rajinder Kumar on the one hand and Tonny's father Ravinder Kumar on the other had become strained because Rajinder had talked to Tonny's mother in a way which her husband did not like and Ravinder asked Rajinder to stop his visits to their house. After this Tonny who used to be a frequent visitor to Rajinder, whom he called "uncle" also stopped his visits for some days; but then three or four days before January 5, he resumed his visits to Rajinder as Rajinder had been giving him sugar drops. (2) Tonny was last seen alive at about 3-30. p. m. in Rajinder's house playing with Rajinder. (3) At that time Rajinder's wife, his father, his sister and his servant Bhagat Ram were away from the house, Bhagat Ram having been actually sent out by Rajinder at about 2-30 p. m. (4) At about 4 p. m. Tonny's mother Sudha called out to Tonny after preparing the tea

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but not getting any response asked Rajinder Kumar, whom she saw coming from the direction of the Garage as to where Tonny was. (5) Rajinder Kumar said that Tonny had gone with his wife to the house of Jagdish Goyal. Rajinder's wife came back to the house just at that time and in reply to Sudha said that Tonny had not gone with her but had been playing about with her husband. Sudha then enquired again from Rajinder about Tonny and he said Tonny might have gone to the shop of Baba to fetch a toast. (6) At the same time Bhagat Ram returned with his cycle and wanted to keep it into the Garage but finding that Rajinder had locked the Garage he asked him to open the lock but Rajinder asked him to put the cycle in the house saying that he had put some important articles in the Garage and so would not open the lock. (7) That night Bhagat Ram slept in the kitchen and Rajinder Kumar who had gone out of the house after 4 O' clock pretending to take part in the search for Tonny returned home at 12 midnight and put on the light in the kitchen where Bhagat Ram had laid himself down and asked him why he had not gone to sleep. (8) At about 2 O' clock when Bhagat Ram came out to answer a call of nature he saw Rajinder and his father in front of the Garage talking to each other but they kept quiet when he drew near. (9) Rajinder remained outside the house for about another two hours during which Bhagat Ram was awake. (10) On January 9, Rajinder met Raj Kumar a teacher in a primary school on the bridge in Mohalla Jori Bhatia and asked for his assistance in removing the dead body of the child after confessing to him that he had murdered him. (11) Rajinder was interrogated by the police on the 3rd and 4th February, and ultimately on the 5th February when he was taken by the police to his own house he made a statement that he had buried the dead body of the child at a distance of 6 to 7 ft. from the main

gate towards the right, wrapped in a gunny bag close to the Gul Mohar tree. (12) Then Rajinder Kumar pointed out a place, dug there about 4 ft. deep and Tonny's body was found there in a gunny bag with his own garments on and with a banian thrust in his mouth. (13) There was also a towel which has been identified by Bhagat Ram as belonging to the accused Rajinder Kumar, inside the bag. (14) Human blood was detected on the banian towel and the bag as also on the garments on the body of the child.

Both the accused pleaded not guilty and urged that they had been implicated falsely on unjustified suspicion.

The Trial Court as also the High Court found all the 14 circumstances mentioned above fully established by evidence. Mr. Chari, who appeared before us, on behalf of both the appellants, does not contest that if these circumstances have been proved they fully justify the conclusion reached by the courts below. He, however, tried to persuade us that the High Court was wrong in finding some of the circumstances, at least, to have been proved.

It appears to us that if no other circumstances than the second, fifth and twelfth circumstances mentioned above have been proved they are by themselves sufficient, without anything more, to justify the conclusion that Rajinder Kumar murdered Tonny. If Tonny was last seen with him at 3.30 p. m. on the 5th and the dead body is discovered in his own house buried under the earth and this fact is known to him and it is further found that about 4 p. m. on the 5th he made contradictory statements as to where Tonny had gone, these three circumstances are incapable of explanation on any other reasonable hypothesis than that he killed the boy between 3.30 and 4 p.m.

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on that day and some time later buried the body. Mr. Chari suggested that it might be that Tony was killed somewhere else by some unknown person and then that killer found some opportunity of bringing the dead body into the appellant's house and buried it there. This appears to us as an absurd suggestion, hardly worth serious consideration. If somebody else killed Tony elsewhere, what could be the reason for his taking the trouble of carrying the body to the appellant's house and burying it there at the risk of being surprised by somebody before he had finished the job? Apart from that the fact remains, as proved beyond shadow of doubt, that the place where the body had been buried was known to Rajinder and it was Rajinder himself who dug the ground at the right place for the recovery of the body. Mr. Chari drew our attention to the statement of prosecution witness No. 5 Mrs. Gurdeep Kaur Girin that the police came to the house of the accused two days before the recovery of the child's deadbody and that some pits were dug by the police on that day and that Rajinder was with them. All the police officers have denied that any digging was done before the 5th. It seems to us clear that Mrs. Gurdeep Kaur while giving evidence in June 1961 has made a mistake about the date on which she saw the digging being done. But even assuming that what she says was correct it would not show that Rajinder did not know the place where the body had been kept; it would merely show that even then he was keeping quiet about it.

Some comment has been made by the learned Counsel on the failure of the police to discover by themselves during their numerous visits to the appellant's house that the ground was disturbed. We find nothing surprising in this. Few people not even the police officers who had some suspicion against the accused from the very commencement of the investigation would expect the accused

to be so daring as to bury the dead body in the compound of his own house. The fact that any disturbed condition of the ground was not discovered by the police before the 5th February can be therefore no ground for thinking, as the learned Counsel suggests, that the body had been brought there from somewhere else shortly before the 5th.

While we think the few circumstances mentioned above are by themselves sufficient to justify the conviction of Rajinder Kumar under s. 302 of the Indian Penal Code, we think it proper to add that nothing has been shown to us that would justify us in interfering with the conclusion of the courts below that the 6th, 7th, 8th and the 9th circumstances mentioned above have also been proved. Mr. Chari wanted us to believe that Bhagat Ram was taken into police custody on the 31st January and it is strange that his statement was not recorded by the police before the 5th February. The High Court has believed the evidence of the Inspector of Police, Ram Nath Paras, that Bhagat Ram was not available at Patiala for recording of his statement till the 7th February, 1961 and we cannot see anything that calls for our reappraisal of the evidence on this question.

The criticism levelled by Mr. Chari against the evidence of prosecution witnesses Raj Kumar and Mahabir Dayal for proving the 10th circumstance mentioned above about Rajinder's extra-judicial confession is more plausible. These two witnesses are on their own showing persons of shady character and they would not be above giving false evidence to oblige the police, if the police wanted it. But, it is difficult to see why the police should think it necessary to secure the services of these persons for giving false evidence when the practically conclusive evidence afforded by the discovery of the dead body in the appellant's compound was already

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there. The story of the extra-judicial confession of Rajinder Kumar, as given by Raj Kumar and supported by Mahabir Dayal is therefore likely to be true. But it is really unnecessary for the purpose of the present case to examine the question further. For, any support from this 10th circumstance regarding the extra-judicial confession is not needed by the prosecution.

What moved Rajinder Kumar to commit this dastardly deed is not clear. The strained relations between Tonny's father Ravinder on the one hand and Rajinder on the other because the former had asked Rajinder to stop his visits as mentioned in the first circumstance specified above does not explain his action. Let us assume, however, that even this evidence of strained relations had not been given. That can be no reason for doubting the evidence, as regards the other circumstances that has been adduced or for hesitating to draw the inescapable conclusion from them. The motive behind a crime is a relevant fact of which evidence can be given. The absence of a motive is a also a circumstance which is relevant for assessing the evidence. The circumstances which have been mentioned above as proving the guilt of the accused Rajinder are however not weakened at all by this fact that the motive has not been established. It often happens that only the culprit himself knows what moved him to a certain course of action. This case appears to be one like that.

We are satisfied that Rajinder Kumar has rightly been convicted under s. 302 of the Indian Penal Code and sentenced to death.

The case against Jagdish Chander rests on Bhagat Ram's evidence. This witness, a youth of seventeen, joined the service of the accused about 5 or 6 months before January 1961. He was a servant in the house on the 5th January. He has

given evidence that when on that day at about 9 or 10 p. m. he asked for the key of the Garage to bring out his bedding which was there the appellant Jagdish said that he would do it himself and actually brought out the bedding. He has further said that when at about 2 O'clock he got up to make water he saw Rajinder and his father, walking about in front of the Garage, that they were talking to each other but kept quiet when he went out; and also that he could not sleep for about a couple of hours after that and that during all this time both the father and son—Rajinder and Jagdish—remained outside the house. We have already stated above that there is no reason for us to interfere with the view taken by the courts below that Bhagat Ram's evidence should be believed. Once that is believed the conduct of Jagdish as proved by it becomes incapable of explanation on any other reasonable hypothesis than that after coming to know that Rajinder had murdered Tonny he helped Rajinder in concealing the dead body by burying it underground. Mr. Chari suggested that Rajinder might have told his father that the boy had died accidentally on receiving an electric shock and the learned Counsel drew our attention in this connection to the fact that an electric wire made into a ring was found on the thumb of the dead body. The medical examination shows however that this wire had nothing to do with the boy's death. Mr. Chari accepts that position, but argues that still Rajinder might have falsely told his father that the death was due to electrocution. There might have been some force in this argument were it not for the fact that a blood-stained *banian* was found stuffed in the mouth of the boy and a blood-stained towel was also found in the gunny bag. There is therefore no scope for the argument that Jagdish was misinformed by his son Rajinder about how Tonny had met his death. The circumstances that have been proved clearly

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