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SMT. OMWATI ETC.

v.

MAHENDRA SINGH AND ORS.

NOVEMBER 7, 1997

B

[M.M. PUNCHHI AND M. SRINIVASAN, JJ.]

C

Penal Code, 1860—Sections 148, 302/149 and 307/149—Murder—Trial of—All the accused held guilty—Convicted and sentenced—High Court set aside the conviction and sentence holding that prosecution has failed to establish the guilt of the accused—On appeal held, case of prosecution not proved beyond reasonable doubt—Motive not established—Entitled to benefit of doubt—No interference called for.

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The respondents were prosecuted for an offence under Sections 148, 302/149 and 307/149 IPC.

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The prosecution case was that PW 1 and his son PW 3 as well as one 'I' were going on a motor cycle from a village to another village. Along with them 'R' and his son 'D' were proceeding on another motor cycle. On the way they saw a tractor parked in the middle of the road and the accused were standing near the tractor. One of the accused had a hasiya while others were having country made pistols. The motor cycles were stopped. The accused with pistols fired at 'R' and he fell down on receiving the gun shot. The accused assaulted him with hasiya and gave several blows. 'D' started to run away but was chased and fired and on receiving the gun shot injuries he fell down. Both 'R' and 'D' died on the spot. All the accused ran away but surrendered before the court after three or four days and pleaded not guilty stating that they were falsely implicated on account of enmity. The prosecution examined ten witnesses including PWs 1 to 3, who were the eye-witnesses. The Trial Court found all the accused guilty and convicted them. However, on appeal, the High Court set aside the conviction and sentence on the ground that the prosecution has failed to establish the guilt of the accused. Hence the present appeal.

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Dismissing the appeal, this Court

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HELD : 1. The case of the prosecution has not been proved beyond doubt and there are certain factors which remain unexplained. Thus the accused

are entitled to benefit of doubt. There is no justification to interfere with the judgment of the High Court. [96-B] A

2.1. The motive for the murder as alleged by the prosecution has not been satisfactorily established. The case of the prosecution is that the deceased were working for one 'I' at the time of election of the Pradhan and the said 'I' was defeated in the election and the accused won. If there was enmity on account of election, the person against whom accused would have borne a grudge was the said 'I' who was present at the scene of occurrence. He was left untouched without even a scratch. There is nothing on record to show that there were clashes between the accused and the deceased or other supporters of 'I' at any time before the incident. It is thus wholly improbable that after a lapse of three years from the election the accused should bear such a grudge as to kill the deceased. The post-mortem report shows several deep incised wounds which according to PWs were caused by some sharp edged weapon like hasiya. It gives an impression that there was some deep seated enmity between the deceased and the assailants. But the evidence on record does not prove any such enmity. [92-E-H; 93-A-B] B C D

2.2. No doubt, proof of motive is not necessary to sustain a conviction but when the prosecution puts forward a specific case as to motive for the crime, the evidence regarding the same has to be considered in order to judge the probabilities. It is well settled that motive for a crime is a satisfactory circumstance of corroboration when there is convincing evidence to prove the guilt of an accused person but it cannot fill up a lacuna in the evidence. [93-F] E

3. The opinion of the High Court that there were more than one assailant armed with sharp cutting weapons cannot be considered to be totally baseless or perverse. The High Court examined an expert Doctor who opined that the injuries on the body of the deceased could not be caused by a single blow of the hasiya. Considering the fact that as many as seventeen incised wounds were found on the body of deceased 'R', the High Court found it difficult to believe that he was assaulted by only one assailant with sharp cutting weapon. [93-C-E] F G

4. The prosecution has miserably failed to prove the connection between the tractor recovered from the scene and the accused 'M'. This goes a long way to shake the credibility of PWs 1 to 3, the eye-witnesses. [94-E]

A From the Judgment and Order dated 10.10.88 of the Allahabad High Court in Crl. A. Nos. 806 and 827 of 1988.

K.B. Sinha, Ashok Kumar Sharma and H.S. Kaicker, (Pramod Swarup and R.K. Singh) for A.S. Pundir, (R.S. Sodhi, David Rao) for Indeevar Goodwill for the appearing parties.

B The Judgment of the Court was delivered by

C **SRINIVASAN, J.** 1. These appeals are directed against the judgment of the Allahabad High Court in Crl. Appeal Nos. 806-807 of 1988 reversing the judgment of the Additional Sessions Judge Moradabad in S.T. No. 608 of 1985 and acquitting all the accused who stood charge under Section 148, 302/149 and 307/149 I.P.C. Cr. Appeal No. 25 of 1990 is by the widow of one of the murdered persons while the other two appeals are by the State.

2. The case of the prosecution was as follows :-

D On 14.7.1985 Sohan Pal Singh, PW 1 and his son Avdesh Kumar PW 3 as well as one Inder Pal Singh were going on motor cycle of the first of them from the village Bilari to the village Chawra. At the same time Raj Kumar Singh and his son Dhirender Singh were proceeding on another motor cycle along with them. At about 8.30 p.m. when they reached the village Bonda Ferozepur

E they saw a tractor parked on the middle of the road with its lights on. It had no bonnet. The accused namely Mahender Singh, Om Vir, Som Vir, Om Pratap Singh, Onkar Singh and Raghu Raj Singh were standing near the tractor. One of them namely, Raghu Raj Singh had a hasiya while the others had country-made pistols. The motor cycle of Raj Kumar Singh was stopped on seeing the aforesaid persons on the road and the other motor cycle was stopped a few

F steps behind. The accused who had pistols fired at Raj Kumar Singh and Dhirender Singh. The former fell down on receiving gunshot injuries. Raghu Raj Singh assaulted him with hasiya and gave several blows. Dhirender Singh started to run away but was chased by the accused. Another tractor came from behind which was stopped by PW 1. Dhirender Singh attempted to climb

G on the said tractor but the accused fired at him as a result of which he received gunshot injuries and fell down. Ram Swaroop, PW 2 and his son Nathu Singh who had come on the said tractor also got gunshot injuries when they tried to save Dhirender Singh. Some other persons who had come on the said tractor ran away. Both Raj Kumar Singh and Dhirender Singh died on the spot as a result of the injuries. In the meantime villagers came from the

H village and the accused boarded their tractor and tried to escape. The tractor

got stuck in the ditch and the accused left it and ran away. The F.I.R. was lodged by PW 1 at police station Kurh Fatehgarh at 10.00 p.m. on the same day. A

3. The accused were not tracable for three or four days. Three of them surrendered on 17.7.85 in the court at Moradabad and the remaining three persons surrendered on 18.7.85. They pleaded not guilty and stated that they were falsely implicated on account of enmity. One of them namely, Om Vir Singh stated that at the time of the occurrence he was on duty in the cooperative bank at Moradabad and in support of his claim he examined the Branch Manager as DW 1. The prosecution examined ten witnesses. PWs 1 to 3 claimed to be eye witnesses. The Additional Sessions Judge found all the accused to be guilty and convicted them. Mahender Singh, Om Vir Singh, Om Pratap Singh and Som Vir Singh were convicted under Sections 148, 302/149 and 307/149 I.P.C. while Raghu Raj Singh was convicted under Section 148 and 302/149 I.P.C. He was acquitted of the charge under Section 307/149 I.P.C. Death sentence was awarded to Mahender Singh and Raghu Raj Singh under Section 302/149 I.P.C. All the accused were further sentenced to undergo three years rigorous imprisonment under Section 148 I.P.C. Mahender Singh, Om Vir Singh, Om Pratap and Som Vir Singh were further sentenced to seven years rigorous imprisonment under Section 307/149 I.P.C. All the sentences of imprisonment were ordered to run concurrently. B C D

4. Two appeals were preferred before the High Court. One was by Mahender Singh and Raghu Raj Singh and the other by the remaining accused. The High Court held that the prosecution failed to establish the guilt of the accused and allowed the appeal. The conviction and sentences were therefore set aside. E

5. The widow of Raj Kumar Singh has filed Crl. Appeal No. 25 of 1990. The State of Uttar Pradesh has filed the other appeals. F

6. The main contention of the appellants is that there are three eye witnesses for the incident in which the husband and the son of the appellant in Crl. Appeal 25 of 1990 was brutally murdered on account of political rivalry. It is argued that the reasons given by the High Court for not believing the eye witnesses are erroneous and flimsy. It is contended that the High Court has made much of minor discrepancies, over-looking the circumstance that the witnesses were giving evidence in court after a long time after the occurrence and such discrepancies are hardly sufficient to reject the evidence of eye witnesses. It is submitted that the names of all the accused were mentioned in the F.I.R. which was lodged within a short time after the H

A occurrence and that PW 2 is an independent witness who had no axe to grind. According to the appellants the Trial Judge has considered every aspect of the matter and accepted the case of the prosecution and the High Court is not justified in reversing the judgment of the Trial Court.

B 7. Per contra, learned counsel for the respondents contend that there are several unexplained factors which cast considerable doubt on the case of the prosecution. It is argued that though the judgment of the High Court is not quite satisfactorily worded, it is clear that the circumstances referred to by the High Court are relevant and vital in the matter of appreciation of evidence. It is submitted that there are some missing links which make the case of the prosecution unacceptable.

C 8. We have gone through the entire evidence on record. We find it difficult to persuade ourselves to hold that the prosecution has established its case beyond doubt. As pointed out by the learned counsel for the respondents there are certain factors which remain unexplained. The Trial Judge has somewhat exceeded his limits and taken for himself the task of explaining some of the circumstances in rejecting the contentions of the defence.

D 9. At the out set, it must be pointed out that the motive for the murder as alleged by the prosecution has not been satisfactorily established. The case of the prosecution is that the deceased were working for Inder Pal Singh at the time of election of the Pradhan from village Chawra held in 1982 in the village. Admittedly Inder Pal Singh was defeated in that election and Mahender won the same. Neither of the deceased contested the election. If there was enmity on account of the election, the person against whom accused would have borne a grudge was Inder Pal Singh who contested the election. The said Inder Pal Singh was present at the scene of occurrence sitting on the motor cycle in front of the accused. He was left untouched without even a scratch. If really the enmity between the accused and the deceased was on account of the election, the accused would have attacked the deceased as well as Inder Pal Singh, if not Inder Pal Singh alone. There is nothing on record to show that there were clashes between the accused on the one hand and the deceased or other supporters of Inder Pal Singh on the other at any time before this incident. It is wholly improbable that after lapse of three years from the election in which Inder Pal Singh was defeated, the accused should bear such a grudge as to kill the deceased. A look at the post mortem reports, Ex. ka 9 and ka 10 shows several deep incised wounds which according to

PW 8 were caused by some sharpe-edged weapon, say, by hasiya. There are several such wounds which indicate that the assailant had given repeated blows with the weapon to the deceased. It gives an impression that there was some deep-seated enmity between the deceased and the assailant. The evidence on record does not prove any such deep-seated enmity between the deceased and Raghu Raj Singh. Learned counsel for the respondents points out the lacunae in the evidence with reference to the hasiya produced before the court as the weapon used by Raghu Raj Singh. There is no evidence on record regarding the finger prints or blood stains on the said hasiya. The failure on the part of police to check the finger prints as well as the blood stains on the weapon is a vital factor to be taken into account against the prosecution. The High Court has sent for the weapons and also examined Dr. R.N. Katiyar, an expert who opined that the injuries on the body of the deceased could not be caused by a single blow of the hasiya. The said doctor stated that the post mortem examination report does not show that the injury was caused by more than one blow. Considering the fact that as many as seventeen incised wounds were found on the body of Raj Kumar Singh, the High Court found it difficult to believe that he was assaulted by only one assailant with a sharp cutting weapon. The High Court opined that there were more than one assailant armed with such sharp cutting weapons. The opinion of the High Court cannot be considered to be totally baseless or perverse.

10. In the light of the aforesaid facts, if the case of the prosecution with reference to the motive for the accused to commit the offence is considered, there will be little difficulty in rejecting the same. No doubt, proof of motive is not necessary to sustain a conviction but when the prosecution puts forward a specific case as to motive for the crime, the evidence regarding the same has got to be considered in order to judge the probabilities. It is well settled that motive for a crime is a satisfactory circumstance of corroboration when there is convincing evidence to prove the guilt of an accused person but it cannot fill up a lacuna in the evidence.

11. According to the prosecution, the accused were standing by the side of the tractor belonging to one of them namely Mahender Singh which had no bonnet at that time. It is also the case of the eye witnesses that the tractor could not cross a trench on the road side and the accused left it there and ran away. Mahender Singh denied the ownership of the tractor. The prosecution has examined one Rayees Ahmed as PW 9 to prove that the tractor was sold by him to Mahender Singh. According to his evidence he owned tractor No. USW-5019 and sold it for a total consideration of Rs. 14,000

A to Mahender Singh about 5 years prior to his evidence. It is his version that on payment of Rs. 10,000 Mahender Singh took possession of the tractor but did not pay the balance of Rs. 4,000. He had not taken any step to recover the balance. According to him the tractor was registered in the name of his younger brother and his mother but he added that he did not know in whose name the tractor was registered in RTO's Office. He did not give any information to the office of the RTO regarding sale of the tractor as he did not receive the full consideration. He claimed to possess the papers relating to tractor but none of them was produced. The Registration Book was stated to have been deposited in connection with a ceiling case but no receipt was produced. He claimed to have sold the said tractor through one Munna mistry but the latter has not been examined. A perusal of his evidence shows that he is wholly untrustworthy. There is nothing on record to show that the tractor which was recovered from the scene of occurrence had the registration No. USW-5019. The recovery memo states that there was no number found on the tractor. The bonnet of the tractor is said to have been recovered from the field of Mahender Singh on 4.11.85 but the evidence on record does not show that the said bonnet was that of the tractor which was recovered from the scene of occurrence. We have no hesitation to hold that the prosecution has miserably failed to prove the connection between the said tractor and the accused Mahender Singh. This circumstance goes a long way to shake the credibility of eye witnesses 1 to 3.

E 12. According to the prosecution there was another tractor at the scene which was being driven by PW 2. According to the recovery report, there were blood stains on that tractor. There is no explanation as to why the police failed to take sample of the blood stains and test the same. That tractor was said to have been handed over by PW 10 Mr. K.D. Verma, the Investing
F Officer to one Dhoom Singh for custody for production in court or before the police whenever required. The records do not disclose the capacity in which the said Dhoom Singh took the custody of the said tractor.

G 13. A perusal of the evidence of PW 10 shows that there were several corrections, cuttings and over-writings in the panchnamas prepared by him. While the eye witnesses denied the correctness of some portions of the statements recorded by PW 10, the latter has deposed that one of the witnesses did not make a statement as claimed by him. PW 2 has deposed that he told the Investigating Officer that two motor cycles had passed by their tractor before the occurrence but PW 10 had stated in his deposition that PW 2 did
H not state so. PW 2 has also denied the correctness of some of his statements

as recorded by PW 10. In the statement recorded under Section 161 Cr. P.C., PW 2 has stated, "a motor cycle was lying at the place of occurrence itself". But in his deposition in court PW 2 has said that he never stated so. One significant circumstance is that the statements of PW 2 and his son were recorded by PW 10 long afterwards i.e. 25.7.85. the version given by PW 2 that he was not in a position to speak till then is not believable.

14. The Trial Court has itself pointed out that Dr. Santosh of Bilary is a very important and material witness and ought to have been examined by the prosecution. But the Trial Court has opined that the failure to do so was only due to the carelessness of the Investigating Officer and it would not impair the evidence of the eye-witnesses. We are of the opinion that evidence of the said doctor would have proved to be an important connecting link and in the absence thereof, the testimony of PWs 1 and 3 lacks credence, particularly because there is a vital discrepancy between the two witnesses in the matter of the time at which they proceeded to the village Bilary. When the presence of the two witnesses in the village itself is questioned, the prosecution ought to have examined Dr. Santosh.

15. The Trial Court has also proceeded on the footing that Inder Pal Singh was murdered some time after the occurrence and some of the accused had been chargesheeted therefor. There is no material on record in support of the said version and the Trial Court could not have taken the same as granted.

16. The Trial Judge has allowed his imagination to run riot while discussing the contention of the defence with reference to the contusions found on the body of Raj Kumar Singh. The Trial Court has observed without any basis therefor on the evidence "during this process of hitting the accused Raghu Raj must have certainly tried to have a grip of Raj Kumar Singh so that he could not stand and run away again and in doing so he might have given him blows by his knee". The Trial Court has completely gone off the track in thinking so.

17. The High Court has also taken note of the fact that PWs 1 to 3 could not have known the accused before the occurrence so as to be able to identify them in court. In that connection reference is made to the order of the Chief Judicial Magistrate, Moradabad dated 26.7.85 directing the holding of identification parade and the failure of the police officials to comply with the said order. The Trial Judge has accepted the version of the Investigating Officer that he was not aware of the order passed by the Chief Judicial

A Magistrate. It is not necessary for us to place reliance on the failure of the police to hold an identification parade.

B 18. The circumstances referred to by us earlier taken along with the facts and circumstances referred to by the High Court would lead cumulatively to the conclusion that the case of the prosecution has not been proved beyond doubt. The accused are certainly entitled to the benefit of the same. Consequently we do not find any justification to interfere with the judgment of the High Court. The appeals fail and are dismissed.

S.V.K.I.

Appeals dismissed.