

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 11th September, 2009*
Judgment Delivered on: 15th September, 2009

+ **CRL.A.597/2001**

PALVINDER SINGH & ANOTHER Appellants
Through: Ms.Nilofar Qureshi, Advocate.
versus

STATE Respondent
Through: Mr. M.N.Dudeja, APP.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. Palvinder Singh was married to Sarabjeet Kaur in June 1990. They had three children aged six years, four years and the youngest being an eight month old son. They were residing in a quarter allotted to them at Gurudwara Badarpur. They were earlier living at the quarter of Gurudwara Bangla Saheb. Palvinder was a Sewadar by profession. Since the last 3-4 months Palvinder had been assigned duty at Gurudwara Bangla Saheb. On 14.1.1998, Amarjeet Singh PW-1 along with Surender Singh PW-5 had gone to Gurudwara Bangla Saheb. They met Sewadar Manga who was employed in

Gurudwara Badarpur. He i.e. Manga told PW-1 that a quarrel had taken place between Palvinder and Sarabjeet and his sister Sarabjeet had probably been murdered by Palvinder Singh and his younger brother Sarwan Singh who had come from Punjab; Sarabjeet had not been seen after 9-10.1.1998 and since then all the occupants of the house had disappeared. PW-1 along with PW-5 went to Gurudwara Badarpur where they found the house of his sister locked. PW-1 informed his father Kishan Singh PW-2. On 15.1.1998 PW-2 and PW-5 went to the native village of Palvinder to find out the whereabouts of Sarabjeet and Palvinder. He i.e. PW-2 met his son-in-law but he did not get any satisfactory reply about the whereabouts of his daughter. PW-2 and PW-5 returned back to Delhi. Complaint Ex.PW-1/A was lodged in PS Badarpur to this effect.

2. Inspector Ved Prakash PW-17 was given charge of the investigation of this case. He made his endorsement Ex.PW-17/A on the aforesaid complaint for the registration of an FIR under Section 364 of the IPC. FIR Ex.PW-16/A was registered by HC Rajinder Singh PW-16. On the same day i.e. on 17.1.1998 PW-17 along with SI Lakhi Ram PW-14, PW-2 and PW-5 proceeded to the native village of the accused in Amritsar; a trap was laid and the accused i.e. Palvinder Singh and his brother Sarwan Singh were both apprehended. The disclosure statement of Palvinder Singh

Ex.PW-2/A was recorded and disclosure statement of Sarwan Singh Ex.PW-5/A was also recorded. Their personal search memos Ex.PW-14/A and Ex.PW-14/B were prepared. Accused Palvinder was found present in Amritsar along with his two children but his third child i.e. his youngest son aged eight months was found missing. Accused feigned ignorance about the third child. The other two children were also not able to inform the investigating agency about the whereabouts of either their mother or their third sibling. The police party along with accused returned back to Delhi.

3. On 19.1.1998 both the accused persons led the police party to the place of occurrence i.e. to the room allotted to Palvinder Singh at Gurudwara Badarpur where he pointed out quarter No.4 i.e. the matrimonial home of Palvinder and Sarabjeet. Room was locked; the cot lying in the room where the Sarabjeet had been killed was taken into possession vide memo Ex.PW-14/H. The 'Granthi' of the Gurudwara Niranjn Singh PW-6 met them there; as per his version he had last seen the accused persons and deceased together. Statements of Tikka Singh PW-4 and Boota Singh PW-7 were also recorded; they were neighbours living in the adjoining quarters at Gurudwara Badarpur. Jasvinder Singh alias Manga has been examined as PW-8; he, however, did not support the version of the prosecution. On the same day i.e. on 19.1.1998, the accused persons led the police party to a well where they had thrown the

dead body of Sarabjeet near BTS Colony at Mathura Road; it was a dry well; pointing out memo of the said place is Ex.PW-1/B. The dead body was pulled out from the well by Sh.Ram Krishan PW-9 and was taken into possession vide memo Ex.PW-1/C. It was found wrapped in a bed sheet and tied with a plastic rope. Dead body was identified by PW-1 as that of his sister. Inquest papers Ex.PW-17/B were prepared. The post-mortem on the dead body was conducted by Dr.Praveen Kumar. The report Ex.PW-11/A has been proved by Dr.Millo Tabin PW-11. Cause of death was asphyxia due to strangulation by ligature. Time since death was reported to be nine days i.e. relating back to 10.1.1998.

4. On 20.1.1998, accused persons led the investigating team to the place where they had abandoned the third child of Palvinder Singh i.e. his eight month old son. This was a place opposite a temple near Ganga Vihar on the Ring Road; pointing out memo is Ex.PW-14/J. In this context on 11.1.1998 a PCR call had been received in the area of police station Srinivaspuri of police post Sunlight Colony by lady Const.Geeta PW-15 that a child had been found abandoned near village Kilokari near Hind Motors. This information had been conveyed by her to the District Control Room and was passed on to the police post at Sunlight Colony. DD no.10 Ex.PW-13/A was recorded by HC Satpal Singh PW-13 who had gone for the investigation thereof; a male child was found abandoned

there; his identity could not be traced. The child was left in the care of Phoolo Devi PW-3. Thereafter the Delhi Child Welfare Association was contacted and the child was transferred to the care of Ms.Chritia Thomas PW-12 who was working as a Supervisor in the Delhi Counsel Child Welfare Department. Testimony of PW-12 is to the effect that the child had thereafter been identified as the son of Sarabjeet Kaur and his custody had been handed over to his grandfather Sh.Arjun Singh vide memo Ex.PW-12/A.

5. The Trial Judge had vide the impugned judgment convicted both the accused persons for the offence punishable under Section 302/34 of the IPC as also for the offence punishable under Section 201 of the IPC i.e. for having committed the murder of deceased Sarabjeet and thereafter for having concealed the evidence of the crime by throwing her dead body in a well. Accused Palvinder had been acquitted for the offence under Section 498-A of the IPC.

6. The Trial Judge had relied upon the testimony of PW-6 to hold that the accused persons i.e. Palvinder Singh and his brother Sarwan Singh were last seen together in the matrimonial home of Palvinder and Sarabjeet. The motive for the crime was the suspicion of Palvinder that his wife was having an illicit relationship and this had been spelt out in the version of PW-5. Immediately, after the crime which was probablized as the intervening night of 9/10.1.1998 accused persons had left Delhi for their village at

Amritsar; on 9.1.1998 when the accused persons were apprehended, they had no satisfactory explanation about the absence of Sarabjeet or of the third child of Palvinder. The Trial Judge had also placed reliance on the version of PW-10 to whom Palvinder had sold his gas stove apparently for the reason that he was going back to his native village after closing his matrimonial home for good; the chain of circumstances had further been woven by the testimony of PW-4 who had deposed that Palvinder had borrowed his cycle on 9.1.1998 and this was to dispose of the dead body of his wife. The most lethal circumstance held against the accused was the recovery of the dead body of Sarabjeet from the well pursuant to the disclosure statement of the accused persons. All these circumstances had been relied upon by the Trial Court to sustain the conviction of the accused.

7. On behalf of the accused it has been argued that the version of PW-6 to establish the circumstance of last seen is unreliable as an appreciation of his version on oath in court shows that he is not sure of the facts; he has not deposed about the date when he had seen the accused persons i.e. Palvinder and Sarwan in the company of Sarabjeet and drawing of inferences from a general version is not what is contemplated by the rules of criminal jurisprudence; such a vague and general statement cannot form the basis of a conviction in a murder trial. Manga who had first set this investigation into

motion has not been examined. It is not clear as to how and in what circumstances Manga had by chance met PW-1 and disclosed his version that he knew about the murder of Sarabjeet i.e. the sister of PW-1. The recovery of the dead body on 19.1.1998 does not inspire confidence as there are inherent discrepancies in the versions of the recovery witnesses and although as per the case of the prosecution recovery of the dead body had been effected on 19.1.1998 in the morning hours yet PW-14 in his cross-examination has stated that it was dusk and late evening when the recovery had been effected; recovery of the dead body is also belied. Prosecution version being clearly suspect, benefit of doubt has accrued in favour of the accused persons and they are entitled to an acquittal. It is submitted that even otherwise the role of Sarwan Kumar has not been spelt out and if the version of Pw-6 is discarded there is nothing with the prosecution to nail him; attention has been drawn to the version of PW-10 who has stated that Palvinder Singh alone had come to sell the gas stove to him and he had not been accompanied by his brother Sarwan Singh. Role of the Sarwan Singh has been demolished by the witnesses of the prosecution itself.

8. We have perused the record and appreciated the submissions.

9. This is a case of circumstantial evidence; all the links in the chain have to be so co-jointly interwoven that there is no gap and the ultimate conclusion must unerringly point towards the guilt of the accused; the hypothesis of their innocence has to be excluded. The circumstances sought to be established by the prosecution have to be tested on this touch stone.

10. Palvinder and Sarabjeet were admittedly living at the quarter allotted to them in Gurudwara Badarpur. Palvinder was a sewadar in the said gurudwara. Tika Singh PW-4 had deposed that he was working as a Sewadar in the Gururdwara where Palvinder was also working and they were both living in the staff quarter of the said Gurudwara. On 9.1.1998 at about 8 PM Palvinder had come to his quarter to borrow his cycle. PW-4 gave his cycle to Palvinder who returned it back on the following morning at about 11 AM. In his cross-examination he had stated that Palvinder used to borrow his cycle occasionally.

11. Niranjn Singh PW-6 was working as a 'Granthi' in Gurudwara Badarpur. He has deposed that Palvinder was working as Sewadar in the said Gurudwara and was living with his wife and children. This witness has been examined by the prosecution to establish the circumstance of the accused persons and the deceased having been last seen together. PW-6 has deposed that prior to the death of the wife of accused Palvinder, his brother Sarwan Singh also came and

started living with Palvinder Singh. Relations of Palvinder and his wife were strained and they used to quarrel with one another. He has deposed that Palvinder and Sarwan Singh had left the Gurudwara premises on 15.1.1998; two to three days prior to 15.1.1998 wife of Palvinder was not seen in the room. In his cross-examination, he has stated that he was working in the Gurudwara since 14.7.1996; he was not living in the Gurudwara; but he used to come for his duty at 7 AM and return back at night.

12. This is the sum total of the testimony of PW-6 which has been relied upon by the prosecution to hold that both the accused persons i.e. Palvinder Singh and Sarwan Singh were last seen in the company of Sarabjeet Kaur. We have scrutinized this testimony. In our view it is vague, general and lacking in all and every particular; dates, timings and place have not been mentioned which are crucial facts to establish the circumstance of last seen. PW-6 has deposed that two to three days prior to 15.1.1998 i.e. around 12/13.1.1998 Sarabjeet had not been seen in her quarter at the Gurudwara; death as per the prosecution had occurred on the intervening night of 9/10.1.1998 and this has been fortified by the post-mortem report. Deposition of PW-6 does not in any manner establish that Sarwan Singh and Palvinder had been last seen together with Sarabjeet Kaur either on 10.1.998 or immediately prior thereto; in fact there is no such express statement and neither does the statement so state

even by implication; there is no mention of the presence of Sarabjeet even before 12-13.1.1998. Admittedly, Sarwan Singh was a resident of Amritsar and he had only come to visit his brother Palvinder in Delhi; when he came to Delhi and when he left for Delhi has not been spelt out in this version of PW-6; there is no other witness with the prosecution to establish that Sarwan Singh had come to live in the house of Palvinder just before the date of the incident i.e. around 9-10.1.1998. Prosecution in our view has not been able to establish that Sarwan Singh was immediately prior to the incident seen in the company of his brother Palvinder and his Bhabhi Sarabjeet. Version of PW-6 is nowhere to the said effect.

13. Buta Singh PW-7 was also an employee of Gurudwara at Badarpur. He has deposed that he was on duty earlier in Gurudwara Bangla Saheb and thereafter he started living in Gurudwara Badarpur where Palvinder was also employed as a Sewadar.

14. The evidence of the aforestated witnesses has established that Palvinder and his wife Sarabjeet were living in the quarters allotted to them at Gurudwara Badarpur. They were living there with their three children. This was the matrimonial home of Sarabjeet Kaur. Sarwan Singh, brother of Palvinder had come to Delhi on a visit but when he actually came and when he left is not clear. Version of PW-6 has nowhere been able to establish that

Sarwan Singh was last seen in the company of his deceased Bhabhi just on or before the date of the incident i.e. 9/10.1.1998. There is not a whisper about this; PW-6 was also not residing at Gurudwara Badarpur.

15. The family members of Sarabjeet Kaur have been examined as PW-1, PW-2 and PW-5. Amarjeet Singh PW-1 had deposed that on 14.1.1998 he learnt from Manga Sewadar that there had been a quarrel between his sister and his brother-in-law and his sister had probably been killed. He had received this information while he had gone to offer his prayer at Gurudwara Badarpur. He had been accompanied by his brother-in-law Surender Singh PW-5. PW-5 has deposed that Sarabjeet Kaur was his elder sister-in-law and relations between Sarabjeet and Palvinder were strained as Palvinder used to suspect his wife for infidelity. Kishan Singh PW-2 is the father of the deceased and he has deposed on the same lines as his son; he had been informed by his son PW-1 that his daughter was missing and he along with PW-5 had gone to Amritsar to find out her whereabouts.

16. On 19.1.1998 both the accused persons had been arrested from Mehta Chowk, Amritsar. After their arrest they had been brought to Delhi. Pursuant to their disclosure statements they had vide memo Ex.PW-1/B pointed out a well at BTS Colony on Mathura Road where they had thrown the dead body of Sarabjeet. This

pointing out memo has been attested by PW-1 and PW-14 and both the witnesses have corroborated one another on this aspect. The dead body had been retrieved by Ram Singh PW-9, who on oath has deposed that on 19.1.1998 he had joined investigation of this case at the asking of the police. He had been taken to a well where with the help of ropes and hooks they retrieved a dead body from the well which was lying in a sack. It was of a female. The body was taken into possession vide memo Ex.PW-1/C. In his cross-examination, he has stated that it was 12 noon when they reached the spot and they remained there up to 1.30 PM. Recovery memo of the dead body has been perused which has duly been attested by PW-9.

17. PW-14 SI Lakhi Ram was also a witness to this recovery. He has in his cross-examination deposed that he had joined the recovery proceedings. The accused persons had pointed out the place where they had thrown the dead body. In his cross-examination he has stated that he cannot give the exact time when the dead body was pulled out from the well but it was dusk time and darkness had set in. This contradiction as has been pointed out by the learned defence counsel in our view is a minor discrepancy. The recovery of the dead body had been effected in January 1998. The witness had come into the witness-box almost after three years of the incident; persons are not expected to have photogenic and

photographic memory of exact timings and place; it is not as if a video tape is being replayed on the mental screen. This discrepancy as pointed out is too minor and has to be ignored. PW-1 Amarjeet Singh the third witness to this recovery has been consistent in his version. The recovery of the dead body stands proved.

18. Testimony of PW-10 Jagdish is also relevant. He was a witness living in the neighbourhood of accused Palvinder and to whom Palvinder had sold his gas stove. On oath PW-10 had stated that he cannot exactly give the date but it was 8th or 9th of January; it was winter season when accused Palvinder had come to sell his stove to him which he has sold for Rs.450/-. PW-10 purchased this stove and he went to the house of Palvinder. He saw that his family was not there. PW-10 had categorically stated that he had not told the police that Palvinder had been accompanied by his brother Sarwan when he came to sell his stove to him. Version of this witness establishes that on 8th or 9th January, 1998 Palvinder had gone alone to Pw-10 to sell his stove to him; PW-10 had accompanied Palvinder to his house where he did not find anyone present there much less Sarwan Singh.

19. Manga alias Joginder has been examined as PW-8; although he did not support the prosecution version; but this does not in any manner dent the version of the prosecution; PW-8 had only given

the first lead to this case; he was an employee of Gurudwara Bangla Saheb where in the natural course he met PW-1 who had gone to offer prayers at the Gurudwara and was known to him since the last 5-6 months; this is the categorical testimony of PW-1.

20. We are unable to understand what were the circumstances which had weighed in the mind of the Trial Judge to hold co-accused Sarwan Singh guilty? Sarwan Singh was the brother of Palvinder and admittedly a resident of Amritsar. Testimony of PW-6 as discussed supra has nowhere in any form or manner shown that Sarwan Singh was last seen in the company of his deceased Bhabhi Sarabjeet Kaur. On the other hand, PW-10 a witness of the prosecution itself has come into the witness box and deposed that on 8/9.1.1998 Palvinder was alone in his house; he had come to sell his gas stove and at that time he was not accompanied by his brother Sarwan Singh; he was alone.

21. In this scenario the role of Sarwan Singh has not surfaced. Benefit of doubt has accrued in his favour and in our view he is entitled to an acquittal.

22. Prosecution in our view has been able to establish that accused Palvinder had committed the murder of his wife. He had strained relations with her. Both of them were admittedly living in quarter No.4 of the quarters of Gurudwara Badarpur; the matrimonial home of Sarabjeet. The married couple had three

children. On 14.1.1998, it was first learnt that the house of Palvinder and Sarabjeet Kaur is locked; their whereabouts were not known. On 19.1.1998 Palvinder was arrested from Amritsar where he was found in the company of his first two elder children and his third child and wife were missing for which he could not give any satisfactory reason; in his statement under Section 313 Cr. P.C. he had stated that his wife had gone to her parents house; the defence adduced by him through the testimony of Kashmir Singh DW-1 has recited that Palvinder had gone with his wife to Punjab to celebrate Lohri of his youngest son; this is a patently false and incorrect version for the reason that admittedly his wife and youngest son had not accompanied him to Amritsar for this celebration. On 11.1.1998 this eight month old unfortunate child was found abandoned at the Ring Road opposite village Kilokari. It is strange and almost impossible to believe that the father would have gone with his two children minus his wife and youngest child to celebrate Lohri festival of the third child who had not accompanied him and was thereafter found lying abandoned; mother of the child was also reported missing. Who was to explain where the mother and the child were? Obviously the father in whose custody and care the mother and the child were. Section 106 of the Evidence Act specifically postulates that where any fact is specially within the knowledge of any person the burden of proving is upon him. It was

for Palvinder to explain and answer to where his missing wife and child were; not only he has given a dissatisfactory explanation but a false and misleading one.

23. In judgment reported as Babu S/o Raveendran vs. Babu S/o Bahuleyan & Anr. (2003) 7 SCC 37, the solitary circumstance was of the accused and the deceased being seen alive in the company of each other followed by the dead body of the deceased being recovered. The relationship of the deceased and the accused was of husband and wife. The place of death was their matrimonial home. The place where the dead body was found was the same matrimonial home. There was no evidence of an intruder, it was held that in such a situation, the circumstance leading to the death of the deceased stand shifted, to be explained by the accused, for it is only he who is to be expected to know the manner and the circumstances under which his wife has died.

24. In the judgment reported as Mohibur Rehman & Anr. vs. State of Assam (2002) 6 SCC 715, the two accused persons had last seen in the company of PW-6; the body of the deceased had been found at a distance of 30 km to 40 km from the bus stand where all were seen together; dead body had been recovered after 13 days; the Supreme Court while acquitting one accused and convicting the other had held qua the convicted accused that the strongly suspicious evidence of being last seen in the company of the

deceased could not be equated with proof but the strongly suspicious circumstance of being last seen alive with the deceased coupled with an attempt to mislead the relations of the deceased and his knowledge of the place where the dead body of the deceased was found were sufficient circumstances where from his guilt could be inferred.

25. In view of the aforestated evidence, it is clear that the prosecution has been able to establish that accused Palvinder had committed the murder of his deceased wife and concealed the evidence of the crime by throwing her dead body in a well. However, benefit of doubt has accrued in favour of his co-accused brother Sarwan Singh who is entitled to an acquittal. Appeal is partly allowed. Accused Sarwan Singh is acquitted of the charges leveled against him. Bail bond and surety bond of accused Sarwan Singh are canceled. Conviction of Palvinder Singh is maintained. His appeal is dismissed. He is on bail. His bail bond and surety bond are cancelled. He shall surrender forthwith to suffer the remaining sentence.

(INDERMEET KAUR)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

15th September, 2009
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