

**State Vs. Zilla Singh**

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**Court :** Jammu and Kashmir

**Decided On :** Jan-05-1973

**Reported in :** 1973CriLJ1384

**Judge :** Jaswant Singh and; Mian Jalal-Ud-Din, JJ.

**Appellant :** State

**Respondent :** Zilla Singh

**Judgement :**

ORDER

**Jaswant Singh, J.**

1. This criminal appeal is directed against the judgment dated April 17, 1971, of the learned Additional Sessions Judge, Srinagar, acquitting the respondent of the charge under Section 302, R. P. C. for causing on the evening of February 14, 1968, the death of Amar Singh constable No. 673 of D. Company of the 1st Battalion of the Indo Tibetan Border Police force posted at the transit camp at Chuma-tong, about 120 miles from Leh, which was used as a place for resting and keeping equipment by the army and police personnel in distress.

2. The story as put forth by the prosecution was that on February 18, 1968, when Lance Naik Ram Dass of D Company of the aforesaid force who had been detailed by his superiors from Handlay post to get fresh supplies of pepper from

the aforesaid transit camp reached the bunker of the deceased, he found the latter lying murdered on his cot. On seeing the gruesome sight he was panic stricken and ran for help to the Head quarters of the 16th Dogra Regiment which was closeby. On being apprised of the matter the Commandant, the Subedar Major, and some other officers of the regiment including a doctor repaired to the spot. After mounting guard at the bunker and asking Lance Naik Ram Dass to stay on, the Commandant rang up Mr. M. L. V. Garg, the Assistant Commandant of the I. T. B. Force at Leh, and informed him about the incident. Mr. Garg in turn informed the Superintendent of Police, Leh, vide Ex. P-I and requested him to take necessary action. On receipt of Ex. P-I the Deputy Superintendent of Police, Leh, directed Shri Ghulam Hassan Khan, Circle Inspector of Police, to investigate into the alleged offence. The Circle Inspector, instructed the police station Neoma to register a case under Section 302, R. P. C. and himself left for Chumatong on that very evening along with Mr. S. N. Singh, Deputy Superintendent and some constables of the I. T. B. Force. On the arrival at the spot on the following day the Inspector took charge of the dead body of the deceased, prepared the site plan, the injury statement of the deceased, and other necessary papers and seized the articles found lying in the bunker. On his return to Leh the Circle Inspector handed over the dead body to Dr.S. T. Phuntsog, Medical Officer, Leh, who performed the autopsy on February 20, 1968, and found the following injuries on the person of the deceased :

1/-One incised wound 3'x2'x3 1/2' in front of the neck cutting the larynx and anterior wall of the oesophagus (that part through which food passes) and cutting the intervening muscles and ligaments.

2/-Two incised wounds about 1 1/2'x 1' x 1/2' on the right side of the neck cutting the neck muscles and external carotid artery.

3/- One incised wound 2'x 1'x 2' on the left side of the neck cutting the platysma and muscles of the left side of the neck with carotid artery.

The doctor was of the opinion that the death of the deceased was the result of excessive haemorrhage due to multiple incised wounds on the neck which were sufficient in the ordinary course of nature to cause the death of the deceased. The

doctor was further of the opinion that the injuries had been inflicted on the deceased by means of a sharp edged weapon some 3 to 6 days before the post-mortem examination. The specimens of the spleen, lungs, liver and stomach of the deceased were sent by the doctor to the Chemical Examiner for examination which revealed that opium was either taken by the deceased or was administered to him. During the course of the investigation the police obtained on March 13, 1968, from the I. T. B. stores the kit belonging to the respondent which had been deposited by him on his transfer from Chumantong to some other post. At the instance of and pursuant to the information stated to have been supplied by the respondent, the police recovered a Roamer Watch the same day, alleged to belong to the deceased from a 'Mani' near the Khalsi bridge. Acting on another piece of information alleged to have been given by the respondent, the police made a search for the knife - the supposed weapon of offence - in the Sindh river but the same did not yield any fruitful result. After completing the investigation the police challaned the accused in the Court of the Judicial Magistrate, Leh, who committed him to the Court of Sessions. After holding a regular trial the learned Additional Sessions Judge, Srinagar, to whose file the case was transferred acquitted the respondent of the aforesaid charge holding that it had 'not been established beyond doubt that no one but the accused had cause and opportunity to murder the deceased.' It is against this acquittal order that the present appeal is directed.

3. Appearing on behalf of the State Mr. Amar Chand has urged that the facts and circumstances proved in the case are incompatible with the innocence of the accused and are incapable of any explanation on any other hypothesis than that of guilt of the accused.

4. Mr. S.P. Gupta, has on the other hand, submitted that the assessment of the evidence made by the learned Additional Sessions Judge and the conclusions arrived at by him are correct and there is no room for interference with the same.

5. On the day of the hearing of the appeal, Mr. Amar Chand also made an application praying that Durrjey Garchan and Sanam Namgal, prosecution witnesses, may be recalled and examined with respect to the photographs of the

deceased which are already on the sessions file. The relevant paragraphs of the application are reproduced below for facility of reference:

3/- The prosecution witness No. 18 Durrjey Garchan and prosecution witness No. 19 Sanam Namgal met them together.

4/- In the trial Court the photographs of the deceased were not shown to the above witnesses to prove that it was the deceased who was accompanying the accused on the above day.

5/- As the above witnesses were not shown the photographs of the deceased, they could not say who was accompanying the accused. This leaves a big lacuna in the whole case.

6/- If the prosecutor did not bring the above witnesses' attention to the photographs of the deceased the trial Court in the interest of justice should have done it.

7/- In the absence of above fact the trial has taken place on incomplete evidence.

The application has been vehemently opposed by Mr. S.P. Gupta.

6. It is now well settled that the power of the appellate Court to take additional evidence under Section 428, Criminal P. C. should be exercised against an accused only in exceptional cases where formal defects have to be made up and not where it is intended by the prosecution to fill up lacunae in the case. (See *Kashmira Singh v. State* AIR 1965 J & K 37 : (1965) 1 Cri LJ 554). In the present case as the application which has been made by the State after an inordinate delay itself shows that it is intended to fill up lacuna, it cannot be allowed. We do not also feel impelled to accede to the request made on behalf of the State as there is nothing in the statements made by the aforesaid witnesses before the trial Court to indicate that they knew the deceased or that they could identify him or his photograph if shown to them. To allow the witnesses to be recalled and examined with the sole purpose of meeting the observation of the learned Additional Sessions Judge that 'the inference that may be drawn from the action of the prosecution in not showing the photographs to the witnesses could be that had the

photographs been shown to them, they may not have supported the prosecution on this point,' would be treading on a very dangerous ground and may lead to miscarriage of justice. We accordingly reject the application.

7. We have also gone through the entire evidence on the record and have given our careful consideration to the submissions of the learned Counsel for the parties with regard to the merits of the case.

8. It is now well settled that in an appeal against acquittal while the powers of the High Court are not different from the powers of the Court in hearing an ordinary appeal against conviction, the High Court is to consider all the matters which prevailed with the trial Court and the reasons given by it for dis-believing the witnesses whose demeanour it had an opportunity of observing. It has also time and again been laid down by their Lordships of the Supreme Court that initial presumption of innocence of the accused is reinforced by his acquittal and should not be lightly interfered with, (See *Balbir Singh v. State of Punjab* : 1957 CriLJ481 ; *Laxman Kalu v. State of Maharashtra* : 1968 CriLJ1647 ; *Khedu Mohton v. State of Bihar* : 1971 CriLJ20 ; *Keshav Ganga Ram Navge v. The State of Maharashtra* : 1971 CriLJ798 and *Kanu Ambu Vish v. The State of Maharashtra* : 1971 CriLJ1547 .

9. Bearing in mind these principles, let us examine the material on the record to see whether the findings arrived at by the learned trial Court are justified.

10. It is common ground that there is no direct evidence to connect the respondent with the commission of the crime. To bring home the offence to the respondent the prosecution relies solely on circumstantial evidence. It is now well recognized that the chain of circumstantial evidence relied upon by the prosecution must be so complete as to leave no doubt regarding the guilt of the accused. It will be worthwhile in this connection to refer to the following observations made by their lordships of the Supreme Court in *Hanumant Govind Nargundkar v. State of Madhya Pradesh* : 1953 CriLJ129 :

In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that

conjecture or suspicion may take place of legal proof. In cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.' Again in *Prabhoo v. State of Uttar Pradesh* : [1963]2SCR881 the Supreme Court while holding that the recovery of an axe and blood stained clothes at the instance of the accused were not sufficient to connect him with the crime observed :-It is well settled that circumstantial evidence must be such as to lead to a conclusion which on any reasonable hypothesis is consistent only with the guilt of the accused person and not with his innocence. The motive alleged in this case would operate not only on the appellant but on his father as well. From the mere production of the blood stained articles by the appellant one cannot come to the conclusion that the appellant committed the murder. Even if somebody else had committed the murder and the blood stained articles had been kept in the house, the appellant might produce the blood stained articles when interrogated by the Sub-Inspector of Police. It cannot be said that the fact of production is consistent only with the guilt of the appellant and inconsistent with his innocence. We are of the opinion that the chain of circumstantial evidence is not complete in this case.

Let us now examine the chain of circumstantial evidence sought to be relied upon by the prosecution and see whether it conforms to the above test and is so complete as to leave no room for doubt regarding the guilt of the accused.

#### LAST SEEN TOGETHER

11. The fact that the respondent and deceased were last seen together has not been satisfactorily proved by the prosecution. The statements of Durrjey Garchan P. W, 9 and Sonam Namgal P. W. 10 do not establish that the deceased was last

seen in the company of the respondent. AH that Durrjey Garchan states is that the respondent came to his house on the 16th of the Bodhi month accompanied by another person who belonged to I. T. B. and asked for Chang which he gave to them. Sonam Namgal who is a local Hakim states that on the 16th of the Bodhi month the respondent and his companion whom the respondent introduced as a Sepoy belonging to the I. T. B. Force came to him before sun set and asked for some medicine for headache and that he gave the medicine to the respondent wrapped in a post office form. According to this witness the respondent and his companion were also given some Chang which they drank after which they left for the house of Durrjey Garcharan. This evidence in our opinion does not establish that it was the deceased who was accompanying the respondent on the day of occurrence. There is also no evidence to show that the respondent entered the bunker of the deceased on the evening of the fateful day.

## 2/- RECOVERY OF THE PACKET OF INDIGENOUS MEDICINE FROM THE BUNKER OF THE DECEASED.

12. According to Shobnaik Singh P. W. 3, the respondent got this medicine for him. It is not understandable as to why the medicine instead of being handed over by the respondent to Shobnaik Singh was taken to the bunker of the deceased and left over there. This recovery, in our opinion, is of no consequence and is not helpful to the prosecution.

## 3/- THE INKSHAF RELATING TO THE SUPPOSED WEAPON OF OFFENCE.

13. The information alleged to have been supplied by the respondent to the police that he threw the knife in Sindh River cannot be used against him as it did not lead to any discovery. It is now settled law that the alleged admission of the accused to the police must be disregarded unless property is recovered as a result of any statement made by him. See AIR 1943 Bom 458 : (43 Cri LJ 221) : 1955 Raj LW 314 (316). In the absence of the discovery of the knife the mere fact that some persons saw the respondent in possession of a knife sometime before the occurrence cannot also be relied upon to fasten the guilt on the respondent.

#### 4/- THE RECOVERY OF THE ROA-MER WATCH ALLEGED TO BELONG TO THE DECEASED.

14. The watch seized in the case is alleged to have been exchanged by the deceased with Lance Naik Kanshi Ram while they were stationed at Ragoopost. Neither any witness in whose presence the watch was exchanged by the deceased with Kanshi Ram has been produced nor has the Anchor watch which is said to have been given in exchange by the deceased to Kanshi Ram been seized and produced although it is admitted by the prosecution that on the day of the recovery of the Roamer watch Kanshi Ram was in possession of the Anchor Watch. No satisfactory explanation has been furnished by the prosecution as to why the watch which was given by the deceased to Kanshi Ram was not seized. That apart, the 'Mani' from which the watch was stated to have been recovered was admittedly accessible to all and sundry and any one could have walked in and placed the watch there. In the circumstances, it is not safe to rely upon this recovery for holding the respondent guilty of the offence of murder.

#### 5/- THE RECOVERY OF KIT BAG FROM I. T. B. STORE.

15. The recovery from the Kit Bag of the clothes alleged to bear some stains of blood is also of no significance. No witness in whose presence the Kit was deposited by the respondent in the I. T. B. Store at Leh has been examined by the prosecution. It is not, therefore, possible to hold that the kit bore the stains of blood when it was deposited by the respondent in the Store. That the blood on the aforesaid clothes was human blood has also not been established. Again from the statement of Shadi Lai P. W. 4, it appears that the clothes did not bear any stains of blood at the time of their production before the trial Court. Shobnaik Singh P. W. 3 is not also able to testify that the uniform of the respondent bore any stains of blood when he returned to his bunker on the night of the alleged occurrence. In view of all this, it is difficult to rely on this piece of evidence to connect the respondent with the commission of the crime.

16. The motive for the commission of the alleged offence, has also not been established. If, as suggested by the prosecution the motive was to relieve the deceased of his valuables like watch etc. to enable the respondent to liquidate his

debts borrowed in connection with gambling and drinking, it is not understandable as to why he did not remove Rs. 400/- which was recovered by the police from the person of the deceased.

17. The circumstantial evidence as detailed and discussed above, does not, in our opinion, make a complete chain so as to exclude all possible doubts regarding the guilt of the accused. We, therefore, find ourselves in complete agreement with the findings of the trial Court that the respondent is entitled to the benefit of doubt.

18. For the foregoing reasons, we do not find any merit in this appeal, which is hereby dismissed.

**Jalal-Ud-Din, J.**

19. I agree.

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