



REPORTABLE
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 1954-1956 OF 2013

STATE OF RAJASTHAN APPELLANT(S)

VERSUS

BHANWAR SINGH ETC. ETC.RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. Heard.

2. The appellant-State of Rajasthan has filed these appeals assailing the common final judgment and order dated 14th December, 2011, passed by the Division Bench of Rajasthan High Court at Jodhpur¹ in D.B. Criminal Appeal Nos. 95 of 2008, 122 of 2008, and 166 of 2008 filed under Section 374(2) of the Code of Criminal Procedure, 1973² by the accused-respondents herein against the judgment and order dated 10th January, 2008,

¹ Hereinafter, being referred to as 'High Court'.

² Hereinafter, being referred to as, 'CrPC'.

passed by the learned Additional Sessions Judge (Fast Track) No.2, Jodhpur³ in Sessions Case No.3 of 2006, whereby the accused-respondents had been convicted for offences punishable under Sections 302 read with Section 120-B, 143 and 201 of the Indian Penal Code, 1860⁴ and were sentenced as below: -

a. **Section 302 read with Section 120-B IPC:**

Imprisonment for life along with fine of Rs. 1,000/- each and in default of payment of fine, to further undergo imprisonment for three months.

b. **Section 143 IPC:** Simple imprisonment for a period of three months.

c. **Section 201 IPC:** Rigorous imprisonment for a period of three years along with fine of Rs. 500/- each and in default of payment of fine, to further undergo imprisonment for one month.

3. The Division Bench of the High Court, *vide* the common impugned judgment and order dated 14th December, 2011, allowed the individual criminal

³ Hereinafter, being referred to as 'trial Court'.

⁴ Hereinafter, being referred to as the 'IPC'.

appeals preferred by each of the accused-respondents and set aside their conviction and sentences imposed by the trial Court and acquitted them of the charges by extending them the benefit of doubt on the ground of insufficiency of evidence and patent infirmities in the prosecution case.

4. We have heard and considered the submissions advanced by the learned counsel representing the appellant-State of Rajasthan and the learned counsel representing the respondents (acquitted accused) and have gone through the impugned judgment and have minutely re-appreciated the evidence available on record.

5. Succinctly stated, the case of the prosecution is that on 23rd January, 2006, Navneet Sharma (PW-15)⁵ lodged a missing report at Police Station Mahamandir, Jodhpur at 12:40 P.M. alleging that his father Shri Suresh Sharma had gone missing. It was stated in the missing person report that Shri Suresh Sharma had some ongoing disputes with Vijay Punia and Gokalram pertaining to the lands situated in the village Nandri District, Jodhpur. On 21st January, 2006, a telephone call made by a

⁵ Hereinafter, referred to as 'complainant-Navneet (PW-15)'.

property dealer was received on the landline number at the complainant's residence at Luhar Colony, Paota, and the same was attended by Shri Suresh Sharma who conveyed to the caller that he would be visiting the subject site on the next day. On the following day, Shri Suresh Sharma left his house at about 6:00 P.M. to visit the agricultural fields located at the Village Banad, however, he did not return, and no information was forthcoming regarding his whereabouts. On the morning of 23rd January, 2006, the complainant-Navneet (PW-15) was informed by Dhanna Ram (PW-11) that while he was sitting at the shop of Ratanlal, he had seen Shri Suresh Sharma proceeding towards Banad. A missing person case was registered, and inquiry was assigned to Assistant Sub Inspector of Police.

6. While the action upon the missing person report was being contemplated, a message was received at the Police Station Mahamandir, Jodhpur at about 12:50 P.M. regarding the discovery of a human dead body lying between villages Jajiwal Gahlotan and Jajiwal Bhatian.

7. Upon receiving this information, the complainant-Navneet (PW-15) immediately rushed

to the spot along with the police personnel and found the dead body of his father Shri Suresh Sharma⁶ lying on the ground. The police personnel from the Police Station Dangiawas were present at the spot in advance. The complainant-Navneet (PW-15) noticed that the hands of the deceased-Shri Suresh had been tied behind his back with an iron wire, and his legs had been fastened with help of a piece of cloth. One shoe was missing and there were visible signs of efforts made to efface the identity by crushing the face. The neck was inflamed with red marks.

8. Pursuant to recovery of the dead body, FIR No. 7 of 2006 came to be registered at the Police Station Dangiawas at the instance of the complainant-Navneet (PW-15) for the offences punishable under Sections 302 and 201 IPC. The usual course of investigation was undertaken. The dead body was subjected to inquest proceedings and subsequently forwarded to the hospital for postmortem examination.

9. The Medical Board, comprising Dr. V.K. Malhotra (PW-23), Dr. Yogiraj and Dr. Rajesh Vyas,

⁶ Hereinafter, referred to as 'deceased- Shri Suresh'.

conducted autopsy on the body of the deceased-Shri Suresh and issued the postmortem report (Exh. P-35) taking note of about 20 injuries on the dead body, and the cause of death was opined to be antemortem strangulation.

10. The accused-respondents were arrested, and upon conclusion of investigation, a chargesheet came to be submitted against them under Section 173 (2) CrPC for offences punishable under Section 302, 201 and 120-B IPC.

11. Since the offence punishable under Section 302 IPC was triable exclusively by the Court of Sessions, the case was committed for trial to the Court of Sessions, and charges were framed against the accused-respondents in the following terms: -

“Firstly - it is alleged against you that with intent to commit murder of Shri Suresh Sharma, you hatched conspiracy with contract killers from U.P. for murdering Suresh Sharma and committed murder of Suresh Sharma. Your aforesaid act is punishable under Section 120-B read with Section 302 of the Indian Penal Code, which is in my cognizance.

Secondly - it is alleged against you that with intent to commit murder of Suresh Sharma, you formed unlawful assembly within 5 or more than 5 persons by having meeting or by having conversation over telephone and in furtherance of your common intention, you shared your

roles, which is an offence punishable under Section 143 of the Indian Penal Code and the same is in my cognizance.

Thirdly - it is alleged against you that during any time between on 22.01.2006 and 23.01.2006, you committed murder of Suresh Sharma, Hemlata and Narpat Seervi in house plot No.111, Tirupati Nagar, Banad Road, Jodhpur and having committed this act in criminal conspiracy along with the members of unlawful assembly and your silence in this regard, is an offence punishable under Section 302 read with Section 149 or 150 of the Indian Penal Code, which is in my knowledge.

Fourth - it is alleged against you that after committing the murder of Suresh Sharma at the time, date and place mentioned in aforesaid charge No.3, you carried the dead body of deceased Suresh Sharma in van of accused Narpat Seervi and put the dead body near the road at Jajiwala Gehlotan in order to escape from the crime, and which is punishable under Section 201 of the Indian Penal Code and the same is in my cognizance.”

12. The accused-respondents denied the charges and claimed trial. The prosecution examined 37 witnesses (PW-1 to PW-37) and exhibited 102 documents (Ex. P-1 to Ex. P-102) along with 29 articles (Ex. A-1 to Ex. A-29) to prove its case.

13. Upon being examined under Section 313 CrPC, and when asked to explain the circumstances appearing against them in the prosecution case, the

accused-respondents claimed to be innocent and alleged to have been falsely implicated. However, they did not lead any evidence in defence.

14. Upon hearing the arguments of both sides and appreciating the evidence on record, the trial Court found the accused-respondents guilty of charges and proceeded to convict and sentence them as mentioned above⁷ *vide* judgment and order dated 10th January, 2008.

15. The trial Court attributed different theories of motive to the accused-respondents, Hemlata and Narpat Choudhary on the one hand, and Bhanwar Singh on the other hand. One of the alleged motives was that the deceased-Shri Suresh used to visit the house of respondent-Hemlata frequently, and because of that she and her husband, Narpat Choudhary, were perturbed and intended to get rid of him. As regards respondent-Bhanwar Singh, it was held that he had some ongoing land dispute with one Sayri Devi (PW-12). The deceased-Shri Suresh took sides of Sayri Devi (PW-12) and threatened respondent-Bhanwar Singh with dire consequences and hence Bhanwar Singh bore a

⁷ *Supra* para 2.

grudge against the deceased-Shri Suresh. Fuelled by the aforesaid motives, the accused-respondents allegedly knitted a criminal conspiracy to kill the deceased-Shri Suresh. To execute the nefarious plan, they hired professional killers from Uttar Pradesh with the connivance of Dhanesh, who is said to be the brother of respondent-Hemlata.

16. As per the prosecution, the professional killers hired by the accused-respondents visited Jodhpur on two occasions and stayed at two different hotels which were facilitated by respondent-Narpat Choudhary. On the fateful evening, the deceased-Shri Suresh was lured to the residence of respondent-Hemlata where he was strangled to death. Thereafter, the dead body was placed in a Maruti van owned by respondent-Narpat Choudhary and was abandoned on the roadside after making efforts to efface the identity in order to escape detection. The trial Court arrived at the following conclusions *qua* respondent-Hemlata:-

“(i) the accused with the aid of her brother Dhanesh called deceased Suresh Sharma at her residence with a pretext to visit a land site for some interested party;

(ii) all the accused committed murder of Shri Suresh Sharma by strangulation after beating him;
(iii) no evidence is available on record to disclose that the deceased went to any other place or was seen alive after parking his scooter in front of accused Hemlata's house; and
(iv) the stole (chunni) recovered from the house of this accused was stained with human blood and no explanation is given to satisfy availability of that."

17. For drawing an inference pertaining to motive, the trial Court relied upon the document (Exh. P-70) which was a disclosure made by respondent-Hemlata about the situs of the crime. Manifestly, the use of the said document was limited to the extent permitted under Section 27 of the Indian Evidence Act, 1872⁸, and inculpatory narrative recited therein could not have been used to draw any inference regarding motive, which was required to be established from substantive evidence.

18. Be that as it may, we may note that the complainant-Navneet (PW-15), in unequivocal terms stated that the deceased-Shri Suresh and respondent-Hemlata were maintaining good relations and there was no dispute or tension

⁸ For short, 'Evidence Act'.

between them. The witness (PW-15) denied having knowledge about any kind of exploitation or victimisation of respondent-Hemlata by his father.

19. Meena Sharma (PW-24) wife of the deceased-Shri Suresh also did not state anything which could give rise to an inference of motive against respondent-Hemlata. Rather she stated that respondents-Hemlata and Narpat Choudhary used to visit the deceased-Shri Suresh in the capacity of his clients and there was no other relation between them.

20. Nevertheless, the trial Court held that the accused-respondents called the deceased-Shri Suresh to the house of respondent-Hemlata, acting in furtherance of their prior plan to eliminate him. The prosecution attempted to establish that Dhanesh, stated to be the brother of respondent-Hemlata, made a telephonic call on 22nd January, 2006, at around 5:00 P.M. on the landline number of the deceased-Shri Suresh and invited him to the residence of respondent-Hemlata. The aforesaid call was attended by Meenkashi (PW-27), being the sister-in-law of Meena Sharma (PW-24).

21. It may be noted that neither Meena Sharma (PW-24) nor Meenkashi (PW-27) had any idea about the identity of the person who made this call who was admittedly a stranger to them. These ladies did not claim to have ever met the caller before. Rather, we find that there is no substantive evidence whatsoever on record to prove that any person by the name Dhanesh, alleged to be the brother of respondent-Hemlata, had actually called on the landline number operational in the house of the deceased-Shri Suresh. If at all, the prosecution was desirous to prove this fact, the relevant call detail records supported by the certificate under Section 65-B of the Evidence Act had to be brought on record and proved as per law. However, this evidence is totally lacking from the side of the prosecution.

22. Heavy reliance was placed by the trial Court on the prosecution theory that the deceased-Shri Suresh parked his scooter and was seen moving towards the house of respondent-Hemlata after having left his home in the evening of 22nd January, 2006. The said evidence was given by Hukum Singh (PW-8) and Dharmender Singh (PW-20).

23. Hukum Singh (PW-8) was employed with Dharmender Singh (PW-20) and was also an attesting witness to the inquest memo (Exh. P-9) that was drawn on 23rd January, 2006, after discovery of the dead body of Shri Suresh Sharma. Dharmender Singh (PW-20), an electrician by occupation, deposed on oath that on 22nd January, 2006, at about 06:30 P.M. to 07:00 P.M., he and his assistant Hukum Singh (PW-8) saw the deceased-Shri Suresh parking his scooter in front of respondent-Hemlata's house. However, neither of the witnesses stated that they had actually seen the deceased-Shri Suresh entering the house of respondent-Hemlata. In addition, it is a matter of record that Hukum Singh (PW-8) divulged this information to the police on 28th February, 2006, *i.e.*, after one month and six days from the date of occurrence. The fact regarding the presence of the deceased-Shri Suresh near the house of respondent-Hemlata just before his death was far too important so as to have escaped the memory of the said witness. If at all, Hukum Singh (PW-8) had seen any such event, he would not be expected to remain silent and, in natural course, he would have

promptly disclosed about this important circumstance to the police officials when he signed the inquest memo (Exh. P-9) on 23rd January, 2006.

24. The failure of the witness (PW-8) in not disclosing this important fact to the police for almost one month and six days of the incident assumes great importance because he was amongst the first few to have seen the dead body of the deceased-Shri Suresh immediately after its discovery. The High Court held that the fact pertaining to the movement of the deceased-Shri Suresh near the house of respondents-Hemlata and Narpat Choudhary few hours prior to his death was very significant and in normal course of events, any person of ordinary prudence would have disclosed this to the relatives of the deceased-Shri Suresh and the police as an immediate reaction after seeing the body of the deceased-Shri Suresh. Thus, the High Court found the conduct of Hukum Singh (PW-8) in keeping silent for more than a month to be highly suspicious and rightly so, in our opinion.

25. Dharmender Singh (PW-20) stated that he came to know about the murder of the deceased-Shri Suresh after a gap of 20-25 days and that his

Assistant Hukum Singh (PW-8) never told him about the said incident. The witness (PW-20) visited the residence of the deceased-Shri Suresh to offer condolences after 20-25 days. On that day, for the first time, he disclosed to the complainant-Navneet (PW-15), about seeing the deceased-Shri Suresh near the house of respondent-Hemlata on the evening of 22nd January, 2006. The complainant-Navneet (PW-15), in turn, asked the witness (PW-20) to convey this information to the investigating agency and pursuant thereto, the statement of the witness (PW-20) came to be recorded as late as 28th February, 2006. Notably, neither Hukum Singh (PW-8) nor Dharmender Singh (PW-20) bothered to convey this material fact to the police officials and chose to remain silent for a long time which is a clear indicator of their unnatural conduct. Thus, it is our firm opinion that the High Court was perfectly justified in discarding the testimony of Hukum Singh (PW-8) and Dharmender Singh (PW-20), finding their conduct to be doubtful.

26. The next circumstance relied upon by the prosecution was that of recovery of a *chunni* (stole) having blood stains of human origin at the instance

of respondent-Hemlata in presence of *panch* witnesses Rameshwar (PW-16), Ramniwas (PW-9) and Babulal (PW-10). It is noteworthy to mention that Ramniwas (PW-9) and Rameshwar (PW-16) were not the residents of the vicinity, while Babulal (PW-10) was a police constable. Suffice it to say that otherwise also, the said recovery is insignificant and does not connect respondent-Hemlata with the murder of the deceased-Shri Suresh in any manner. This is primarily so because no opinion was obtained from the Forensic Science Laboratory regarding the group of blood found on the *chunni*. Unless the *chunni* was shown to be having the same blood group as that of the deceased-Shri Suresh, the recovery thereof even with blood stains of human origin would be inconsequential and cannot link respondent-Hemlata to the crime. Moreover, the High Court, observed that the *chunni* was recovered on 27th January, 2006, *i.e.*, 5 days after the incident, during which period the house was under the occupation of respondents-Hemlata and Narpal Choudhary. The High Court found it strange that the accused-respondents despite having full control over the house, did not make any effort to remove or

destroy the evidence pertaining to the crime allegedly committed by them. As per the High Court, fact that the *chunni* was recovered from the house which remained unlocked till the police brought back respondents-Hemlata and Narpal Choudhary for inspection rendered the recovery under Section 27 of the Evidence Act irrelevant, as it was effectively recovered from a place accessible to all and sundry.

27. The prosecution also relied upon some additional circumstances in its effort to connect respondent-Narpal Choudhary with the crime. These circumstances were regarding the recovery of the visitors entry register from Hotel Taj and Hotel Raneja, Jodhpur based on the disclosures made by respondent-Narpal Choudhary; call details records purportedly proving the telephonic conversations between respondents-Bhanwar Singh and Narpal Choudhary just before and after the commission of the crime; recovery of the Maruti van in which the dead body of the deceased-Shri Suresh was allegedly transported and the presence of blood stains on the seat cover and the mats of the said vehicle.

28. The hotel registers were seized on the premise that the accommodation for hired killers from Uttar Pradesh was arranged in these hotels by respondent-Narpat Chaudhary. The High Court, after threadbare discussion of evidence held that the entries made in the registers, in no manner, connected respondent-Narpat Choudhary with the persons (hired killers) who allegedly stayed at these two hotels. The prosecution failed to lead any evidence to establish the fact that respondent-Narpat Choudhary had facilitated the stay of the so-called hired killers in the aforesaid hotels. We find the said finding of the High Court to be unimpeachable.

29. So far as the recovery of the Maruti van is concerned, the same also did not provide any succour to the prosecution's case. No witness saw the dead body of Shri Suresh Sharma being moved in the said vehicle. The blood stains allegedly found at various places in the vehicle did not give any positive conclusion for blood grouping during serological examination. Hence, the said recovery also becomes inconsequential.

30. Regarding the call details records, the prosecution did not lead any evidence whatsoever to prove the ownership/subscription of the mobile numbers which were allegedly used to hatch the conspiracy. Furthermore, no certificate under Section 65-B of the Evidence Act was produced on record to prove these so-called incriminating call detail records as per the mandate of law. The High Court also found that the cell numbers, which were sought to be connected to the accused-respondents on the basis of the information provided by the Customer Care Executive, Reliance Web World, Jodhpur *vide* document (Ex. P-53), were not derived from an electronic record but were present in form of a handwritten note. The scribe of the said document, namely, Ms. Ragini Vyas was not examined by the prosecution and hence, the recitals contained therein were not proved in accordance with law.

31. We are of the firm opinion that the said finding of the High Court is unassailable. Taken together, both the circumstances, *i.e.*, non-production of the certificate under Section 65-B of the Evidence Act, and the call detail records being presented through

a handwritten note without examining the scribe thereof would lead to an inescapable conclusion that the call details were not proved as per law.

32. We give our full imprimatur to the conclusion drawn by the High Court in the impugned judgment that the recovery of *chunni* was concocted and planted. The other recoveries effected by the investigating officer were insignificant. The theory of motive and last seen was nothing but a conjectural story. Thus, there is no evidence worth the name on the record of the case so as to connect respondents-Hemlata and Narpal Choudhary with the murder of the deceased-Shri Suresh. None of the three alleged incriminating circumstances *i.e.*, motive, last seen theory and recoveries were proved by leading an admissible or reliable evidence.

33. Thus, the High Court was fully justified in holding that no satisfactory evidence was led by the prosecution so as to establish complicity of respondents-Hemlata and Narpal Choudhary for the alleged murder of the deceased-Shri Suresh.

34. *Qua* respondent-Bhanwar Singh, the prosecution had projected the theory of conspiracy through the evidence of Sayri Devi (PW-12). The trial

Court held that respondent-Bhanwar Singh was in unauthorised possession of certain plots of land owned by Sayri Devi (PW-12) and the deceased-Shri Suresh extended a helping hand to the said lady and that is why, respondent-Bhanwar Singh was bearing a grudge against the deceased-Shri Suresh. The prosecution also sought to connect the respondent-Narpat Choudhary through the call detail records but the said evidence again suffers from the same infirmity regarding the inadmissibility of the call detail records as concluded above.⁹

35. We have perused the statement of Sayri Devi (PW-12) closely. Although, in her examination-in-chief, the witness (PW-12) stated that respondent-Bhanwar Singh had extended a threat to kill the deceased-Shri Suresh but on a perusal of her cross-examination, we find that she admitted that the land which had fallen to her share had been sold to respondent-Bhanwar Singh. However, she corrected herself saying that respondent-Bhanwar Singh to whom the land was sold, was another Bhanwar Singh who resided in BJS. Total 18 bighas of land

⁹ *Supra* paras 30-31.

were sold to said Bhanwar Singh of BJS and on this land, houses had been constructed. Thus, from the tenor of evidence of Sayri Devi (PW-12), all that can be inferred is that she was involved in some land disputes with respondent-Bhanwar Singh. The witness was confronted with her police statement (Exh. D-6) wherein the following glaring omissions were elicited: -

- i. The deceased-Shri Suresh had extended help to her in order to resolve the disputes with respondent-Bhanwar Singh.
- ii. The alleged threat given by the deceased-Shri Suresh to respondent-Bhanwar Singh for letting go of the disputed land.
- iii. The respondent-Bhanwar Singh had threatened the said witness (PW-12) that if her Advocate, *i.e.*, deceased-Shri Suresh got the house vacated then, first her Advocate would be killed and thereafter the witness (PW-12) herself would be eliminated.

Manifestly, the theory of motive and threat attributed to respondent-Bhanwar Singh by the witness (PW-12) in her examination-in-chief are in form of gross exaggerations and improvements from

her previous statement (Exh.-D6) and hence, the evidence of this witness (PW-12) was rightly discarded and disbelieved by the High Court.

36. Other than the evidence of the so-called threat given by respondent-Bhanwar Singh in presence of Sayri Devi (PW-12), which the High Court found to be highly doubtful and exaggerated, no other evidence was led by the prosecution to link respondent-Bhanwar Singh with the alleged murder of the deceased-Shri Suresh.

37. Suffice it to say that mere threat to inflict harm may constitute an incriminating circumstance but in isolation, the said circumstance would fall woefully short of proof of conspiracy to commit murder.

38. Having threadbare examined the entire evidence on record, we are of the firm opinion that the view taken by the High Court in acquitting the accused-respondents is based on *apropos* appreciation and evaluation of evidence and hence, does not warrant inference in this appeal against acquittal.

39. This Court in ***Babu Sahebagouda Rudragoudar v. State of Karnataka***¹⁰, reiterated following principles governing interference by the appellate Court with a judgment of acquittal:-

“41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:

41.1. That the judgment of acquittal suffers from patent perversity;

41.2. That the same is based on a misreading/omission to consider material evidence on record; and

41.3. That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

42. The appellate court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial court.”

40. Applying the above-mentioned principles, we are of the firm view that there exist no valid grounds that would justify upsetting and reversing the acquittal of the respondents. On a careful consideration of the evidence and materials available on record, we find no infirmity or

¹⁰ (2024) 8 SCC 149.

perversity in the impugned judgment and order dated 14th December, 2011 warranting interference.

41. As a consequence of the above discussion, we do not find any merit in these appeals which are dismissed as such.

42. In view of dismissal of the appeals, no orders are required to be passed in the application for impleadment and is accordingly dismissed as such.

43. Pending application(s), if any, shall stand disposed of.

.....**J.**
(SANDEEP MEHTA)

.....**J.**
(JOYMALYA BAGCHI)

NEW DELHI;
SEPTEMBER 26, 2025.