

Before Rajiv Sharma & Harinder Singh Sidhu, JJ.

RAJENDER KUMAR BATRA—Appellant

versus

STATE OF HARYANA—Respondent

CRA-D No.1909-DB of 2014

December 05, 2018

A) Indian Penal Code, 1860—Ss.302 and 201—Murder of unknown person—Case based on circumstantial evidence—Appellant/accused was present in area where car was found abandoned with dead-body of unknown person—Registration of car was in name of his son and he absconded for about seven months—Conduct of appellant unusual and unnatural- Car crossed toll plaza Karnal on the day burnt body of deceased was recovered from the car—Further as per PW-10 Constable Karambir call details of mobile nos. 9899630896 and 8800104858 were obtained and handed over to Investigating Officer—Pw-30 SI Phool Singh not cross-examined about call details obtained—Held, chain of circumstances complete and case of prosecution proved beyond reasonable doubt.

Held that, what emerges from the evidence discussed hereinabove is that the appellant had picked up a man from Raja Garden, New Delhi. He killed him. He crossed Toll Plaza, Karnal at 1.22.57 P.M. on 16.7.2013. He abandoned the car after putting the dead-body on fire near village Sharifgarh. Car was owned by the appellant's son Karan Batra. The registration documents were taken in possession from him. The appellant had disappeared on 16.7.2013 and was arrested on 10.2.2014. The conduct of the appellant is unusual and unnatural. It cannot be said that since he apprehended his arrest, he disappeared. Neither any FIR was lodged nor any complaint was made of the missing car in the month of July, 2013.

(Para 25)

Further held that, the prosecution has completed the chain. The appellant was present in the area where the car was found abandoned with dead-body of an unknown person. Registration of the car was in the name of his son. He absconded for about seven months. The car crossed the Toll Plaza Karnal on 16.7.2013 at about 1.22.57 P.M. This fact is proved by CD, Ex.P21. Further PW10 Constable Karambir deposed that he obtained the call details of mobile nos. 9899630896 and 8800104858 for the period from 1.7.2013 to 17.7.2013. He handed

over the call details to the Investigating Officer. PW30 SI Phool Singh was not cross-examined about the call details obtained vide Ex.P111. He has also deposed that he has tried to join the independent witnesses but no body came forward. The prosecution proved the case against the appellant beyond reasonable doubt.

(Para 31)

B) Criminal Procedure Code, 1973—S. 313—Examination of accused—Appellant/ accused failed to give any explanation when questions were put to him regarding registration of car etc.

Held that, there are serious lapses in the investigation. The police should have taken the finger prints from the car. However, this will not give any benefit to the appellant. The appellant has not given any explanation when questions were put to him at the time of recording his statement under Section 313 Cr.P.C. regarding registration of car, etc.

(Para 32)

J. P. Jangu, Advocate for
Anoop Singh Sheoran, Advocate
for the appellant.

Apoorv Garg, Deputy A.G., Haryana.

RAJIV SHARMA, J.

(1) Though CRM No. 2136 of 2017 was listed for suspension of sentence, but learned counsel for the appellant requests to argue the main appeal.

(2) The present appeal is instituted against the judgment dated 25.11.2014 and order dated 27.11.2014 rendered by Additional Sessions Judge, Kurukshetra, in Sessions case No. 84 of 2014, whereby appellant Rajender Kumar Batra was charged with and tried for the offence punishable under Section 302/201 IPC. He was convicted and sentenced under Section 302 IPC to undergo imprisonment for life and to pay a fine of `5,000/- and in default of payment of fine, to further undergo simple imprisonment for six months. He was also convicted and sentenced under Section 201 IPC to undergo imprisonment for a period of six months and to pay fine of `1,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of one month. Both the sentences were ordered to run concurrently.

(3) The case of the prosecution in a nutshell is that complainant Sukhjeet Singh was resident of village Sharifgarh. He was an

agriculturist by profession. On 16.7.2013 at about 6.00 P.M. he and Balbir Singh son of Madho Singh were going from their village to Power House, Dhola Majra. When they reached about half a kilometer from village Sharifgarh, a car bearing No.DL-10CB-4739 was found. The engine was on. When they opened the driver's window of the car, a young man was found on the driver's seat. There were burnt marks on his body. Police was informed. Statement of Sukhjeet Singh was recorded on the basis of which FIR was registered. The body was sent for post-mortem examination. Investigation was completed and challan was put up after completion of all the codal formalities.

(4) The prosecution examined a number of witnesses in support of the case. The statement of the accused was also recorded under Section 313 Cr.P.C. He has denied the case of the prosecution. He was convicted and sentenced, as noticed above. Hence, the present appeal.

(5) Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubts and supported the judgment and order of the learned Court below.

(6) We have heard learned counsel for the parties and gone through the judgment and record very carefully.

(7) PW1 Reena, Lady Constable, deposed that on 2.8.2013 she had deposited parcels with FSL, Madhuban and receipt thereof was handed over to MHC.

(8) PW2 Balak Ram had clicked the photographs of the dead-body, Ex.P2 to Ex.P15, on 17.7.2013.

(9) PW3 Constable Dinesh Kumar is a formal witness.

(10) PW4 Dr. Lajja Ram deposed that on 17.7.2013, Investigating Officer moved an application, Ex.P16, for post-mortem examination of the dead-body. It was referred to the PGI, Rohtak.

(11) PW6 HC Sanjay Kumar testified that on 17.7.2013, he had gone to the Toll Plaza NH-1, Karnal, to obtain the footage of CCTV regarding the crossing details of Car No. DL-10CB-4739 on 16.7.2013. He moved an application, vide Ex.P19, to the Manager, Surya Partap Toll Plaza. The Manager handed over the CD containing footage of CCTV dated 16.7.2013 to him. Thereafter, he handed over the CD to SI Sahab Singh. He proved the CD, Ex.P21.

(12) PW8 Sukhjeet Singh deposed that on 16.7.2013 at about

6.00 P.M., he along with Balbir Singh was going to power house village Dhola Majra from his village. When they reached about half a kilometer from village Sharifgarh, they noticed a car parked on the road. They came near the car. No body was in the car. Jute Cord (bann) was not lying in the car. They did not notice any unknown person. They did not feel smell or fumes of kerosene oil. He was declared hostile on the request made by the learned Public Prosecutor.

(13) PW9 Balbir Singh has also not supported the case of the prosecution.

(14) PW10 Constable Karambir deposed that on 26.2.2014 he was posted as Operator, Cyber Cell, S. P. Office, Kurukshetra. He obtained the call details of mobile nos. 9899630896 and 8800104858 for the period from 1.7.2013 to 17.7.2013.

(15) PW11 ASI Bhag Singh deposed that on 16.7.2013, he received the information about an abandoned car. He along with EHC Dhir Singh and SI Sahab Singh rushed to the spot. On 17.7.2013, Investigating Officer recorded the statement of Sukhjeet Singh and ruqqa was sent to the police station. He further testified that on 18.7.2013 post-mortem examination of dead-body was got conducted from PGI, Rohtak. He further testified that on 22.7.2013, Karan Batra son of Rajender Singh had produced registration card of Car No. DL-10 CB-4739 before the Investigating officer, vide Ex.P31. Accused was interrogated by the Investigating Officer. He made disclosure statement, Ex.P33, to the effect that on 16.7.2013, he had picked up one man from Raja Garden, Delhi and committed his murder. He then put up his body in the car and set it on fire near Shahbad. The accused took the police party to the place of occurrence. Demarcation was got prepared. Shirt was also recovered. The accused retracted from his earlier disclosure statement. Fresh disclosure statement, Ex.P36, was made. He disclosed about the knife, which was used in the murder and had thrown the same in the pits. The accused also took the police party to the place from where he picked the unknown person on 16.7.2013.

(16) PW13 Bhushan Goyal, PW14 Bhuvesh Aggarwal and PW15 Jagdish Wadhwa did not support the case of the prosecution. They were declared hostile.

(17) PW16 Surya Partap has proved CD, Ex.P21.

(18) PW19 Sochan Ram also was declared hostile.

(19) PW23 Manish Sharma is the material witness. He testified

that police officials had moved an application for seeking details of Car No. DL- 10CB-4739 dated 16.7.2013. They generated the data from the toll system and details were handed over to EHC Sanjay Kumar. According to the vehicle search record, vehicle registration no. DL-10CB-4739 had crossed towards Ambala side on 16.7.2013 at about 1.22.57 P.M.

(20) According to PW24 Satbir Singh, the car was registered in the name of Karan Batra son of Rajender Batra.

(21) PW26 SI Sahab Singh deposed that on 16.7.2013 a telephonic message was received. On this information, he along with EHC Dheer Singh and ASI Bhag Singh reached the spot. Car's engine was on. Statement of Sukhjeet Singh was recorded, vide Ex.P22, on 17.7.2013. Photographs were got clicked. The articles i.e. Card-box, three canisters containing kerosene oil, pieces of clothes, two bundles of rope, two iron shallow pans out of which one containing Tarkol, one empty plastic canister, mobile phone and two sim cards were recovered. These were taken into possession. Seals were affixed. The case property was deposited with MHC Police Station, Shahbad. The board was constituted. Body was sent to PGI, Rohtak for post-mortem examination. He also moved an application, Ex. P64, in the office of National Highway Authority, Model Town, Ambala, for obtaining the search details of vehicles on 16.7.2013 passing through the Toll Plaza Karnal. He also got prepared site plan. He identified the exhibits produced in the Court.

(22) PW27 Dr. Pankaj Chhikara conducted the post-mortem examination along with his team. According to their opinion, dead-body was of an young adult male and cause of death was ante-mortem injuries. Burns were post-mortem in nature. Viscera was preserved.

(23) PW30 SI Phool Singh deposed that investigation was handed over to him along with ASI Bhupinder Singh and others. They went to the house of accused Rajender Kumar Batra. Karan Batra son of accused produced his father before him. He was arrested. The accused was interrogated on 10.2.2014. He made disclosure statement, vide Ex.P33, to the effect that on 16.7.2013, he had picked up a man from Raja Garden Delhi and committed his murder. Dead-body was put in the car and set it on fire after pouring kerosene oil near village Sharifgarh. He retracted from his previous statement. His fresh disclosure statement was recorded, vide Ex.P36. According to his disclosure statement, he had thrown the knife in the pits. The knife could not be recovered. Shirt was recovered from nearby the G.T. Road

in the bushes. He also took the police party to the place from where he took the unknown person on 16.7.2013.

(24) The case is based on circumstantial evidence. In order to prove the case based on circumstantial evidence, the prosecution is to complete the chain.

(25) What emerges from the evidence discussed hereinabove is that the appellant had picked up a man from Raja Garden, New Delhi. He killed him. He crossed Toll Plaza, Karnal at 1.22.57 P.M. on 16.7.2013. He abandoned the car after putting the dead-body on fire near village Sharifgarh. Car was owned by the appellant's son Karan Batra. The registration documents were taken in possession from him. The appellant had disappeared on 16.7.2013 and was arrested on 10.2.2014. The conduct of the appellant is unusual and unnatural. It cannot be said that since he apprehended his arrest, he disappeared. Neither any FIR was lodged nor any complaint was made of the missing car in the month of July, 2013.

(26) The appellant had moved an application seeking bail during the trial. Specific averments have been made in the application that on 16.7.2013 he was going to Amritsar. He stopped at Karnal. Three persons took lift from him. They became friendly with him. One of them took the control of steering. Two persons sitting behind kidnapped him on gun point and took the car to a narrow road. He was taken to unknown place. It was with great difficulty that he could manage to flee away from their clutches in February, 2014. The appellant has, thus, admitted his presence in the area where the crime was committed. The car, which was driven by the appellant, crossed the Toll Plaza, Karnal on 16.7.2013 at 1.22.57 P.M. The vehicle details were duly proved by PW16 Surya Pratap, vide Ex.21.

(27) The appellant had made disclosure statement, vide Ex.P33. He retracted from his earlier disclosure statement and thereafter, fresh disclosure statement, Ex.P36, was made. The deceased died due to ante- mortem injuries. Thereafter, his body was burnt to destroy the evidence.

(28) PW8 Sukhjeet Singh and PW9 Balbir Singh though have resiled from the earlier statements but admitted the presence of the car on the road side. There is no explanation given by the appellant how the car driven by him reached village Sharifgarh and how the dead-body was found burnt in his car. This specific fact was in his knowledge. It is a fit case where Section 106 of the Indian Evidence

Act, 1872 would be attracted. Strange enough that the son of the appellant i.e. Karan Batra has also not lodged any report about the missing of his father or car. He remained silent spectator for about seven months.

(29) In *Sucha Singh versus State of Punjab*¹, their Lordships of Hon'ble the Supreme Court have held that when a man was abducted and then murdered, the abductors alone could tell the Court what happened to the persons who were abducted. When abductors withhold this information, the Court is justified to draw inference that abductors were the murderers. Their Lordships have held as under:-

“10. Three witnesses were examined on the defence side to say that the old parents were actually living at Amritsar for about six months prior to the occurrence. They are: DW-1 a member of the Panchayat, DW-3 and DW-4. True, those three witnesses said like that. But their evidence would not help the defence to show that the old parents were living differently from the house where the deceased stayed on that night. All that the witnesses could say was that PW-3 and PW-4 were staying at Amritsar. That expression "Amritsar" could encompass even areas lying on the periphery of the city limit also. This is clearly discernible from the manner in which DW-1 Senga Singhs address was described in his deposition. He is described as resident of Rupawali Village "in Amritsar".

Learned counsel made a futile endeavour to create some doubt that PW-3 and PW-4 would have been staying with the elder sons at Amritsar City. One such attempt was based on a fact that PW-3 himself was convicted in a murder case earlier, and hence he would have known the value of prompt reporting to the police. According to the counsel, PW-3 did not choose to go to the police station even by next early morning. What PW-3 said on that score is that after the sons were taken away he remained in the house during the entire night as he was fear- stricken and when the morning broke he collected his brother Gurnam Singh and went in search of his sons and came across the body at Village Phirni (which is close to their residence). He then left the spot after leaving his brother to remain near the dead bodies, and went to

¹ 2001 (4) SCC 375

Amritsar city on a bicycle for informing his elder sons about the occurrence. On his way back from the city he came across the police. He furnished to them the details of the occurrence as he knew. In the above narration there is nothing to show that PW-3 and PW-4 were residing away from their house at Rupawali.

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19. We have seriously bestowed our consideration to the arguments addressed by the learned senior counsel. We only reiterate the legal principle adumbrated in *State of West Bengal* versus *Mir Mohammad Omar* (supra) that when more persons than one have abducted the victim, who was later murdered, it is within the legal province of the court to justifiably draw a presumption depending on the factual situation, that all the abductors are responsible for the murder. Section 34 of the IPC could be invoked for the aid to that end, unless any particular abductor satisfies the court with his explanation as to what else he did with the victim subsequently, i.e. whether he left his associates en-route or whether he dissuaded others from doing the extreme act etc. etc.

20. We are mindful of what is frequently happening during these days. Persons are kidnapped in the sight of others and are forcibly taken out of the sight of all others and later the kidnapped are killed. If a legal principle to be laid down is that for the murder of such kidnapped there should necessarily be independent evidence apart from the circumstances enumerated above, we would be providing a safe jurisprudence for protecting such criminal activities. India cannot now afford to lay down any such legal principle insulating the marauders of their activities of killing kidnapped innocents outside the ken of others.

(30) In *Harivadan Babubhai Patel* versus *State of Gujarat*², their Lordships of Hon'ble the Supreme Court have held that when the attention of the accused is drawn to the circumstances that inculpated him in the crime and he fails to offer appropriate explanation or gives a false answer, the same can be counted as providing a missing link for building the chain of circumstances. Their Lordships have held as

² 2013 (7) SCC 45

under:-

“22. Another facet is required to be addressed to. Though all the incriminating circumstances which point to the guilt of the accused had been put to him, yet he chose not to give any explanation under Section 313 Criminal Procedure Code except choosing the mode of denial. It is well settled in law that when the attention of the accused is drawn to the said circumstances that inculpated him in the crime and he fails to offer appropriate explanation or gives a false answer, the same can be counted as providing a missing link for building the chain of circumstances. (See *State of Maharashtra v. Suresh*, (2000)1 SCC 471. In the case at hand, though number of circumstances were put to the accused, yet he has made a bald denial and did not offer any explanation whatsoever. Thus, it is also a circumstance that goes against him.”

(31) In the instant case, the prosecution has completed the chain. The appellant was present in the area where the car was found abandoned with dead-body of an unknown person. Registration of the car was in the name of his son. He absconded for about seven months. The car crossed the Toll Plaza Karnal on 16.7.2013 at about 1.22.57 P.M. This fact is proved by CD, Ex.P21. Further PW10 Constable Karambir deposed that he obtained the call details of mobile nos. 9899630896 and 8800104858 for the period from 1.7.2013 to 17.7.2013. He handed over the call details to the Investigating Officer. PW30 SI Phool Singh was not cross-examined about the call details obtained vide Ex.P111. He has also deposed that he has tried to join the independent witnesses but no body came forward. The prosecution proved the case against the appellant beyond reasonable doubt.

(32) There are serious lapses in the investigation. The police should have taken the finger prints from the car. However, this will not give any benefit to the appellant. The appellant has not given any explanation when questions were put to him at the time of recording his statement under Section 313 Cr.P.C. regarding registration of car, etc.

(33) The prosecution has proved the motive. The appellant was a builder. His business was running into losses. The customers were asking for their money. The appellant killed an unknown person and put him on fire after pouring kerosene oil in order to fake his death to evade his liabilities.

(34) No interference is called for in the well reasoned judgment of the learned trial Court. There is no merit in the appeal. The same is hereby dismissed.

Angel Sharma