

PETITIONER:
SMT. OMWATI ETC.

Vs.

RESPONDENT:
MAHENDRA SINGH & ORS.

DATE OF JUDGMENT: 07/11/1997

BENCH:
M.M. PUNCHHI, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

THE 7TH DAY OF NOVEMBER, 1997

Present:

Hon'ble Mr. Justice M.M.Punchhi
Hon'ble Mr. Justice M.Srinivasan

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

J U D G M E N T

The following Judgment of the Court was delivered:
SRINIVASAN, J.

1. These appeals are directed against the judgment of the Allahabad High Court in Cr1. 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 charged under Section 148, 302/149 and 307/149 I.P.C. Cr1. 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:-

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 they saw a tractor parked on the middle of the road with its lights on. It had no bonnet. The accused namely Mahendar 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 Sing had a hasiya while the other 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 steps behind. the accused who had pistols fired at Raj Kumar Singh and Dhirender Sing. 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 cashed by the accused. Another tractor came from behind which was stopped by PW 1. Dhirender Singh attempted to climb on the said tractor but the accused fired at him as a result of which he received gunshot injuries and fell down. Ram Swroop, 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 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.

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 PW 1. The prosecution examined ten witnesses. PWs 1 to 3 claimed to be eye witness. 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 Section 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 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. Mahendar 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.

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 therefor set aside.

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

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 Cri. 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 circumstances 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 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.

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.

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.

9. At the outset, 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 Pradhan from village Chawra held in 1982 in the village Admittedly Inder Pal Singh was defeated in that election and Mahendar 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 was class 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 sharp-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 weapon 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 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 the 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 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 the of them namely Mahender Singh which had not 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. DSW-5019 and sold it for a total consider of Rs.14,000/- 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 hm 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 regarding sale of the tractor as he did not receive the full consideration. He claimed to possess the paper relating to tract 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 sad tractor through one Munna mistry bu the latter has not been examined. A perusal of has 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 that tractor. The bonnet of the tractor is said to have ben 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 circumstances goes a long way to shake the credibility of eye witnesses 1 to 3.

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 wee 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 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.

13. A perusal of the evidence of PW 10 shows that there

were several corrections, cutting and over writings in the punchanamas prepared by him. While the eye witnesses denied the correctness of some portions of the statements recorded by PW 10, the later 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 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 this 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 Investigation 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 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 therefore 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 Magistrate. It is not necessary for us to place reliance on the failure of the Police to hold an identification parade

18. The circumstances referred to by us earlier taken along with the facts and circumstance 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.

JUDIS