



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 242 of 1999**

Paras Singh alias Pappu Thakur, aged 27 years, son of Shyamnarayan Singh, resident of Bhanpuri, Raipur, District Raipur M.P. (now Chhattisgarh)

---- Appellant

Versus

The State of Madhya Pradesh (now Chhattisgarh)

----Respondent

And**Criminal Appeal No. 423 OF 2003**

Kamlesh Dewangan, S/o Chaitram Dewangan, aged about 32 years, R/o Village Chandkhuri Farm, P.S. Mandir Hasoud, Distt. Raipur (C.G.)

---- Appellant

Versus

State of Chhattisgarh

----Respondent

For Appellants:

Shri Surendra Singh, Senior Advocate along with Smt Renu Kochar, Shri Neeraj Mehta and Shri Abhijeet Sarkar, Advocates.

For Respondent/State:

Shri Ravindra Agrawal, Panel Lawyer.

Hon'ble The Chief Justice**Hon'ble Shri Justice Sanjay Agrawal****Order on Board****Per Deepak Gupta, Chief Justice****19/1/2017**

1. These two Appeals are being disposed of by a common judgment since they arise out of one judgment passed by the Additional Sessions

Judge, Raipur in Sessions Trial No.423/97 dated 24.12.1998 whereby he has convicted both the Appellants of having committed the offence punishable under Sections 302/34 IPC and 394/34 IPC and sentenced them to undergo life imprisonment with fine of Rs.50,000 under Section 302/34 IPC and to undergo RI for 10 years with fine of Rs.25,000/- under Section 394/34 IPC with usual default stipulations.

2. The undisputed facts are that one Santosh Sharma was working as a Munim in the rice mill of Chandrashekhar Kastwar, PW-15 in Dhamtari. It is also an admitted fact that on 23.4.1997, Santosh Sharma was directed by Chandrashekhar Kastwar, PW-15 to go from Dhamtari to Raipur. He was carrying one cheque for a sum of Rs.1,00,000/- which he had to encash at Raipur. He was also directed by Chandrashekhar Kastwar, PW-15 to collect money from other rice dealers of Raipur who owed money to him. On 23.4.1997, Santosh Sharma encashed the cheque for Rs.1,00,000/-. He also collected a sum of Rs.1,10,800/- from Purushottam, PW-12 and another sum of Rs.44,156/- from Rajesh Shah, PW-26. Thus, he was carrying a total amount of Rs.2,54,956/- in addition to any personal cash which he may have been carrying. It is also not disputed that between 8 and 9 pm, Santosh Sharma was seen waiting for some transport at Kalibadi Chowk, Raipur by Rajesh Sankhla, PW-9.

3. The further undisputed facts are that on the morning of 24.4.1997, Parmeshwaran G. Pillai, PW-1 saw the dead body of some person near the aerodrome. He reported the matter to the police and merged intimation, Exhibit P-1 was recorded. This unknown body was subjected to postmortem vide Exhibit P-7, which was conducted by Dr. Sanjay Kumar Dadu, PW-3. Later, the body was identified to be that of deceased Santosh Sharma. As per the postmortem report Exhibit P-7, the deceased had died due to head injury. He

48

had also been strangled which was evidenced by a ligature mark. There were number of injuries on the body of the deceased. The fact that the deceased had come from Dhamtari to Raipur, that he had collected money, that he was last seen between 8 & 9 pm at Kalibadi Chowk and that he was murdered on the intervening night of 24/25.4.1997 are facts not disputed even by the Appellants.

4. The two Appellants Paras @ Pappu Thakur and Kamlesh Dewangan along with their associates Shivajirao Maratha were arrested on the basis of some information given by an informer on 1.7.1997. It is pertinent to mention here that thereafter Shivajirao Maratha absconded and his trial was separated and in these two Appeals, we are concerned only with the trial of Paras Singh @ Pappu Thakur and Kamlesh Dewangan. It appears that after the postmortem was conducted, the dead boy of the deceased was identified but the police remained clueless as to how Santosh Sharma has been murdered. The Police however received information that the murder may have been committed by the Appellants and their associates and they were accordingly arrested on 1.7.1997. Thereafter, further investigation was done and during the course of the investigation, the police recorded the statements of the accused and the other witnesses. The memorandum statements of the accused recorded under Section 27 of the Evidence Act, according to the prosecution, led to discovery of certain facts which connected the accused to the commission of the offence.

5. The main allegation is that the accused Paras @ Pappu Thakur made a disclosure statement, Exhibit P-16 in which, he stated that he along with his associates, had killed the deceased, thereafter, they had looted him of the money which he was carrying. Then, they shared the loot. As far as this portion of the statement is concerned, the same is hit by Section 25 of the



Evidence Act and therefore cannot be admitted in evidence since this portion of the statement is confessional and self-incriminatory in nature. The only portions of the disclosure statement which can be relied upon are that according to the accused, out of the amount, he handed over Rs.80,000/- to his father-Shyamnarayan, PW-27. In this statement he has also mentioned that he also handed over the wrist watch which was being worn by the deceased as also the bag in which the money was being carried to the father. According to this statement, he also handed over a sum of Rs.12,900/- to Ramesh Singh, PW-29.

6. As far as the other co-accused Kamlesh Dewangan is concerned, he made a statement, Exhibit P-29 on the same day i.e. 1.7.1997. According to him, he had handed over a sum of Rs.60,000/- to one RD Kamlesh, S/o Shri Bhallu Das Kamlesh, PW-28 and Rs.5,000/- was seized from this witness. As far as Kamlesh is concerned, he also allegedly made another disclosure statement, Exhibit P-26 on 15.7.1997 and as per this statement, he led the accused to the place where the occurrence of murder had taken place and in the presence of witnesses, got discovered one stone, Exhibit P-24, allegedly used to kill the deceased. The police also relied upon two other seizure memos, Exhibits P-18 & 20. Vide seizure memo Exhibit P-18, certain clothes of accused Paras @ Pappu Thakur were also seized which are stated to be blood stained. Similarly, vide Exhibit P-20, blood stained clothes were recovered from Kamlesh Dewangan. The prosecution also relies upon the test identification parade, Exhibit P-10 wherein Smt Krishna Sharma, PW-10, W/o Santosh Sharma allegedly identified the bag and watch which were being carried by her husband. On the basis of this evidence, the prosecution filed a charge sheet alleging that the accused had committed robbery and thereafter had murdered the deceased Santosh Sharma.



49

7. The accused pleaded not guilty and claimed trial. After trial, they have been convicted and sentenced as aforesaid.

8. We have heard learned Counsel for the parties. On behalf of the Appellants, it is urged by Mr Singh, learned Senior Advocate that this is a case of a blind murder. There are no eye-witnesses. He submits that the circumstances relied upon by the prosecution have not been proved and the circumstantial evidence is not sufficient to hold the accused guilty of this serious offence.

9. On the other hand, learned Counsel for the State has relied upon the judgment of the learned Trial Court and submits that the circumstance proved by the prosecution, proved beyond reasonable doubt that it is the Appellants/accused who have committed the murder of the deceased and hence they shall be liable to be convicted.

10. The learned Trial Court has relied upon as many as 14 circumstances. In our considered view, some of them are based only on factual assertions which are not even denied by the accused. The first circumstance relied upon by the Trial Court is that the deceased was working in the rice mill at Dhamtari and used to visit Raipur on and off. This may be true but this cannot be a circumstance to hold a person guilty of murder. Similarly, the circumstance No.2 that Santosh Sharma used to travel by a public bus or by a transport provided by known person is not a circumstance that can be used in this case. As has been held by us above, it is proved by the prosecution that on 23.4.1997, the deceased had collected Rs.2,54,956/- in cash after encashing the cheque and collecting money from the dealers. It is also proved that between 8 & 9 pm, he was standing at Kalibadi Chowk, Raipur waiting for transport to go to Dhamtari.

11. It is also not disputed that both the Appellants and the third accused were known to each other because this is apparent from the statement of Shyamnarayan, PW-27, father of the accused/Appellant Paras Singh @ Pappu Thakur. Another factor which is proved on record that Paras Singh @ Pappu Thakur visited village Nonari, Distt. Jonpur, Uttar Pradesh. On 24.4.1997 along with Kamlesh and Shivajirao Maratha. This fact has been stated by Shyamnarayan, PW-27 also. It is also proved on 25.4.1997, Shyamnarayan, PW-27-father of accused/Appellant – Paras Singh @ Pappu Thakur has deposited a sum of Rs.1,00,000/- in his bank account in Gomti Gramin Bank. It is also proved and established on record that prior to this, in the last 13 years, Shyamnarayan, PW-27 had never deposited an amount in excess of Rs.5,500/- in one transaction. The prosecution alleges that on the left side door of the Tata Sumo as well as in the floor mat, blood was found as per Report Exhibit P-35. This report is not disputed but it would be pertinent to mention here that this report is silent with regard to the origin of the blood. It is not clear whether it is human blood or otherwise. One must also remember that this vehicle was seized on 1.7.1997 and it was not seized immediately after the occurrence. The blood may have come on the vehicle in the meantime.

12. The learned Trial Court has also relied upon another circumstance that Rs.12,900/- was recovered from Ramesh Singh, PW-29, Resident of Raipur. This finding of the learned Trial Court is against the record. In fact, Ramesh Singh, PW-29 has denied that any money was paid to him by the accused and even assuming that any amount was recovered by the prosecution from this witness, the sum of Rs.12,900/- cannot be said to be such a large amount that a person cannot have it in his house and this witness denied that the same was given to him by accused/Appellant. The Appellant has failed to



80

prove that this amount was paid to this witness by accused Paras Singh @ Pappu Thakur.

13. Similarly, RD Kamlesh, PW-28 has denied that accused Kamlesh Dewangan gave him a sum of Rs.50,000/-. The police has only been able to recover a sum of Rs.5,000/- from Kamlesh Dewangan and such an amount of Rs.5000/- would be available in any house for household purposes and the police has failed to prove that this money was handed over to RD Kamlesh by the accused Kamlesh Dewangan.

14. The two other main circumstances on which the discussion needs to be made are the following:-

- A. Recovery of watch and bag from Shyamnarayan, PW-27-father of accused/Appellant Paras Singh @ Pappu Thakur,
- B. Recovery of stone used as weapon of offence at the instance of accused Kamlesh Dewangan.

15. As far as the watch is concerned, the same is exhibited as Article-A. It is said to have been identified in a test identification parade by Smt Krishna Sharma, PW-10 – widow of the deceased Santosh Sharma. This test identification parade was conducted by Manish Mishra, PW-6 who states that on 12.8.1997, he was working as Naib Tahsildar, Dhamtari. On the asking of the Mana Camp Police Authority, he got two articles i.e. one watch and one bag identified. He states that Smt Krishna Sharma, PW-10, widow of the deceased was called to the chamber of the Tahsildar, Dhamtari. In the presence of witnesses Vasudev Bhoi and Noor Mohammad. Along with wrist watch, seven other watches were placed and along with bag, five other bags were placed: Smt Krishan Sharma, PW-10 identified one watch and one bag. These articles were also identified by one Shankar Halder, PW-31. He has proved his report Exhibit P-10. It would be pertinent to mention that there is

no material on record to show that this witness was given a request in writing by the police authorities to carry out this identification of the watch. We must remember that this watch had been recovered on 8.7.1997. The bag had also been recovered on 8.7.1997. There is not an iota of evidence on record to show where this bag and watch were kept from the date of recovery till the date that they were produced before Manish Mishra, PW-6. There is no explanation as to why it took so long for the test identification parade to be conducted. Manish Mishra, PW-6 in his statement states that he has mixed the bag and watch with similar looking bags and watches. There is no specific description and the wife of the deceased Smt Krishna Sharma, PW-10 has identified the watch because it had a crack on the glass. If proper test identification parade was to be conducted, even all the other watches placed on record should have a cracked glass. If one watch with a cracked glass is placed, then it is not difficult to identify it. Therefore, the test identification was not properly done. Even more important is the fact that when Smt Krishna Sharma, PW-10 stepped into the witness box, this watch was never shown to her and this watch was not identified by her in Court. If any reliance had to be placed on the statement of this witness, she should have made the statement before the Court that this is the watch which belonged to her husband. Similarly, the bag was also not produced before the Court. In any way, the bag was a very ordinary bag having no other special identification marks and therefore in our considered view, the Appellants failed to prove that the wrist watch and bag were those which belonged to the deceased.

16. As far as the recovery of the stone is concerned, the story set up by the Appellants is wholly unbelievable. It is not possible to believe that almost more than 2 ½ months after the occurrence, the police was led by the accused to recover the stone. Again though blood was found on this stone, it

80

has not been identified to be human blood. If there were blood marks on the stone, the Appellants should have explained why when the body was recovered by the police on 24.4.1997, it did not carry out a search to see if there were any blood marks on the stone lying in the place of occurrence till 15.7.1997. This story of recovery is obviously false and cannot be relied upon.

17. Similarly, the recovery of the blood stained clothes of the accused also cannot be believed. It is not possible to believe that the accused would keep the stone and the blood stained clothes with them for 2 ½ – 3 months as if they were waiting for the police to arrest them and seize the clothes. It would also be pertinent to mention here that Shankar Halder, PW-31 has turned hostile and has not at all supported the prosecution story.

18. From the discussion made above, we can safely say that the prosecution has only been able to prove the following:—

- A. that the deceased has collected Rs.2,54,956/- and was waiting to go to Dhamtari,
- B. that the deceased was last seen between 8 & 9 pm at Kalibadi Chowk, Raipur,
- C. that the next morning, the body of the deceased was found near Mana Aerodrome and
- D. that Shyamnarayan, PW-27-father of the accused/Appellant Paras Singh @ Pappu Thakur deposited a sum of Rs.1,00,000/- in his bank account on 25.4.1997 and also that this was a cash transaction as far as he was concerned.

19. We may however remember that Shyamnarayan, PW-27-father of the accused/Appellant Paras Singh @ Pappu Thakur in his statement has stated that he sold jewelry to M/s. Kanhaiyalal Pidi Wale, Lahuraveer Market in Banaras. If the testimony of Shyamnarayan, PW-27, for the sake of argument, has come out for the first time in the Court, nothing prevented the

prosecution from seeking permission of the Court to investigate this portion of the matter to find out whether actually Shyamnarayan, PW-27 has sold the jewelry or not. Without that investigation having been done, we cannot just discard the testimony of Shyamnarayan, PW-27 made on oath. Even assuming that the prosecution has been able to prove that Shyamnarayan, PW-27 had deposited an unusual and large amount of Rs.1,00,000/- there is no evidence to show that this amount was given to him by his son. However, since the prosecution has been able to prove that the son of Shyamnarayan, PW-27 i.e. accused Paras Singh @ Pappu Thakur had reached Nonari on 25.7.1997, we for the sake of argument, may presume that this amount may have been given to him by his son. It is apparent that it can only raise a grave suspicion and this circumstance by itself cannot be sufficient to convict the person as has been repeatedly held. No amount of suspicion, however grave, can take the place of proof. In a criminal case, it is the duty of the prosecution to prove the case beyond reasonable doubt. There can be no possibility of the money belonging to Shyamnarayan, PW-27. There can be the possibility of Shyamnarayan, PW-27 or his son indulging in any other illegal activities from the place where they might have got this money, we cannot say with certainty that this amount may have been given to Shyamnarayan, PW-27 by the accused and we also cannot say with certainty that this money was part of the money being carried by the deceased.

20. Therefore, we are of the considered view that we cannot convict the accused on the basis of this circumstance alone. Benefit of doubt is to be given to the accused.

21. In view of above discussion, the Appeals are allowed. We set aside the judgment passed by the Additional Sessions Judge, Raipur in Sessions Trial No.423/97 dated 24.12.1998 and acquit the accused. The accused are

82

on bail. Their bail bonds may remain valid for a period of 6 months in terms of
Section 437-A of Cr.P.C.

Sd/-
Chief Justice

Sd/-
(Sanjay Agrawal
JUDGE

Priya