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Onkar Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Feb-18-1974

Reported in : 1974CriLJ1200; 1973MPLJ69

Judge : S.M.N. Raina and ;Surajbhan, JJ.

Appellant : Onkar

Respondent : State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. Chouhan

Judgement :

S.M.N. Raina, J.

1. This judgment will also govern Criminal Reference No. 15 of 1973 and Criminal Appeal No. 1006 of 1973.

2. Birsingh, aged about 24 years, Onkar, aged about 22 years, and Nanhelal, aged about 17 years, were tried on a charge under Section 302 of the Indian Penal Code for committing the murder of Shri Mishrilal Singhai, an Advocate of Narsimhapur, on 2-1-1973. They were further charged under Section 201 of the Indian Penal Code for causing disappearance of the evidence of the said murder. Three other accused, namely, Girani, Annilal and Buttu, were also tried on a charge under Section 201 of the Indian Penal Code for causing disappearance of

the evidence of the said murder along with the accused mentioned above. Girani, Annilal and Buttu were acquitted by the order of the learned Sessions Judge, Narsimhapur, dated 10-10-1973. Subsequently, vide judgment dated 19-10-1973 the learned Sessions Judge acquitted the accused Birsingh and Nanhelal but convicted the accused Onkar of an offence under Section 302 of the Indian Penal Code and sentenced him to death. Onkar has preferred this appeal against his conviction and sentence, while the Sessions Judge has made a reference for confirmation of the death sentence which has been registered as Criminal Reference No. 15 of 1973. The State Government, on the other hand, has preferred an appeal against the acquittal of the accused Birsingh and Nanhelal which has been registered as Criminal Appeal No. 1006 of 1973. Both the appeals and the reference were heard together and will be considered in this judgment.

3. The deceased Mishrilal Singhai, aged about 41 years, was a practising advocate at Narsimhapur. He held some agricultural land which is situated at a distance of about two or three furlongs to the north of Narsimhapur. On the said land there was an orchard and a building which have been referred to as a bungalow in the evidence. About four years back, Sumerchand Jain (P. W. 8), brother of Smt. Chandabai (P. W. 1) wife of the deceased, engaged the accused Onkar to work on the agricultural land of the deceased as Bataidar. Some time after Onkar was employed by the deceased, Birsingh and Nanhelal, brothers of accused Onkar, also moved to Narsimhapur and started working for Singhai. All the three accused lived in a portion of the bungalow. Later on, the accused Birsingh got a job in a shop of sweets, while the accused Nanhelal took to rickhsaw-plying. So far the facts are not in dispute.

4. The case for the prosecution is that the accused Onkar and Nanhelal used to pilfer the produce of the agricultural farm of the deceased and they did not also properly attend to the agricultural operations. Before Diwali of 1972 the accused Onkar and his brothers misappropriated the grain given to them for seed purposes and committed theft of husk during the absence of the deceased from Narsimhapur. The deceased, therefore, wanted to discharge the accused persons from his service and he conveyed this decision to them. On 2-1-1973 the deceased asked the accused Onkar at his residential house either to compensate

him for the loss caused to him or face legal consequences. Onkar was not willing to compensate and he went away. At about 9.30 a. m. Singhai left his house on a scooter informing his wife that he was going to the police-station to take steps against the accused persons. That was the last time he was seen alive by his wife.

5. Singhai went to Narsimhapur police-station and met Sub-Inspector Surendra Shrivastava (P. W. 18). He requested him to call Onkar and his brothers and reprimand them for misappropriating the farm produce. Singhai was asked to lodge a report; but he went away saying that he would lodge a report afterwards as he was in a hurry. There after, Singhai was seen on his scooter at his bungalow by Vimalimar (P. W. 17) at about 10.00 a. m. Singhai was not seen alive thereafter by any one.

6. Singhai did not return to his house, his wife Smt. Chandabai (P. W. 1) became worried. Mukesh (P. W. 2), her nephew, who was living with her, returned home from school at about 2 p. m. that day. She asked him to go to the bungalow and make enquiries about Singhai. Mukesh did not find Singhai there. On the following day, Chandabai went to Jabalpur and informed her elder brother Nemichand (P. W. 4) about the disappearance of Singhai. Nemichand came along with Chandabai to Narsimhapur on the evening of 3-1-1973 and on the same day lodged a report at the police-station. Narsimhapur, at about 7.30 p. m. vide Ex. P.-5. Thereafter, an intensive search was made for Singhai; but no trace of him was found. Sujansingh (P. W. 23), Station Officer, recorded the first information report (Ext. P-32) on 7-1-1973 at 1.35 p. m. when he came to the conclusion that it was a case of murder. Sujansingh summoned the accused Onkar and there Onkar is said to have furnished information vide Ex. P-7 leading to the discovery of the dead body of Singhai from a well. The body was tied with a piece of gunny-bag and rope to his Scooter.

7. After the body along with scooter was taken out from the well in the early hours of 8-1-1973, an inquest was held. Ex. P. 10 is the inquest report. Thereafter, the dead body was sent for post-mortem examination. The Autopsy was performed by Dr. B. P. Dixit (P. W. 11). In the opinion of the doctor, death was due to asphyxia as a result of strangulation. He found the following injuries on the person of the

deceased which, according to him, were caused by violence during strangulation:

(i) Ecchymosis 6' x 1 1/2' on upper part of the left neck below the border of the mandible.

(ii) An ecchymosis 1 1/2' x 1/4' on the outer aspect of the right elbow.

(iii) An ecchymosis 4' x 3' on and around the left ear.

(iv) An ecchymosis 4' x 3' on the centre of the skull.

(v) An ecchymosis 4' x 4' on the left axilla in the middle.

(vi) A ligature mark was present about 1/2' in width below the thyroid cartilege encircling the neck in horizontal direction; the grove of the ligature was place(?), dry and hard.' The aforesaid: injuries, according to the doctor, were ante-mortem and death had occurred about 5 or 6 days before the post-mortem examination which was held on 8-1-1973 at 12.30 p. m.

8. After investigation the police came to the conclusion that all the three accused namely, Onkar, Birsing and Nanhelal jointly committed the murder of the deceased and then threw his dead body along with his scooter in the well in order to cause disappearance of the evidence of murder. They were, therefore, prosecuted and tried on a charge under Section 302 of the Indian Penal Code read with Section 201 of the Indian Penal Code.

9. All the accused abjured their guilt. Onkar was convicted and sentenced as stated above; while the other two accused were acquitted.

10. It is clear from the medical evidence and other evidence on record that the deceased Mishrilal Singhai was strangulated to death and thereafter his dead body was thrown into the well tied to his scooter with a gunny-bag and a rope. It is needless to consider the evidence on this point in detail because it was not questioned by the learned Counsel for the accused. The only point for consideration in these appeals is if the accused persons were responsible for causing the death of the deceased and then throwing his dead body along with the scooter in the well in order to cause disappearance of the evidence of murder. We

shall take up the case of each accused separately. We propose to deal with the appeal preferred by the accused Onkar and the death reference made by the learned Sessions Judge first.

11. There is no direct evidence in this case against either of the accused. The evidence relied upon by the learned trial Judge to arrive at the conclusion of guilt against Onkar may be classified as follows:

(i) Evidence of motive.

(ii) Discovery of the dead body on information furnished by the accused vide memorandum Ex. P-7.

12. So far as motive is concerned, it appears to us that part of the evidence relied upon by the learned Sessions Judge is inadmissible in evidence. The learned trial Judge admitted in evidence certain statements said to have been made by the deceased to his wife Chandabai (P. W. 1) and Sumerchand (P. W. 8) which suggest that the accused Onkar had a motive for the murder of the deceased. The only provision under which such statements can be considered is Sub-Section (1) of Section 32 of the Evidence Act. The said sub-section provides that a statement made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, is relevant. The expression 'circumstances of the transaction which resulted in his death' means only such facts or series of facts which have a direct or organic relation to death. The circumstances admissible under this sub-section must have some proximate relation to the actual occurrence.

13. In Mrs. Rego v. Emperor AIR 1933 Nag 136 : (1933) 34 Cri LJ 505 it was held that the transaction resulting in death contemplated by Section 32(1) of the Evidence Act cannot possibly mean any fact or series of facts which have no direct and organic relation to death; and statements made by the deceased long before the actual incident of murder are inadmissible under the said Sub-Section.

14. In Narayan Swami v. Emperor AIR 1939 PC 47 : (1939) 40 Cri LJ 364 their Lordships, while considering the scope of Sub-Section (1) of Section 32, Evidence

Act held that the expression 'circumstances of the transaction' in the said Sub-Section is not as broad as 'circumstantial evidence' which includes evidence of all relevant facts. The circumstances must have some proximate relation to the actual occurrence and they can only include the acts done when and where the death was caused. In other words, the circumstances must be circumstances of the transaction which resulted in death (vide observations at p. 50). Circumstantial evidence of the transaction is to be distinguished from the circumstances of the transaction itself. Thus a statement merely suggesting motive for a crime cannot be admitted in evidence unless it is so intimately connected with the transaction itself as to be a circumstance of the transaction. In the instant case evidence has been led about statements made by the deceased long before this incident which may suggest motive for the crime. Such statements, in our opinion, are inadmissible in evidence, and must be excluded from consideration.

15. Chandabai (P. W. 1) testified that about one year before his death her husband had told her that the accused Onkar pilferred agricultural produce and for this he had reprimanded him. She further stated that about one and a half years before his death her husband had told her about some quarrel between him and the accused Birsingb over pilferage. She made certain other statements of a similar nature regarding what she learnt from her husband about the accused. All such statements must be excluded from consideration, being inadmissible in evidence under Sub-Section (1) of Section 32 of the Evidence Act.

16. Her version about what transpired on 2-1-1973 is, however, admissible in evidence. According to her, when the accused Onkar came to her house for milking the cow, her husband asked him to give him compensation for the loss caused to him and threatened to institute proceeding against him, if he failed to do so. Onkar replied that the deceased was free to do what he liked and went away. This would indicate that there was unpleasantness between the deceased and the accused Onkar on 2-1-1973. This must have resulted in ill-will. As for incidents prior to that date, Chandabai admitted in her deposition that quarrels between her husband and the accused regarding pilferage did not take place in her presence but the accused had come in her presence to apologise.

17. Sumerchand Jain (P. W. 8) testified that about one year prior to this occur rence the deceased had complained to him about theft of grass by accused Nanhelal. He further stated that in February, 1972 deceased Mishrilal had complained against accused Birsingh: and accused Birsingh had apologised in his presence when he went to the field. Further, according to him, in October, 1972 the deceased had told him that he was thinking of discharging the accused from his service. The statements made by the deceased about the accused are not admissible in evidence. The testimony of this witness is, therefore, good enough merely to show that there was some dispute about which accused Birsingh had apologised in his presence.

18. Another witness on the question of motive is Sub-Inspector Surendra Shrivastava (P. W. 18). According to him, on 2-1-1973, at about 9.30 a. m., the deceased had complained to him that the accused and his brothers were committing pilferage and should be reprimanded. The testimony of this witness suggests that the deceased was not contemplating any serious action against the accused persons. He merely wanted to make use of police influence so as to deter them from committing pilferage. The incident of the morning of 2nd January as narrated by Chandabai (P. W. 1), no doubt, shows that the deceased had called upon accused Onkar to pay compensation. It would, however, appear from the testimony of Mukesh (P. W. 2) that the extent of compensation demanded was only Rs. 10/- and not more.

19. The aforesaid evidence, no doubt, indicates that relations between the accused and the deceased had deteriorated and were far from happy; but they do not indicate any strong motive for murder, particularly in the absence of any evidence to show that the deceased in any way harassed the accused or ill-treated them.

20. Apart from this, although motive is relevant and can be considered along with rest of the evidence, it cannot be treated as evidence of the crime itself. Motive, however strong, cannot form the basis of conviction; and where the evidence of crime is not satisfactory, even a strong motive cannot furnish the lacuna in such evidence.

21. In Atley v. State of U. P. : 1955 CriLJ1653 it was held that the proof of motive merely lends additional support to the finding of the Court that the accused was guilty. Where positive evidence against the accused is clear, cogent and reliable, the question of motive is of no importance. But motive by itself is no evidence of the crime, although it lends support to such evidence. Also see: Gurcharan-singh v. State of Punjab : 1956 CriLJ827 .

22. We now proceed to consider the rest of the evidence against accused Onkar. Chandabai (P. W. 1) testified that on the morning of 3rd January, Shashi, a niece of the deceased, had accused Onkar of having a hand in the disappearance of the deceased but the accused remained silent. This statement has been relied upon by the learned Sessions Judge for drawing an inference of guilt against the accused. We do not, however, consider it safe to rely on this part of the evidence because, if the accused Onkar had been suspected on 3rd January, there would have been some mention of such suspicion in the report Ex. P-5 which was lodged on 3rd January at 7-30 p. m. Moreover, the police would have questioned the accused much earlier if there had been any truth in this statement of Chandabai. We, therefore, exclude it from consideration.

23. The only other evidence against him is that on 7-1-1973 on being questioned by the Sub-Inspector Sujansingh (P. W. 23) he furnished the following information to him which was recorded in the memorandum (Ex. P-7). The memorandum contains certain statements which are not admissible in evidence. The admissible portion of the statement is as under:

The fact that the accused made such statement is borne out from the testimony of the Sub-Inspector Sujansingh (P. W. 23) which is duly corroborated by Jivanlal (P. W. 10). The testimony of this witness on this point has been believed by the trial Court and we do not find any good reason to take a contrary view.

24. Learned Counsel for the appellant vigorously assailed the fairness of the investigation in this case. He contended that it was Gokulchand, the elder brother of the deceased who really stood to gain by the death of his younger brother and, therefore, there are reasonable grounds to suspect that he had a hand in this murder. He further went on to urge in this connection that the indifference shown

by Gokulchand when the deceased disappeared and the fact that he did not take any steps to trace him or to make a report to the police further go to strengthen this suspicion. According to the learned Counsel, he seems to have influenced the police so as to rope in these accused persons and thus to get himself exonerated of the charge. We have given our anxious consideration to these submissions. From the evidence on record it does appear that Gokulchand, the brother of the deceased, did not take any prompt steps either to trace the deceased or to report the matter to the police but we do not find any justification for drawing any adverse inference against him from this circumstance alone. The deceased was an advocate and his brother could very well be under the impression that he had gone somewhere in connection with his duties. He had no reason to suspect that he was the victim of any mishap. The wife of the deceased also did not imagine any such mishap and she appears to have gone to Jabalpur just to find out from her brother if her husband had gone there. In these circumstances the conduct of the brother of the deceased cannot be said to be suspicious. It may be that he stands to gain by the death of the deceased; but merely on this ground it would be preposterous to draw any inference of fratricide against him. We do not also find any material on record to suggest that the police was influenced by him or that the investigation was not fair. It may be possible to find fault with the investigation here and there; but that is another matter.

25. It was suggested during arguments that the Sub-Inspector recorded the statement (Ex. P-7) of the accused Onkar merely to implicate him after he somehow managed to secure information that the dead body was in the well; but we do not find any merit in this contention. It is clear from the testimony of Sujansingh (P. W. 23) as well as that of Jivanlal (P. W. 10) that there was plenty of water in the well and nothing was visible from the top. Hazarilal (P. W. 13), who actually made a dive into the well, could not reach the bottom of the well and so could not see if there was any dead body at the bottom. He merely noticed some foul smell when he dived. It is clear from his testimony and that of other witnesses that water had to be pumped out from the well before the body could be seen and pulled out. Thus, we do not find anything on record to suggest that the police had prior information of the dead body being in the well. In no case could the police have any information regarding the body being tied to the scooter in the manner

stated in the memorandum Ex. P-7. It is clear from the evidence of both Sujansingh (P W. 23) and Jivanlal (P. W. 10) that it was Onkar who had pointed out the well and the body was found tied to the scooter in the manner stated in the memorandum Ex. P-7. This shows that the evidence relating to this memorandum and the discovery of the dead body in consequence of the information furnished by the accused is reliable and worthy of acceptance.

26. Shri Chouhan, learned Counsel for the appellant, questioned the admissibility of this evidence on the ground that the accused was not in custody when the statement was made. In this connection he relied on the following statement of Sujansingh (P. W. 23) in paragraph 45:

27. On the basis of the aforesaid statement it was urged that since the accused was permitted to go home, it would appear that he was not under restraint and as such was not in custody of the police. We are not, however, impressed by this argument. The aforesaid statement seems to have been made merely to emphasise that the accused had not been arrested on 7th January. There is a distinction between custody and arrest. Custody does not mean formal custody but includes any sort of surveillance or restriction or restraint by the police. In Chhotelal v. State of U.P. : AIR1954 All687 it was held that the word 'custody' in Section 27, Evidence Act does not mean formal custody and the accused can be said to be in custody when he is under surveillance of the police. A similar view was expressed in Allah Ditta v. Emperor AIR 1937 Lah 620 : (1937) 38 Cri LJ 1082 and Maharani v. Emperor AIR 1948 All 7 : (1947) 48 Cri LJ 939. In the Allahabad case it was held that the word 'custody' in Section 27, Evidence Act does not mean formal custody but includes such state of affairs in which the accused can be said to have come into the hands of a police officer or can be said to have been under some sort of surveillance or restriction: vide paragraph 17. In Shiv Charan v. State of M.P. 1968 Civ App R 268 (SC) their Lordships construed the expression 'custody' in Section 27, Evidence Act as connoting some restraint on the freedom of movement of the person whether by word or action. It was held that it did not mean custody after formal arrest. The following observations of their Lordships at p. 271 are pertinent:

As soon as a person is suspected of the commission of an offence, and the police officer in charge of the investigation exercises some control over his movements, for the purpose of the investigation, in the absence of clear evidence to the contrary, he is no longer at liberty and may be taken to be in custody within the meaning of Section 27.

28. When a person is called to the police station and is interrogated as an accused in connection with the investigation of a crime, he must be deemed to be in the custody of the police while he is so interrogated and no formal arrest is necessary. In the instant case it is clear that when the accused made the aforesaid statement (Ex. P-7) he was being interrogated as an accused person. In fact, in paragraph 50 of his deposition Sujansingh (P. W. 23) made it clear that the statement fin question was recorded after taking the accused into custody. The fact that the was ?not formally arrested till 10th January, 1973, would be of no consequence. It is, no doubt, true that Onkar was permitted to go home after he made the statement; but it is obvious that after he made the statement leading to the discovery of the dead body, he must have been under the police eye throughout. We, therefore, hold that the statement in question was made while the accused was in custody of the police and as such it is admissible in evidence.

29. The next point for consideration is whether on the basis of the aforesaid evidence the accused can be adjudged guilty of the offence of murder of the deceased Mishrilal. Considerable stress has been laid on the fact that the deceased was last seen at his farm-house (bungalow) at about 10 a. m. on 2nd January, 1973 and the accused used to reside in that bungalow; but there is no satisfactory evidence to show that the deceased was put to death either in the bungalow or nearabout it. There is also no satisfactory evidence to show that he died soon after he was last seen there. The autopsy was performed on 8-1-1973 at about 12.30 p. m. and the doctor opined that death must have taken place about five or six days prior to that. From this evidence it cannot be concluded that death took place on the morning of 2nd January, 1973. From the map (Ex. P-28) and index (Ex. P-29) it would appear that the well from which the dead body was recovered is at a distance of about 1407 feet from the bungalow. It is highly improbable that the body tied to the scooter could be carried unnoticed in broad

daylight up to the well from the bungalow in case the deceased had been put to death at about 10 a. m. or so nearabout the bungalow. These are material circumstances which must be taken note of in this connection. The scooter, which was recovered from the well, was found locked. This suggests that the deceased went to some place near the well in some connection and left the scooter there after locking it. It may be that he was put to death thereafter and then thrown into the well after tying him with the scooter. Thus, the fact that the deceased was last seen at about 10 a. m. nearabout his bungalow can-not be treated as an incriminating circumstance against the accused, Onkar so as to give rise to an inference that he committed the murder.

30. In our view, from the aforesaid evidence all that can be inferred is that the accused Onkar is guilty of causing disappearance of the evidence of the murder by participating in the throwing of the body into the well along with the scooter. We may in this connection refer to the decision of the Supreme Court in K. K. Jadav v. State of Gujarat : 1966 CriLJ605 . The following observations made by their Lordships in paragraph 9 are pertinent:

The mere fact that the dead body was pointed out by the appellant or was discovered as a result of a statement made by him would not necessarily lead to the conclusion of the offence of murder.

Their Lordships upheld the conviction of the appellant under Section 201 of the Indian Penal Code in somewhat similar circumstances.

31. Learned Counsel for the appellant urged that the fact that the accused furnished information leading to the discovery of the dead body from the well is not sufficient for his conviction under Section 201 of the Indian Penal Code. He relied on a decision of this Court in Dadulla v. State 1961 MPLJ 1291. It was held in that case that the more fact that the dead body of the victim was recovered when pointed out by the accused from a spot under water was not sufficient for proving the guilt of the accused for an offence under Section 201 of the Indian Penal Code because the knowledge that the body was there could be consistent with his innocence. But, here in this case, the statement made by the accused is to the effect that he was a party to the throwing of the body into the well. It is obvious that

a number of persons must have been associated in doing this job. One person could not throw the body along with the scooter in the well. Further, the details given by the accused Onkar in his statement about the manner in which the body was tied to the scooter suggest that he was closely associated with the disposal of the body and the scooter, if not with the murder of the deceased, about which a doubt could be entertained.

32. We, therefore, hold that although the evidence on record is not sufficient to sustain the conviction of the appellant Onkar of an offence under Section 302 of the Indian Penal Code, he is clearly guilty of an offence under Section 201 of the Indian Penal Code and we convict him accordingly.

33. The appeal is, therefore, partly allowed. The conviction and sentence of the appellant Onkar under Section 302 of the Indian Penal Code are hereby set aside. His conviction under Section 201 of the Indian Penal Code is, however, maintained. The learned Sessions Judge did not impose are sentence for the offence under Section 20 of the Indian Penal Code. In our view, a sentence of rigorous imprisonment for a period of seven years would be appropriate. Accordingly we sentence the accused Onkar to undergo rigorous imprisonment for a period of seven years. The reference made by the Sessions Judge for confirmation of the death sentence is hereby rejected as the sentence itself has been set aside.

34. We shall now deal with the appeal filed by the State against the acquittal of the accused Birsingh and Nanhelal. There is no direct evidence against either of these two accused and the evidence against them consists mainly of motive and discovery of certain incriminating articles on the basis of information furnished by them. We shall first deal with the case of the accused Birsingh. According to Sujansingh (P. W. 23), he questioned the accused Birsingh on 9-1-1973 in the presence of Hazarilal (P. W. 13) and Govind Prasad (P. W. 12) and he made the statement (Ex. P-12). The admissible portion of this statement is as under:

The testimony of Sujansingh (P, W. 23) is duly corroborated on this point by Govind Prasad (P. W. 12) and Hazarilal (P. W. 13). According to these witnesses, accused Birsingh took them to the spot and dug out the articles which were duly

seized under seizure memo (Ex. P-13). The incriminating articles out of these are a bunch of keys (Art. O), a bunch of keys (Art. V) and a watch (Art. E). The watch was found wrapped in a piece of cloth.

35. According to Sujansingh (P. W. 23), the accused made a second statement the same day at the bungalow of the deceased which was recorded in the memorandum Ex. P-14 in the presence of the aforesaid witnesses. The admissible portion of this statement is as under:

According to Sujansingh (P. W. 23) and the other two witnesses Birsingh produced the aforesaid article which was duly seized under seizure memorandum Ex. P-15. Further, according to Sujansingh and the other two witnesses, this accused made a third statement on the same day at 5 p. m. at the bungalow of the deceased which was recorded in the memorandum (Ex. P-16). The admissible portion of this statement is as under:

According to the witnesses, the accused then produced a silken bush-shirt from the spot indicated in the aforesaid statement and it was duly seized under seizure memorandum Ex. P-18.

36. The aforesaid evidence was not considered reliable by the learned Sessions Judge on grounds which do not appear to us to be reasonable. The learned Sessions Judge observed in paragraph 132 of his judgment that Govind Prasad, aged 22 years (P. W. 12) was a servant in Dada Medical Stores; while Hazarilal (P. W. 13) was an ex-serviceman who can only sign in Urdu and was employed as a Chowkidar in a local cinema. We do not find any good reason to doubt the evidence of these witnesses merely because of their status in life in the absence of anything to show that they were under the influence of the police or anyone else. The learned Judge observed in paragraph 133 of the judgment that Hazarilal had helped the police in the recovery of the dead body of Singhai from the well and, therefore, it appeared that he was specially picked up for the statement of Birsingh. Merely because a witness has taken part in the investigation at an earlier stage is no reason to doubt his veracity on the ground that he agreed to participate in the subsequent stages of the investigation. We may refer here to the following observations of their Lordships of the Supreme Court in Himachal Pradesh

Administration v. Om Prakash : 1972 CriLJ606 in paragraph 9:

We cannot as a matter of law or practice lay down that where recoveries have to be effected from different places on the information furnished by the accused, different sets of persons should be called in to witness them.

It, is, therefore, clear that no adverse inference against the prosecution can be drawn from the mere fact that Hazarilal (P. W. 13) had been associated as a witness in connection with the discovery of the dead body.

37. The learned Sessions Judge also seems to have inferred that the investigating officer was biassed against the accused. He drew this inference from the fact that he did not care to ascertain whether Birsingh was at his shop at the material time. We do not think any inference of bias can legitimately be drawn on this ground. It is for the accused to establish his alibi and the investigating officer may or may not make enquiries in this connection. Even assuming that the investigating officer ought to have done so, it can at best be treated as an error in investigation. It cannot at all lead to an inference that he was biassed against the accused. We have carefully scrutinized the evidence relating to the statement made by the accused leading to the discovery of the articles mentioned above and we are of the view that it is perfectly reliable and can be safely acted upon. The view taken by the learned Sessions Judge is patently erroneous.

38. We now proceed to consider what inference can be legitimately drawn on the basis of such evidence. The watch (Art. R) has been identified as that of the deceased by Chandabai (P. W. 1), the wife of the deceased, and his nephew Mukesh (P. W. 2) in a test identification conducted by Naib Tahsildar Shri Upadhyaya (P. W. 20) vide identification memorandum (Ex. P-1). Both these witnesses had opportunity to see the watch of the deceased daily and, therefore, the identification is perfectly reliable. The accused has not on his part claimed that the watch belongs to him or to anyone else. He has simply denied that it was recovered at his instance. The bunch of keys (Art. O) also clearly relate to the deceased because they fitted in the scooter of the deceased; and this position was not disputed by the learned Counsel for the accused. Similarly, the keys (Art. V) fitted in the lock of one of the rooms of the house of the deceased. Thus, it is clear

that these keys belonged to the deceased.

39. As regards the piece of rope, which was seized under seizure memorandum (Ex. P-l5) on information furnished by the accused Birsingh, it has not been satisfactorily established that it was connected with the crime. All that the expert, Shri Kesharwani (P. W. 14), could say was that the rope found tied on the dead body and the rope discovered were of jute fibres. He made it clear that it was not possible to say that both were pieces of the same rope. So, the recovery of the rope cannot be treated as an incriminating circumstance.

40. Shri Kesharwani also compared the piece of cloth, in which the watch was found wrapped, with the bush-shirt recovered on information furnished by the accused Birsingh and he was of the opinion that the piece of cloth was a part of the bush-shirt. This opinion appears to be reliable; but, although this piece of evidence lends support to the fact that the watch was in possession of the accused, it cannot be treated as an incriminating circumstance relating to the charge of murder because it does not connect with anything found on the dead body. It is not unlikely that somebody handed over the watch to the accused Birsingh who in turn concealed it with a guilty mind after tearing a piece of cloth from a bush-shirt which may be belonging to him.

41. Besides this, there is evidence of motive against the accused Birsingh which would at best suggest a feeble motive. Moreover, no inference of guilt can be drawn on the basis of motive alone. Since the prosecution has failed to adduce any other evidence which may go to connect the accused with the crime, all that can be safely inferred is that the accused received the aforesaid articles belonging to the deceased with a guilty mind. Although a suspicion about his complicity in the murder also arises, in the absence of any other evidence, it would be unsafe to draw an inference of guilt on a charge of murder in this case and base a conviction thereon. We, therefore, hold that he accused Birsingh is guilty of an offence under Section 411 of the Indian Penal Code.

42. The appeal preferred by the State Government against the acquittal of Birsingh is, therefore, partly allowed and Birsingh is convicted of an offence under Section 411 of the Indian Penal Code. In our view, a sentence of rigorous imprisonment for

a period of three years would meet the ends of justice. We sentence him accordingly.

43. As regards the acquittal of the accused Nanhelal, the evidence against him consists of motive and the discovery of a pair of chappals (Art. F) at his instance on information furnished by him to the police vide Ex. P-20 and the recovery of the chap-pals at his instance which were seized under seizure memorandum Ex. P-21. Motive, as pointed out above, is no evidence of a crime. It is only a relevant fact to be considered along with the rest of the evidence. We may here refer to the testimony of Makhanlal Nema (P. W. 9). He testified that two or three months before Singhai's death Nanhelal had told him during the course of casual talk while he was being taken in his rickshaw that he was thinking of taking revenge against Singhai for having removed him from service on a false charge of theft. The testimony of this witness has been considered by the learned Sessions Judge in paragraphs 58 to 60 of the judgment. The learned Judge considered the evidence unworthy of reliance for the reasons given by him and we are inclined to agree with him.

44. As regards the discovery of the pair of chappals (Art. F), it has to be borne in mind that it was recovered from an open space in a field and it has not been established that it belonged to the deceased. Even Chandabai, wife of the deceased, could not identify this pair of chappals. The chappals are of usual type and in the absence of any special identification mark, it would be unsafe to rely on their identification by Mukesh (P. W. 2) alone. It is significant that there is no mention of the chappals in the first report (Ex. P.5). Since it has not been satisfactorily established that these chappals belonged to the deceased and were on his person when he was last seen alive, it is not possible to draw any inference against this accused merely on the basis of some motive which is common to his brothers. There is, therefore, no justification for interference with the order of acquittal of the accused Nanhelal. The learned Government Advocate also did not press this appeal with any degree of seriousness.

45. Thus, the appeal of the State Government, so far as Nanhelal is concerned, is hereby dismissed.

46. In the result, the appeal of accused Onkar (Criminal Appeal No. 858 of 1973) is partly allowed as indicated in paragraph 33 above; and the reference made by the learned Sessions Judge, for confirmation of the death sentence (Criminal Reference No. 15 of 1973) is rejected. The appeal of the State Government (Criminal Appeal No. 1006 of 1973) is also partly allowed as indicated in paragraph 42 above.

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