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Court : Himachal Pradesh

Decided On : Aug-02-1972

Reported in : 1973CriLJ1023

Judge : D.B. Lal and; Chet Ram Thakur, JJ.

Appellant : State

Respondent : Lavinder Singh and anr.

Judgement :

D.B. Lal, J.

1. Lavinder Singh (28 years) has been convicted under Sections 302 and 201 of the Indian Penal Code and has been sentenced by the Sessions Judge of Simla to death under Section 302 and to undergo rigorous imprisonment of five years and to pay a fine of Rs. 5,000/-, in default to undergo further rigorous imprisonment for one year for the offence under Section 201. Ajaib Singh (31 years) another accused in the same case, has been convicted for the offence under Section 201, I. P. Code and has been sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 5,000/-, in default to undergo further rigorous imprisonment for one year. Both Lavinder Singh and Ajaib Singh have preferred appeals aganist their convictions. There is also the usual reference by the State for confirmation of the death sentence. The facts leading to these convictions may now be stated.

2. On 2nd June, 1970 at about 8 A.M., Krishan Dutt (P.W. 5) employed at the P.W.D. Rest House Barog was coming to attend his duty and on Kalka-Simla Road 20 feet below the road near the Rest House, he found a dead body of a young lady lying in a pool of blood. He proceeded to Amar Nath Lambardar and reported the matter to him. Thereafter Krishan Dutt (P.W. 5) went to the police station Dharampur while leaving Amar Nath at the spot to look after the dead body. The S. H. O. Shri Malik Inder Raj (P.W. 55) .arrived at the scene of the occurrence. He found much blood lying at the spot. At about 100 yards away from the corpse of the lady, a frock worn by a child was found lying and at about 550 yards away from the dead body, another dead body of a child was discovered. There were several penetrated wounds on the person of the lady and similarly there were several cut wounds on the person of that child. The necessary inquest report and the injury statements were prepared. It is stated that the witness Chatter Singh (P.W. 12) came to the spot and informed the police that at 6.30 P.M. on the previous day he had passed on that way and saw a cream coloured Ambassador car standing at the spot, while a lady was sitting inside that car and was feeding her child. Two Sikh youngmen wearing red turbans were also seen nearby, drinking beer. Similar information was given by one Lila Dutt (P.W. 4) that he was driving his jeep at 8-15 P.M. on the previous day on that road. His mother Mathi Devi (P.W. 3) and his aunt Janki Devi (P.W. 2) were occupying the front seat of that jeep. In the beamlight of that jeep they found a cream coloured Ambassador car standing at the spot and a small child was sitting alone in that car. Janki Devi had commented at that time that the mother of the child was a bit careless so as to leave the child alone. Nearby, the three witnesses saw two young Sikh gentlemen standing and they were facing each other with the consequence that the features of only one of them were visible to these witnesses.

3. Since the police could not get proper identification done for the lady and the child, they procured the necessary photographs of the dead-bodies. A publication was also made in Daily Nav Bharat. On 5th July, 1970, Roop Singh (P.W. 11) father of the deceased lady whose name was subsequently found to be Kulwant Kaur, appeared before the Dy. S.P. Shri Mehta at Simla and recognised the lady and the child by the help of the photographs. He gave scent to the police that Lavinder Singh accused was the husband of the lady, and Rattan Singh and Ajaib

Singh were his two brothers and all the three were involved in the murder of the lady and the child. Accordingly on 6th July, 1970 the police went to Pehowa where the accused resided. Lavinder Singh and Ajaib Singh were found at their house. The police party then came to Ambala and there, they interrogated Rattan Singh accused. Thereafter the police came back to P.S. Dharampur. They had asked the three accused to appear before them at P.S. Dharampur on 7th July, 1970. Accordingly the three accused came to P.S. Dharampur on 7th July, 1970 and two of them were formally arrested on that evening at 5-30 P.M.

4. As a result of investigation, it was found that the accused Lavinder Singh and Ajaib Singh had gone to Agra on 8th June, 1970 and had stayed at Jaggi Hotel. They had given a complaint before the police of Agra on 8th June, 1970 at 9-15 P.M. to the effect that Kulwant Kaur, because of some family dispute, had gone to bus stand of Agra at 12-30 P.M. on that day and went away somewhere from there. According to the accused, she had gone astray and was to be searched by the police. The accused further stated in the complaint that the lady was also wearing several ornaments on her person. The police of Agra investigated that complaint, but ultimately came to the conclusion that the complaint was false. Subsequently on 10th June, 1970, according to prosecution, the accused Lavinder Singh and Ajaib Singh went to Rup Singh (P.W. 11) and told him about that report and disappearance of the lady. Rup Singh (P.W. 11) along with one Lachh-man Singh and also accompanied by the accused came to Agra on 13th June, 1970 and met one Raj Kumar Samma (P.W. 51) President of Jan Sangh. They complained to the witness about the disappearance of the lady on 8th June, 1970 and stated that she had gone to urinal at the bus stand but never returned from there. The accused were asked to produce the photographs of the lady, but they could not produce them. Subsequently Roop Singh (P.W. 11) produced these photographs. Ajaib Singh accused, however, on 20th June, 1970 gave an advertisement in the paper Daily Amar Ujala of Agra. He deposited Rs. 15/- for the charges of the advertisement. The news item was published in that paper regarding the disappearance of the lady from the bus stand on 8th June, 1970.

5. As the prosecution story goes, the two accused Lavinder Singh and Rattan Singh were brought to Mughal Everest Hotel at Pinjore nearly a month and a half

after the occurrence. It is stated that they were identified before police by Sulekb Chand (P.W. 53) Proprietor of that Hotel. who stated that the two accused had gone to that hotel on 1st June, 1970 at 1-30 P.M. along with the lady and the child and had taken their meals. It was stated that the car in which the accused had arrived went away towards Kalka side.

6. On 19th July, 1970 as a result to the disclosure statements made by Lavinder Singh and Rattan Singh, the former discovered a 'darant' (Ex. P-7) lying somewhere underneath a bush down below in the Khud near the place of occurrence, and the latter discovered a knife (Ex. P-6) found buried under a water trough on Kalka-Simla road. On the next day on 20th July, 1970, Lavinder Singh accused also discovered for the police two car plates bearing No. HRK 376 which were found hurried in the ground near Pinjore. It was stated that the two accused had replaced the original number t)i the car by this faked number so that its identity might not be disclosed. It was further stated by Lavinder Singh that he had purchased the frock of the child from Am-bala and he pointed out that shop on 20th July, 1970 and the police recovered another similar frock (Ex. P-9) from the shop.

7. The two accused Lavinder Singh and Rattan Singh were put up for identification parade on 10th July, 1970, but they refused to submit themselves for test identification. The accused stated that they were already seen by the witnesses. On 3rd December, 1970, the accused Lavinder Singh and Ajaib Singh were asked to give their specimen signatures for comparison. It was stated that the complaint (Ex. PP-1) made at Agra on 8th June, 1970 was in the handwriting of Ajaib Singh and was signed by Lavinder Singh. The two accused refused to give their specimen signatures and stated that the police was already possessed of several signatures which they had obtained from them. The post-mortem examination over the two bodies was performed on 2nd June, 1970 at 3 P.M. and at 4-30 P.M. respectively, on the persons of the deceased lady and the child. The doctor found 15 penetrated wounds over the anterior aspect of throat, both sides of neck, left shoulder, right chest and dorsum of left hand over the dead body of the lady. On the dead body of the child, four incised wounds were discovered cutting left eye-brow and completely severing one wrist as well as one arm. From the duration

since death, the time could be fixed for the occurrence between 7 P.M. and 12-30 A.M. on l/2nd June, 1970.

8. Accordingly the accused Lavinder Singh and Rattan Singh were prosecuted for the offences under Sections 302 as well as under Section 302 read with Section 34 of the I. P. Code. Lavinder Singh was further prosecuted for the offence under Section 201 of the I. P. Code. Ajaib Singh was, however, prosecuted only for the offence under Section 201, I. P. Code.

9. The prosecution sought to prove its case by producing 55 witnesses. Chatter Singh (P.W. 12), Janki Devi (P.W. 2), Mathi Devi (P.W. 3) and Lila Dutt (P.W. 4) came to state about the presence of the two accused at the spot of occurrence on 1-6-1970 at 6-30 P.M. and also at 8-15 P.M. along with the lady and the child who were found in their car. Sulekh Chand (P.W. 53) stated for the visit of the accused along with the ill-fated lady and the child at Mughal Everest Hotel at 1-30 P.M. on that very day. Roop Singh (P.W. 11) came to state for the visit of the accused at his house on 10-6-1970 and thereafter about their visit to Agra on 13-6-1970 where they met Raj-kumar Sharma (P. W. 51) who was also produced. Hifazat Hussain A. S. I. (P.W. 40), Hoshiar Singh S. I. (P.W. 41) and Abdul Aziz M. H. C. (P.W. 43) belonged to Agra Police, and they came to state about the visit of the two accused at Agra on 8-6-1970 where they lodged the false complaint. Besides them, several witnesses were produced in support of their recoveries made by the two accused. Shri Surrinder Prakash Magistrate (P.W. 50) was examined to prove that the two accused refused to get themselves identified, in a parade and also refused to give their specimen signatures. Finally Malik Inder Raj S. H. O. (P.W. 55) was produced, being the investigating officer.

10. The defence of the accused was one of denial. They did not admit that they were present at the spot of occurrence on 1-6-1970 and were seen by these witnesses, or that they had gone on that day at 1-30 P.M. with the lady and the child to Mughal Everest Hotel Pinjore, or that they visited Roop Singh (P.W. 11) on 10-6-1970, or that they made any recoveries of articles by giving disclosure statements to the police. For their visit to Agra on 8-6-1970 they admitted that they did go there, but stated that they lodged that complaint at the instance of Roop

Singh (P.W. 11). Their counterversion was that Kulwant Kaur along with the child had gone by bus to Amloh where Roop Singh resided, and disappeared somewhere from the way. They went to make enquiries from Roop Singh on 5-6-1970 and came to know that the lady and the child had not arrived there. Thereafter they made a search for them and in that connection came to Agra and instituted that complaint. The accused further stated that Kulwant Kaur suffered from mental sickness, meaning thereby that she was amenable to going astray along with anybody. The accused did not produce any defence.

11. It can admit of no doubt that Kulwant Kaur (24 years) and the child by name Sweety (2 years) met with violent deaths at the hands of assassins and it was a case of murder. Several penetrated and incised wounds were found over the two dead bodies. Much blood was discovered lying at the spot and all this clearly proved that the two murders were committed. The person or persons who causedi these injuries definitely intended to cause' their deaths and the offence committed was of murder under Section 302, I. P. Code.

12. The learned Sessions Judge had before him only circumstantial evidence. The law on circumstantial evidence is fairly well settled. Where there is no eye wit-Mess to the murder and the case against the accused depends entirely on circumstantial evidence, the standard of proof required to convict the accused on such evidence is that the circumstances relied upon must be fully established and the chain of evidence furnished by these circumstances should be so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. (See: Deonandan Mishra v. State of Bihar : 1955 CriLJ1647 .

13. To quote the Supreme Court again, circumstantial evidence in this context means a combination of facts creating a net-work through which there is no escape for the accused, because the facts taken as a whole do not admit of any inference but of his guilt. The learned Advocate General argued with much learning and insistence that the conduct of the accused should be seen and he pointed out the attendant circumstances for a finding in his favour and concluded that Lavinder Singh really committed the murder of the lady and the child. A

criminal trial is not an enquiry into the conduct of an accused for any purpose other than to determine whether he is guilty of the offence charged. It is, therefore, obvious that only that piece of conduct can be held to be inculpatory for which the accused has no reasonable explanation except on the hypothesis that he is guilty. In Anant Chintaman Lagu v. State of Bombay 0043/1959 : 1960 CriLJ682 , the Court observed that only such conduct which 'destroys' the presumption of innocence can be considered material. The word 'destroys' is a pointer to the fact that strict assessment regarding conduct of the accused is to be made. Only such conduct which leads to one inference alone, namely the guilt of the accused, would be relevant. We are then to examine the evidence produced by the prosecution from this point of view.

14. The learned Sessions Judge has not placed reliance upon the statement oi Suiekh Chand (P.W. 53) and has not given credence to the story that Lavinder Singh had gone with this lady and the child to Mughal Everest Hotel at Pinjore for taking his lunch. Similarly the learned Sessions Judge has not placed reliance upon the recovery witnesses and the 'darant' as well as the name-plates recovered by Lavinder Singh, according to him, lose their evidentiary value. In this manner, he was left With the version of Chatter Singh (P.W. 12) who stated that he saw two Sikh youngmen wearing red turbans at 6-30 P.M. and a lady sitting in the car feeding a child. The learned Sessions Judge also relied upon a few other circumstances, namely, that the child-was seen in the car at 8-15 P.M. by Lila Dutt (P.W. 4), Mathi Devi (P.W. 3) and Janki Devi (P.W. 2), that the dead bodies of the lady and the child were found on the next morning near that spot, that Lavinder Singh and Ajaib Singh went to Agra on 8th June, 1970 and lodged that false report, that they further went to Roop Singh (P.W. 11) on 10th June, 1970 and reiterated what they had stated in the report at Agra, and that these two accused as well as Rattan Singh failed to produce the photographs of the lady before the police. These circumstances, in our opinion, either taken singly or cumulatively, do not complete the chain of circumstantial evidence nor create a net-work through which it is, impossible for the accused to escape. Each one of those circumstances can be explained reasonably in a manner consistent with the innocence of the accused Lavinder Singh. This accused would have behaved in a very much similar manner if not he but any of his brothers or even a third person

whom he wanted to shield, had committed the murders. At any rate a reasonable probability of anybody else committing the murders cannot be ruled out. The severe test laid down by the Supreme Court has thus remained unfulfilled. There is extreme suspicion, no doubt, that Lavinder Singh was in the know of these murderers; otherwise he would not have invented that false complaint which he instituted at Agra. Yet, howsoever grave the suspicion was, it could not replace a positive proof. It has been repeatedly held that graver the offence, greater the responsibility of the court. The prosecution evidence has not been considered, it appears, by the learned Sessions Judge with as much scrutiny as it deserved. Regarding the presence of the two accused at 6-30 P.M. or 8-15 P.M. on 1-6-1970 at the spot of occurrence, the learned Sessions Judge concluded' that the evidence was doubtful against Rattan Singh but conclusive against Lavinder Singh. We fail to understand how this distinction could be drawn. It has been stated by Mathi Devi (P.W. 3) and Lila Dutt (P.W. 4) that the back of one of the two Sikh youngmen was towards them. It was impossible for the witnesses to have recognised at least one of them. The learned Sessions Judge also held that after lapse of more than a year, the identification by these three witnesses in court without previous identification in a parade, was not sufficient. Lila Dutt (P.W. 4) stated before the police that both those persons were standing as if urinating. In that position, their faces must not have been towards the witnesses. They must have been urinating facing the khud side or the mountain side and in both these positions, it was improbable that their faces were visible. Krisban Dutt (P.W. 5) stated that he remained on the spot from morning up to 5 P.M. on 2nd June, 1970 and no other witness came to give statement to the police in his presence. This further renders the presence of Lila Dutt or Chatter Singh extremely doubtful and probably they never went to give their statements at that time to the police.

15. In cases where accused are not known to witnesses, the value of prior test identification need hardly be emphasised. There may be a case where the court places an explicit reliance upon a witness and his identification in court itself is considered, sufficient. But in other cases, identification made during trial is not of much value unless it is corroborated by prior identification in a parade. The substantive evidence is the statement of the witness made in eourt. In Budhsen v. State of U. P.. : 1970 CriLJ1149 it was bsecved that the evidence of mere

identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification is to test and strengthen the trustworthiness of the evidence given in court. Their Lordships observed:

It is accordingly considered a safe rule f prudence to generally look for corroboration of the sworn testimony of witnesses in Court as to the identity of the accused who are strangers to them, in the form of earlier identification proceeding.

It was urged by the learned Advocate-General that a presumption arises against the accused because they refused to appear in a test identification parade. The presumption can only be under Section 114 of the Evidence Act. It may be presumed that the witnesses would have correctly identified the two accused, but between 'may presume' and 'must presume', there is a long distance to travel. In a criminal trial, the prosecution was required to reach a stage where it must be presumed that the accused committed the crime. The infirmity attached to the identification made for the first time during trial, cannot be set right by any such presumption alone. It is high time the police and other investigating agency learned about the necessity of prior test identification parades. The usual statements of the accused that they were already seen by witnesses should not desist them from arranging such parades. That step would rather be necessary for a successful investigation.

16. Therefore, the identification made by the witnesses Chatter Singh, Janki Devi, Mathi Devi, Lila Dutt and Sulekh Chand during trial could not be conclusively relied upon. Sulekh Chand was not even put up for the proposed identification parade. The learned Sessions Judge, was therefore, right in discarding the testimony of these witnesses, in so far as they stated that they had seen the two accused on 1-6-1970 at the Mughal Everest Hotel, or at or near the spot of occurrence at 6-30 P.M. or 8-15 P.M.

17. There were other reasons as well, why these witnesses could not be believed. For instance, Chatter Singh (P.W. 12), it appears, had no reason to be present at the spot. According to him, he was engaged for carrying stones for the first time on that day. Thereafter, he was never engaged for carrying stones. He could not

name any of the labourers whom he employed for that work, nor did he produce any receipt for the wages which he might have paid.

18. It is very curious that all these four witnesses almost fell into the hands of the police as if by sheer chance. They just appeared and gave their statements without any effort to procure them. Chatter Singh (P.W. 12) stated that he saw a few persons standing near Dharampur Hospital and he just went inside to make enquiries. He happened to see the dead bodies of the lady and the child and he at once recognised them. He did not confine himself to that, but came direct to the spot and informed the police. In this manner, he showed extraordinary interest. Similarly Lila Dutt himself goes and tells the police about all that he had seen on the previous night.

19. If the identity of Rattan Singh, according to the learned Sessions Judge, was not proved by the statements of these witnesses, how the identity of Lavinder Singh was established? The same set of witnesses was believed in the case of Lavinder Singh and was disbelieved in the case of Rattan Singh. We find it difficult to accept the findings of the learned trial Judge.

20. If Lavinder Singh visited Agra on 8th June, 1970, Ajaib Singh also went along with him. Ajaib Singh was rather the scribe of the complaint (Ex. PP-1). He played a very prominent part throughout, in lodging that complaint and pursuing it upto the end. The circumstance was as much incriminating against Ajaib Singh as it is incriminating against Lavinder Singh. Besides this, Ajaib Singh, according to prosecution, faked sickness and got himself admitted at the Military Hospital at Ambala on 2nd June, 1970, just on the next day of the murder. He was released from that hospital on 6th June, 1970 as he had suffered from a very minor ailment. That was again a circumstance against Ajaib Singh. If we look up the police papers relating to the complaint made at Agra, we come across a very significant narration. The lady had objected for the presence of Ajaib Singh and according to both these accused, she did not want to go to Agra along with Ajaib Singh, but wanted to go alone with her husband. There is also the evidence of two ladies produced by the prosecution, one of whom Balbir Kaur (P.W. 15) was the wife of Ajaib Singh and she stated about the immoral character of Ajaib Singh and said

that he had evil intentions upon Kul-want Kaur. Ajit Kaur (P.W. 16) who was once the wife of Lavinder Singh also stated that Ajaib Singh was of immoral character. All this evidence indicates that Ajaib Singh was more prone to have taken the lady to this spot for some evil design. He might even have committed the murder of the lady and the child. Therefore, Lavinder Singh could not be convicted merely because be accompanied Ajaib Singh to Agra and instituted that false complaint. If Ajaib Singh was let off despite that complaint, Lavinder Singh also deserved the same treatment.

21. The other important circumstance relied upon by the learned Sessions Judge relates to the visit of Lavinder Singh to Roop Singh on 10th June, 1970. It is stated that Lavinder Singh reiterated the false story to Roop Singh about the visit of the lady to Agra and her disappearance from the bus stand of that town. Roop Singh (P.W, 11) did not state before the investigating officer that Lavinder Singh also came to him along with others on 10-6-1970. The learned Sessions Judge seems to have explained this circumstance but to our mind no reasonable basis could be discovered for this omission. It is, therefore, doubtful if Lavinder Singh at all went to Roop Singh (P.W. 11) on 10-6-70. Besides this, both Ajaib Singh and Rattan Singh had accompanied Lavinder Singh while they went to Roop Singh. If the other two could not be implicated because of this circumstance, how could Lavinder Singh alone be implicated for it? Similar would be the fate regarding the last circumstance, namely the negligence shown by the three accused in producing the photographs of the lady before the police. This circumstance by itself is of practically no incriminating value, Besides this, it is again a circumstance common to all the accused and why should Lavinder Singh be singled out for it?

22. To us, it seems that it never occurred to the learned Sessions Judge that he was convicting Lavinder Singh on the very same circumstances on which he acquitted Rattan Singh and failed even to frame a charge against Ajaib Singh.

23. The learned Sessions Judge has pointed out a few other circumsthances which, according to him, go to implicate the appellant. He has stated that the lady could not have gone to Barog except with her husband. She could as well have gone there along with Ajaib Singh and Rattan Singh. Even Lavinder Singh would

have sent her through someone with whom she was associated. They might have taken her to that place and left her at the mercy of some others whom they might have hired to do this job. So many eventualities are probable and it is difficult to say that tha occurrence took place exactly in the manner submitted by the prosecution. When several versions are probable, the benefit will naturally go to the accused. The appellants have no doubt denied that they were the authors of the complaint (Ex. PP-1). But as we have stated before, that was a circumstance no doubt against them. We have only gone to this extent that this circumstance alono without getting support from somewhere else cannot lead to a conclusive inference that Lavinder Singh committed the murder. The learned Sessions Judge then remarked that the accused Lavinder Singh did not make a proper search for the lady and her child. That may be stated to be a circumstance against the accused. He should have asked the conductor and the driver of the bus. He should have lodged police reports at the intermediary stations. All this, ha never did. This would simply raise a suspicion against Lavinder Singh as well as equal suspicion against the other brothers. The appellant cannot be singled out for this circumstance. They were knowing as to who committed the murder and were clearly shielding him. At the same time they might not themselves be the muderers. The learned Sessions Judge considered the letter (Ex. DF) written by Kulwant Kaur and concluded that this was a forgery committed by the appellant. This letter was admitted by Roop Singh to be in the handwriting of Kulwant Kaur. There was absolutely no evidence to prove forgery of any description. The letter indicates that the lady was suffering from depression and her ideas were not coherent. It was a mental case, although of a very slight degree. Ex. DD is the letter dated 9th September, 1967. It is from Mohinder Kaur sister of the accused, in the name of Roop Singh. In this letter, the ailment of the deceased is described. The other two letters are of June, 1969 (Ex. DE) and November, 1969 (Ex. DG). These two letters are from Roop Singh to the appellants. In these two letters again, the mental sickness of Kulwanl Kaur has been described. It appears to ui that the deceased was suffering from depression and at times she was also incoherent in her talk and behaviour. A person suffering from such symptoms could easily be led away by anybody. It is just probable that she was led astray by some ona and she happened to reach Barog and became subject to an inhuman

man-slaughter.

24. It was argued by the learned Advocate-General that no motive was proved and a young and beautiful woman could not have been murdered in ordinary circumstances. He pointed out that Lavinder Singh had already changed one wife and perhaps became infatuated with the other and committed the murder of Kulwant Kaur and his child. These are all surmises and no conviction can be sustained upon them. It is difficult to believe that Lavkider Singh would murder his own child and that too in such a merciless manner.

25. It was then stated that the appellants did not give their handwritings on 3rd December, 1970 and from this an inference should be drawn ' against them that the complaint (Ex. PP-1) was written by Ajaib Singh and signed by Lavinder Singh. The learned Counsel for the accused presented an application to this Court under Section 428. Cr. Procedure Code. He wanted that the specimen signatures of the two accused should be sent to a document expert for comparison. In our opinion, it would all be a futile exercise. When it was proved beyond doubt that Lavinder Singh and Ajaib Singh had gone to Agra on 8th June, 1970 and fully participated in the investigation of that false complaint, where had the necessity remained for comparison of signatures? It was fully proved by the witnesses that the two accused did go to Agra and did move the complaint which was the subject-matter of that enquiry. This is sufficient for our purpose. We have already held that this circumstance does not reach beyond creating a suspicion against the two accused. It is no doubt a very cogent circumstance for the offence under Section 201, I. P. Code. A. S. I. Hifazat Hussain (P.W. 40), S. I. Hoshiar Singh (P.W. 41), Abdul Aziz (P.W. 42) and Raj Kumar Shamma (P.W. 51) have all stated that the two appellants went to Agra and pursued that false complaint. All these witnesses were rightly believed by the learned Sessions Judge. In these circumstances, it was proved beyond doubt that the two appellants went to Agra and pursued that false complaint. It is not necessary in the ircumstances to procure their signatures and get the comparison made by any handwriting expert.

26. The learned Advocate-General wanted us to believe Sulekh Chand (P.W. 53) the proprietor of Mughal Everest Hotel and also the recovery witnesses. Regarding

Sulekh Chand, besides the reasons given by the learned Sessions Judge for disbelieving him one more reason stares at us and it is this, that no effort was made by the investigating officer in respect of Sulekh Cband so that he could identify the two accused in a test identification parade. From the statement of Malik Inder Raj (P.W. 55), it is evident that Sulekh Chand was never produced before the Magistrate for the identification of the two accused. For the reasons stated above, it is difficult to place absolute reliance upon the identification made by Sulekh Chand during the course of trial. It was then stated that Sulekh Chand identified the two accused in the presence of the police about a month and a half after the occurrence, when these two accused were produced before him by the investigating officer. If Sulekh Chand at all identified the two accused at that time, it was nothing else but the statement of Sulekh Chand before the police made during investigation. Such a statement was inadmissible under Section 162, Cr. P. Code. Therefore, Sulekh Chand was rightly disbelieved by the learned trial Judge.

27. It was then stated that the recovery witnesses should not have been disbelieved simply because the learned Sessions Judge held that Krishan Dcv Ratti (P.W. 31) and D. D. Sharma (P.W. 32) the two discloser witnesses could not be absolutely relied upon. So far as Lavinder Singh is concerned, the recovery of 'darant' (Ex. P-7) was by itself suspicious. It was stated that Lavinder Singh got down in the khud by the help of a rope and could discover the 'darant' from underneath a bush. When the murder was committed at about 8 P.M. it had grown dark and the weapon of offence was thrown inside the khud. It was highly improbable for anybody to have remembered as to where the weapon had fallen so that it could subsequently be discovered. On Kalka-Simla road, 'khuds' are there all along and one khud can hardly be distinguished from the other and a person who commits such a ghastly crime will seldom remember the particular khud in which he dropped the weapon. If at all they threw away the weapon, they must have done it in a hurried manner and at the first opportunity. Therefore, the recovery of 'darant' (Ex. P-7), in our opinion, does not inspire confidence. The two number plates of the car said to be recovered by Lavinder Singh, would not have been concealed by him as there was no necessity to do so. These plates could have been thrown away anywhere as nobody could have inferred anything merely by seeing them lying somewhere. Therefore, the two recoveries made by Lavinder

Singh are not very helpful to the prosecution.

28. It is evident, the murder was committed at a spot where there was a stone quarry and labourers were working. There were also a few shops nearby. That was really a very inopportune place for committing murder in the early hours of the evening. It is a different matter that the murder was committed late in the night when people had gone away. The absence of motive is, no doubt, a circumstance in favour of the accused, specially in a case entirely based on circumstantial evidence. This is so held in Rajinder Kumar v. State of Punjab : 1966 CriLJ960 .

29. In this view of the matter, we are of opinion that Lavinder Singh could not be convicted for the offence under Section 302, I. P. Code. It is evident he has not been convicted by the learned Sessions Judge for this offence with the aid of Section 34, I. P. Code. The circumstances which have been procured to bring home this offence are not conclusive in nature. Lavinder Singh should have been given the benefit of doubt, and should have been acquitted of the charge under Section 302, 'I. P. Code.

30. The other offence for which the two appellants are imputed is one under Section 201, I. P. Code. In our opinion, there was more than sufficient evidence to convict them for this category of offence. It is manifest that the offence of murder was committed and Kulwant Kaur and her child Sweety were done to death. The injuries received and examined at the time of post-mortem examination reveal beyond doubt that it was a case of murder and the offence under Section 302, I. P. Code was committed. From tb/3 conduct of Lavinder Singh and Ajaib Singh which they exhibited, it was amply proved that they knew, or at any rate had reason to believe, that this offence of murder was committed. Lavinder Singh did not care to make enquiries from the driver or conductor of that bus. He did not lodge any police report at the intervening police stations. He did not care to know from anyone travelling in that bus as to where the lady and the child had gone. Rather he set up a false story of disappearance of Kulwant Kaur from the bus stand of Agra. For this, he went and lodged that complaint of 8th June, 1970. Ajaib Singh also played prominent part throughout. He accompanied Lavinder Singh and went to Agra and instituted that false complaint. Not only that, he deposited Rs. 15/- and

got the news item published in Amar Ujala. Thereafter he again went to Agra and met Raj Kumar Sharma (P.W, 51) and asked him to make further investigations. He also went to Roop Singh on 10th June, 1970 and assured him that the lady and her child were lost at the bus stand of Agra, knowing that the entire event was false. At any rate, Ajaib Singh had sufficient reasons to believe that the story put forward by Lavinder Singh was false.

31. The statement regarding disappearance of the lady at the bus stand was also improved from one stage to another. In the complaint itself, it was stated that there was some family dispute and the lady had pone astray. The two accused subsequently staled before the police that they did not except any foul play on the part of any person. They gave out that the lady had gone astray and nobody was to be blamed. It is upon that statement that the witness Hoshiar Singh S.' I. (P,W. 41) reported that as a result of enquiry, he could find that the report itself was false and nothing could be done in the matter. This was again an attempt to sidetrack the police and to screen the actual offender. Subsequently the story was developed that the lady had gone to urinate and did not return from there and was taken away by dacoits. It was even stated by Ajaib Singh to Roop Singh (P.W. 11) that he had engaged some criminals to trace out the lady and for that purpose, he had taken him Mathura.

32. From all this evidence, it is not difficult to infer that the two accused knew about the offence of murder and their purpose was to screen the offender from legal punishment. In fact, they wanted the evidence of murder to disappear. As such both the accused were guilty of offenc under Section 201, I. P. Code and sine they wanted to screen the offenders who had committed the murder, the punishment awarded to each of them was sufficient.

33. We must, therefore, hold that the accused Lavinder Singh and Ajaib Singh were both guilty of the offence under Section 201, I. P. Code and were rightly punished.

34. In the result, the appeal of Lavinder Singh for the offence under Section 302, I. P. Code is allowed, and he is acquitted of that charge. His convictioa and sentence under that section are set aside. The reference made by the State for

confirmation of death sentence is accordingly rejected.

35. The two appeals of Lavinder Singh and Ajaib Singh in respect of the charge under Section 201, I. P. Code are dismissed and their convictions and sentences awarded by the learned Sessions Judga are confirmed.

36. The appellant Ajaib Singh is o bail, and he has to surrender forthwith t9 serve out the sentence.

Chet Ram Thakur, J.

37. I agree.

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