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September 28

DEONANDAN MISHRA
v.
THE STATE OF BIHAR.

[VIVIAN BOSE, JAGANNADHADAS and B. P. SINHA JJ.]

Circumstantial evidence—Conviction based thereon—Standard of proof—Various links completing the chain of evidence—Failure to offer an explanation by the accused—Whether an additional link in the chain.

The standard of proof required to convict a person on circumstantial evidence is well-established by a series of decisions of the Supreme Court. According to that standard the circumstances relied upon in support of the conviction must be fully established and the chain of evidence furnished by those circumstances must be so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused.

The appellant was convicted under s. 302 of the Indian Penal Code and sentenced to transportation for life. There were no eye-witnesses to the murder and the conviction of the appellant rested solely on the circumstantial evidence which was relied on by the courts below.

The various facts which formed the links in the chain of circumstantial evidence in the present case taken together advanced the case against the appellant very much beyond suspicion and reasonably and definitely pointed to the appellant as the person who committed the murder.

In a case like the present when the various links in the chain had been satisfactorily made out and the circumstances pointed to the appellant as the probable assailant with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offered no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completed the chain.

Hanumant v. *The State of Madhya Pradesh* ([1952] S.C.R. 1091), referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 19 of 1955.

Appeal by Special Leave from the Judgment and Order dated the 11th May 1954 of the Patna High Court in Death Reference No. 8 of 1954 with Criminal Appeal No. 142 of 1954 arising out of the Judgment

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and Order dated the 12th March 1954 in Sessions Trial No. 2 of 1954.

B. P. Maheshwari, for the appellant.

M. M. Sinha, for the respondent.

1955. September 28. The Judgment of the Court was delivered by

JAGANNADHADAS J.—This is an appeal by special leave. The appellant Deonandan Mishra (Deonandan Missir) who was a stenographer to the Inspecting Assistant Commissioner of Income-tax, Patna, has been convicted under section 302 of the Indian Penal Code for having committed the murder of his second wife, Mst. Parbati Devi, on the night of the 3rd/4th September, 1953 and sentenced to transportation for life. The deceased was married to the appellant in or about the year 1941 and was his second wife. As appears from the subsequent events, she was considered to be a woman of loose morals. She appears to have been forsaken by her husband as also by her father in or about the year 1945 and to have sought shelter in the Anath Ashram at Gaya. Through the intervention of the Secretary of the Ashram and with the consent of both the husband and the father, she got remarried to one Nand Lall of Punjab in December, 1945. After a stay of about an year and a half with Nand Lall in Punjab, she appears to have left him on account of alleged ill-treatment. She came back to the Anath Ashram at Gaya in June, 1947, but left it again in October, 1947. What happened thereafter is not clear from the evidence and her whereabouts between October, 1947 and August, 1953, are not known and do not seem to have been traced. All that appears is that for some time prior to the date of the murder, she was found going up and down in places near about Gaya and that particularly on the 2nd and 3rd September, 1953, *i.e.,* two days prior to her murder she was found going between Gaya and Patna and a place Chakand in between these two places. Early morning at about 7 A.M. on the 4th September, 1953, P. W. 10, Havildar, found a naked dead body of a

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female lying in the Kabristhan at the outskirts of Gaya about a mile and a half from the police thana. It was lying on the western verandah of the bungalow of the Kabristhan with a number of cut injuries on the neck and on other parts of the body. Report of this was carried to the police and the body was subsequently identified to be that of Parbati Devi, the second wife of the appellant. Investigation followed and the appellant was arrested on the 6th September, 1953, and put up for trial in due course.

There is no eye-witness to the murder and the case against the appellant depends entirely on circumstantial evidence. The standard of proof required to convict a person on such evidence is well-established by a series of decisions of this Court, of which it is sufficient to mention *Hanumant* v. *The State of Madhya Pradesh*(1). This standard requires that the circumstances relied upon must be fully established and that the chain of evidence furnished by these circumstances should be so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. The learned counsel for the appellant has, therefore, strenuously contended before us that the circumstances relied on have not been fully established and that in any case they are not enough to bring the offence home to the accused. The various circumstances relied upon have, therefore, to be briefly noticed.

The appellant belongs to a place called Chakand-dih about a mile and a half from a railway station called Chakand, which is in between Patna and Gaya and which is about five miles from Gaya. It is in evidence that the deceased woman was seen alighting at the Chakand railway station on the night of the 2nd September, 1953, at about 10-15 P. M. from a train proceeding from Gaya to Patna and that after so alighting she was found proceeding to the village Chakand-dih. It is also in evidence that she took the train again early next morning at Chakand for Patna. The evidence further shows that on the 3rd morning at about 10 o'clock, she presented herself at the

(1) [1952] S.C.R.1091.

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Income-tax office at Patna, and made enquiries about the appellant from a peon of the office, P.W. 12, and that the appellant was informed about this by him. On receiving this information the appellant came out and on seeing the woman told the peon that she was his wife and asked him to make some arrangement to keep her for the day so that he might meet her in the evening after he was free from the office work. The peon accordingly made arrangements for her stay till the evening in the quarters of the Chowkidar, P. W. 22, who lived in the compound of the office. In the evening of that day, i.e., 3rd September, at about 7 P.M. the appellant came to his quarters and took away this woman in a rickshaw. These facts are spoken to by the peon, P. W. 12, and the Chowkidar, P. W. 22. It is further in evidence that after midday on the 3rd September, 1953, the appellant filed an application for casual leave, for one day, i.e., 4th September and that leave was granted. That the appellant did apply for leave and got it is not disputed. The next evidence against the appellant is that he was seen that night, travelling with the deceased Parbati Devi in a compartment of the train which left Patna at about 8 P.M. that night for Gaya. This evidence is that of three witnesses, P. W. 1, a daffadar and P.Ws. 3 and 4, two chowkidars, all of whom were on duty at Chakand railway station that night. All of them speak to their having seen the appellant along with the deceased woman in a third class compartment at about 11 or 11-30 P.M. that night in the train from Patna to Gaya when it stopped at Chakand railway station for a few minutes. It is their evidence that they knew both these persons well and that these persons did not get down at that station but proceeded in the train towards Gaya. This evidence, if accepted as it has been by both the courts below—undoubtedly is a strong circumstance against the appellant inasmuch as it makes out that the appellant was last seen with the murdered woman a few hours before the time when the murder must have taken place. This evidence has been strongly challenged. The appellant admitted that the murdered

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woman met him at his office at Patna in the first week of September, but his case before the Sessions Judge was that this was not on the 3rd but on the 2nd. In answer to questions under section 342, Criminal Procedure Code by the learned Sessions Judge, he admitted that the deceased came to the Income-tax Office at Patna, to see him and that he met her there and that he made her stay in the house of the Chowkidar and that he took her from the lodging of the chowkidar in the evening on a rickshaw. But he maintained that all this happened on the 2nd and not on the 3rd and said that after taking her from the lodgings of the chowkidar, at Patna on a rickshaw, he got down at the crossing and gave her money and sent her away. He also added that once formerly she had come to his office to demand money. His case that he met the deceased woman at Patna on the 2nd and not on the 3rd was not accepted by both the courts below. Not only was there the evidence of the peon, P.W. 12, and the chowkidar, P.W. 22, in support of the prosecution case as to the date being the 3rd but a responsible and educated person like the Inspector of Income-tax, against whom nothing has been alleged, has also spoken to the same from his personal knowledge. It is also significant that the appellant when he was questioned under section 342, Criminal Procedure Code in the court of the Committing Magistrate did not specifically put forward his case that it was on the 2nd and not on the 3rd, that he met the woman at his office in Patna. His answers in that court were bare denials when he was asked whether he saw Parbati Devi at the Patna Income-tax Office on the 3rd and whether he asked the chowkidar to allow her to remain in his house for the whole of the day. His present case that he met the deceased at Patna on the 2nd and not on the 3rd appears to be afterthought. In the circumstances, the following facts, *viz.*, that the appellant met the deceased at Patna Income-tax Office on the 3rd, that he took charge of her that evening from the quarters of the chowkidar of the office by taking her in a rickshaw, that he was found travelling with her by

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the night train at about 11 or 11-30 P.M. at the Chakand railway station and proceeding towards Gaya, must be taken to have been fully and clearly established as found by both the courts below.

The next important circumstance alleged against him is the existence of a strong motive. That the relations between both of them were completely strained, and that the marital tie was virtually (though not legally) snapped, is admitted and is clearly borne out on the record by the Thyagpatra which he gave to the Secretary, Anath Ashram, in 1945 authorising him to get her married to another person. It is also admitted that the appellant had married a third wife some time before this murder. The suggestion for the prosecution is that in all these circumstances and having regard to the bad reputation which this woman had gathered round her, as the evidence clearly shows, and in view of the fact that she started troubling him by visits at his office, the appellant had a strong motive to commit the murder. It is urged for the defence that this woman must have had a number of persons with whom she must have been carrying on love intrigues and that she must have provoked strong jealousies of various persons in and around the place where she was admittedly moving for at least some time prior to her murder and that any one of such persons might have had much stronger motives to commit the crime. Now, while it is perfectly true that there is no clear evidence about the life and movements of this woman from about October, 1947 to August, 1953, there can be no doubt that on the material before the Court, the existence of a strong motive on the part of the appellant is clearly indicated. As has been already stated this woman left the appellant in the year 1945 and took shelter in the Anath Ashram, Gaya. Ex. 2 (a), a Thyagpatra executed by the appellant on the 12th October, 1945, shows that he purported to give up all rights over this woman as a husband and authorised the Ashram to arrange to get her married according to her choice. Simultaneously with this Thyagpatra, he also sent a letter to the Secretary,

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Anath Ashram, Ex-2-A(1), which is as follows:

"It is submitted that I have duly filled the tyag-patra (divorce form) in connection with my wife Parbati Devi and submitted the same to the Ashram. Besides this, I pray to the Ashram Samiti and the Bibah Samiti, with my folded hands that they should keep in mind to get Parbati Devi married at a very distant place in any other State, because she is woman of such a loose character that if she is married to a place near about it will bring ill fame to the Ashram and to me. As I am an employee in the Police department, it shall adversely affect my service. I pray you not to refuse my prayer".

The state of mind of the appellant as disclosed in this letter furnishes a clue as to how his mind would have reacted when in spite of her having been married away at a distant place, she came back and was virtually knocking about from place to place between Patna and Gaya and went so far as to meet him in the very office where he was working to demand money. It is strongly urged that this letter only shows the state of his mind about eight years prior to the murder. But in view of his own admission that she started troubling him again by visiting him at his office, and demanding money at least on two occasions including that on the 3rd September, the courts below were perfectly justified in considering that a strong present motive on the part of the appellant has been made out.

Learned counsel for the appellant urges that the existence of the motive and the evidence as to the appellant having been last seen travelling in the train with this woman on the night of the 3rd September a few hours prior to the time of the murder, even if believed are, at best circumstances which may create a strong suspicion but that they are not enough by themselves to make out the guilt of the accused. It is pointed out that there is no evidence that the appellant and the deceased woman were found getting down at the Gaya station or that they were both found proceeding towards Kabristhan after so getting down. Undoubtedly there is some gap in the evidence

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at this point. But their getting down at Gaya or proceeding towards Kabristhan must have taken place at or after midnight. It is in evidence that Kabristhan was on the out-skirts of Gaya about a mile and a half from the Gaya police station, on the bank of the river Phalgu and that there was no human habitation within about 100 yards of the place. The absence of any specific evidence, therefore, as to the appellant having been seen with the murdered woman going towards Kabristhan or near about Kabristhan is intelligible. It cannot be denied, however, that if the circumstances against the appellant stopped short at this point, there may be room for hesitation. There are however further circumstances relied upon by the courts below and they require to be noticed and considered.

These further circumstances are (1) the finding of a blood-stained knife (pen-knife) near the dead body, and (2) the existence of certain injuries upon the person of the appellant when he was arrested on the 6th. The evidence of P.W. 23, the officer-in-charge of Kotwali police station, Gaya, who proceeded to investigate this offence on getting information thereof at 7 A.M. on the 4th September shows that he then found the dead body of the woman, in a pool of blood underneath and near the neck, and that there was found at the time a blood-stained knife near the head. This knife was seized and marked as Ex. 1. The prosecution has given evidence of three witnesses, P.Ws. 11, 13 and 18, who are respectively the Daftari, the Chaprasi and the Inspector attach to the Income-tax Office, Patna, in which the appellant was working, that they had seen with the appellant a knife similar to the one which was shown to them in Court, as having been found by the side of the dead body. Out of these P.W. 18, the Income-tax Inspector says in cross-examination that he had never seen such a knife "before". The appellant, while in his examination under section 342, Criminal Procedure Code admitted that he used to keep a knife for mending pencil, denied that the knife, produced in court as being the one which was found by the side of the dead body, was

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his or was like the one he kept. It was strongly urged on behalf of the defence that there was no proof that this was the very knife which the appellant used to have. The learned Judges of the High Court met this criticism as follows:—

"Of course no witness could have possibly deposed that this was the knife which was in possession of the appellant. They say that the knife which they had seen with the appellant prior to the occurrence was a knife similar to the one which was found in a blood-stained condition near the dead body. We have examined that knife for ourselves and it has a peculiarity of its own. The knife has an ivory handle. It has a cork screw and a bottle opener—all combined. A knife of this description, therefore, can be identified and it is not one of the kind which can be said to be an ordinary one".

In view of the above observation by the learned Judges and having regard to the evidence of P.W. 18, who, though he did not speak of these peculiar features, has categorically said that he had never seen such a knife before, there is no reason to disagree with the finding of the High Court that the find of this knife near the dead body is a strong circumstance against the appellant.

The next circumstance found against the appellant is the presence of injuries on his body at the time of his arrest on the 6th. P.W. 24, a Civil Assistant Surgeon of Gaya who examined him at 6 P.M. on the 6th of September, found the following four simple injuries on his person. (1) One wound on the left ring finger, (2) one wound on the back of left hand near thumb, (3) two abrasions in front of right knee, and (4) one small abrasion in front of left knee. In his opinion, the injuries were all about three days old. Numbers 1 and 2 might have been caused by a sharp-edged weapon such as a pen-knife and injuries 3 and 4 by some hard and rough substance such as friction against the ground. According to him, the nature and position of the injuries were such that "if the victim is lying on the ground and if the assailant is over on the chest of the victim and he is holding the victim

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by his left hand and if he is inflicting injuries near about his left hand the victim is struggling—making the assailant unsteady, then injuries Nos. 1 and 2 may be caused by his own weapon and injuries Nos. 3 and 4 may be caused due to friction against the ground". This answer indicates the possibility of the injuries having been received by a person while making a murderous attack on the victim with a pen-knife. The appellant when asked about these injuries in his examination under section 342, Criminal Procedure Code stated in the Sessions Court (as well as in the committal court) that he fell down at Jehanabad platform on the 3rd due to Dhoti getting entangled, and sustained injuries. In support of his explanation he relied on an application for extension of leave sent first by telegram on the morning of the 5th of September to the Commissioner of Income-tax, Patna asking for extension of leave followed by a letter of that very date to the same effect. The letter was addressed to the Inspecting Assistant Commissioner of Income-tax, Northern Range, Patna, and runs as follows:

"I beg to state that I started from home from Patna in the night train of 3rd September 1953. When the train stopped at Jehanabad I wanted to come out of the train for taking a stand on the platform due to unbearable heat in the train. At the gate of the compartment as soon as I wanted to come out my one leg entangled with the lower part of my dhoti resulting instantaneous fell down from the train. Due to this accident I got injuries at both the knees and the cut marks in the back of my left palm. I therefore request you to kindly extend my leave up to 10th September, '53".

When questioned under section 342, Criminal Procedure Code before the Sessions Court about the extension of his leave, he said "I was a stenographer. How can have I typed when my left hand was injured. Hence I wanted to extend the leave". It appears to us, however, very doubtful, having regard to the nature of the injuries, whether this can be the real reason for his extending the leave. He does not

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say so specifically in his application for leave. Nor, does it appear so likely from the medical evidence how injuries Nos. 1 and 2 could have been caused by the alleged fall on the railway platform. In the cross-examination of the Doctor it was suggested that if there is a broken glass piece lying on the ground and if during the fall the hand came in violent contact with that piece of glass, then such injuries may be caused. But the appellant in his explanation and in the application for leave does not say anything which indicates that he received the injuries on the hand from a piece of glass. In this state of the evidence, it cannot be said that the courts below were not justified in coming to the conclusion which they did, viz., that the explanation of the appellant for the injuries was false and that the injuries may well have been received on the occasion of the murder.

Summing up, the various facts which formed the links in the chain of circumstantial evidence in this case, may be stated to be as follows :

1. There was a fairly strong motive for the appellant to commit the murder in question.

2. He took charge of the murdered woman on the evening of the 3rd September by taking her out from the quarters of the chowkidar of the Income-tax Office, Patna, and leaving the place with her in a rickshaw.

3. He was found travelling with her by a train which was proceeding to Gaya that night, at Chakand railway station and this was at about 11 or 11-30 P.M., i.e., a few hours prior to the time when she must have been murdered.

4. The knife, which looked like the one which he was known to be using in his office and which was not of a common pattern, was found just by the side of the head of the murdered woman stained with blood.

5. When he was arrested two and a half days after the murder, he had simple injuries on his hand and the knees which might well have been received, according to the medical evidence, in an assault on the murdered woman with the knife above mentioned.

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These circumstances taken together, advance the case against the appellant very much beyond suspicion and reasonably and definitely point to the appellant as the person who committed the murder. In such a situation the fact that he has no explanation to offer as to how, after having taken charge of this woman on the evening of the 3rd at Patna and after having travelled with her in the train that very night towards Gaya, he left the woman, where and how he parted company with her and what became of her so far as he knows, goes a long way against him. The fact that on the other hand he tries to dissociate himself from her company at the relevant time by putting forward for the first time in the Sessions Court, the story of having met her at Patna on the 2nd September and of his having parted company with her that evening at some crossing after giving her some money, which is patently false, is very significant. The further fact that the explanation for his injuries appears to be false is also significant. These false explanations are telling circumstances which, in a case depending on circumstantial evidence taken with the other facts such as those in this case, are enough to bring the guilt home to the accused.

To combat this conclusion, learned counsel for the appellant drew our attention to the nature and position of the injuries on the body of the deceased woman as disclosed by the medical evidence of the Doctor, P.W. 17, who conducted the post-mortem examination, as also the various indications at the site of the occurrence, as found and spoken to by the police-officer, P.W. 23, who was the first officer to go to the scene by about 7 A.M. on the 4th on receiving information. He also drew our attention to the fact that according to the report of the Serologist and Chemical Examiner, no human blood appeared to have been found on the saree and the bodice found lying near about the place where the dead body was lying and that neither the saree nor the bodice showed any indication of having been torn or tampered with and that on the other hand the body was found lying absolutley naked with face upwards. These features

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have all been pressed into service for a strong argument that the murder must have been the act of more than one person and probably having its source in sex jealousy. We have very closely and anxiously gone into this aspect of the matter by carefully scrutinising the entire evidence in this behalf. It is unnecessary to recapitulate the same. Whatever may have been the actual situation on the spot and the method by which the murder was in fact committed—a matter for mere speculation—we are satisfied that the murder could have been committed by a single individual in the position of the appellant. Sitting in an appeal by way of special leave, we are not prepared to say that the medical evidence and other concomitant circumstances were such as to compel a conclusion contrary to that arrived at by the Courts below. It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain. We are, therefore, of the opinion that this is a case which satisfies the standards requisite for conviction on the basis of circumstantial evidence.

We find, therefore, no sufficient reason to differ from the view taken by the lower courts and this appeal must accordingly be dismissed.