Vikramjit Singh @ Vicky vs State Of Punjab on 24 November, 2006

Equivalent citations: 2006 AIR SCW 6197, 2006 (12) SCC 306, 2007 CRI. L. J. 1000, 2007 (1) AIR JHAR R 875, (2007) 49 ALLINDCAS 89 (SC), 2007 (1) SCC(CRI) 732, 2007 (49) ALLINDCAS 89, 2007 (2) SRJ 413, (2007) 1 CHANDCRIC 35, 2006 (12) SCALE 321.1, (2007) 1 JCC 64 (SC), (2006) 12 SCALE 321.2, 2007 (1) JCC 64, (2007) 1 CURCRIR 334, (2006) 12 SCALE 321(1), (2007) 2 EASTCRIC 151, (2007) 1 CRIMES 181, (2007) 1 ALLCRIR 904, (2007) 2 ALLCRILR 1

Author: S.B. Sinha

Bench: S.B. Sinha, Markandey Katju

```
           CASE NO.:
Appeal (crl.)  1459 of 2005

PETITIONER:
Vikramjit Singh @ Vicky

RESPONDENT:
State of Punjab

DATE OF JUDGMENT: 24/11/2006

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
```

J U D G M E N T S.B. SINHA, J :

Appellant and the deceased Meena Rani were married on 3.03.2002. She went to her parents' place on 3.07.2002. The appellant came to her parents' house which was situated at village Ghal Kalan to take her back on 7.07.2002. They started in the appellant's Maruti Car at about 7.30 p.m. She was allegedly wearing all her gold ornaments at that time. After about a couple of hours, a telephonic call was received at a Medical Store of a local Press Reporter Rakesh Kumar informing him that car of the appellant and his wife had met with an accident on the bridge of Bukan Wala and they were lying in an injured condition. The caller had allegedly informed that he would be leaving for the said place of accident and the mother of the appellant Amarjit Kaur should reach the same place. Upon receipt of the said information, Amarjit Kaur, her neighbour Kusum Lata wife of Rajinder Kumar and her son

> Deepak Kumar reached the place of occurrence and found the Maruti Car to be standing at an open place on the right near canal minor. The mobile phone of the appellant and one of the shoes of the deceased were lying on the rear side of the car along with some luggage.

Broken bangles were found scattered and the other shoe of the deceased was also found lying nearby. They went to the appellant's house and came to learn that both of them have been hospitalized. On reaching Civil Hospital, Moga, they found Meena Rani to be dead having suffered multiple stab injuries. She was wearing a gold ear ring, two gold rings, one silver ring, silver pajebs and bishue. A First Information Report was lodged by the said Amarjit Kaur alleging that the appellant murdered her by inflicting knife injuries. She suspected that the appellant had illicit relations with some other girl and had murdered her daughter in order to remove her from his way.

Twenty-three injuries were found on the person of the deceased. A few of them were stab wounds. The injuries on the person of the appellant were as under:

> "1. Superficial incised wound with tail on the left side present horizontally 1.5 x 1-1/4 cm on back side of chest 23 cm. below top of shoulder. 11 cm from midline.
>
> 2. Linear abrasion 2 cm on lateral aspect of left upper arm mid part.
>
> 3. Lacerated and punctured wound 1-1/3 x 1-1/3 cm on the lateral aspect of left upper arm 12 cm above elbow.
>
> 4. Superficial incised wound 3.75 x 1 cm on the front of right forearm. Horizontally placed 9 cm above wrist.
>
> 5. Superficial incised wound 6 x 1-1/2 cm horizontally placed on front of right forearm, 8.5 cm above injury no. 4.
>
> 6. Superficial incised wound 2 x = cm on the front of right forearm horizontally placed 3 cm above injury no. 5.
>
> 7. Lacerated wound 5 x < cm with abrasion = x 1- 1/2 cm on left side of skull, 7 cm from pinna 13 cm from posterior hair line.
>
> 8. Swelling 2.5 x 2.5 cm on the right side of skull. 10 cm from right pinna, 15 cm from posterior hair line.
>
> 9. Swelling 1-1/2 x 1-1/2 cm on right side of skull. 11 cm from pinna. 9 cm from posterior hair line.
>
> 10. Linear abrasion 6 cm on the right scapular region.

11. Linear abrasion 3 cm on lateral aspect of left knee."

The doctor opined:

> "Patient was conscious. General condition was fair. He was well oriented in time and space. Injuries nos. 7,8,9 were advised X-ray. Rest were declared simple. Injuries No. 1,4,5,6 were inflicted by sharp weapon. Injury nos. 2,10,11,3 with pointed and blunt. Rest were blunt. Duration of injuries was fresh. There was no corresponding cut on pent and banyan injuries. Injuries Nos. 4,5,6 were horizontally placed and were parallel to each other. On receiving the X-ray report No. HK 171/3050 dated 8.7.2002, the injuries nos. 7,8 and 9 were declared simple."

According to him, the possibility of injuries Nos. 1,4,5 and 6 having been caused by friendly hand cannot be ruled out.

Allegedly, the appellant made a confession leading to recovery of 'a knife just like chhuri' near Kingwah canal's bridge, near the southern bank side of Rajbaha on the eastern side of the Bukkanwala road at a distance of 20 karams from the bridge in the bushes in the area of village Bukkanwala thereof.

Some ornaments were said to have been recovered from a dicky of a scooter belonging to the co-accused Arvind Sharma. He has been declared to be a proclaimed offender.

The version of the appellant as stated in his statement under Section 313 of the Code of Criminal Procedure is as under:

> "I am innocent. I have been falsely implicated. My relations with my wife were normal and we were living happily. I had also good relations with the family members of my wife. I had no relations with any lady. I and my wife were going in a car. We were waylaid by some unknown persons and they caused injuries to both of us. I sent information at my house, who took us to Moga Hospital where she died. My family members also sent information to the family members of my wife at Baghapurana. I was medically examined. I did not make any disclosed statement nor got recovered any weapon like knife. It was foisted against me. Recovery of necklace and topas is a made up affair. The FIR statement was concoted and fabricated at about 4 or 5-00 p.m. on 8.7.2002"

The prosecution in support of its case examined a large number of witnesses. The complainant Amarjit Kaur was examined as PW-4. She supported the prosecution case in its entirety in her examination-in-chief which took place on 15.04.2003. Her cross-examination was deferred. It resumed after a period of five months, i.e., on 16.09.2003. She, however, turned hostile. Similarly, all the material witnesses who although supported the prosecution case in their examination-in-chief, in their cross- examination, did not support the prosecution case at all.

The learned Sessions Judge, however, despite the same arrived at a finding of guilt. He imposed death penalty on the appellant. By reason of the impugned judgment, the High Court affirmed the said findings.

In its judgment, the High Court purported to have placed reliance on so called independent circumstances collected by the investigating agency, the medico-legal and post-mortem reports which are as under:

> (i) "According to the appellant, the car in which couple was traveling was waylaid by some unknown persons. If that is correct, it is inconceivable that the appellant, who was driving the car would instead of driving through the hostile elements, who were trying to stop the car and in the process giving injuries to some of them, had pulled up the car on a katcha path at a distance of about 30 fts. from the main road and thereby facilitated the attack."
>
> (ii) "Apart from this, the fact that no obstacles were found placed on the road as would normally be done in case some people were trying to rob unwary travelers on the road also militates against the story being true."
>
> (iii) "The appellant asserts that he had informed his family at Ghal Kalan, who in turn had conveyed the message to Amarjit Kaur at Bagha Purana but the message, which was received was to the effect that they had met with an accident and there was no indication about the couple having been attacked by some unidentified persons."
>
> (iv) "The fact that when Maninder Singh had brought the dead body of Meena Rani and the injured appellant to the Hospital, he did not inform the Doctors or the police about the circumstances in which Meena Rani had died and Vikramjit Singh received injuries would also indicate that the stand of the appellant at the time of recording the statement under Section 313 Cr.P.C. is an after thought."
>
> (v) "One would have expected that the appellant who was examined by Dr. Naresh Kumar PW-2 at 10.45 P.M. would normally have requested the Doctor to forward to the Police Station the circumstances in which he and his wife had received injuries. Rather than doing this the appellant had chosen to keep quiet and the police is only informed through the ruqqa sent by the Hospital about Maninder Singh having brought the dead body of Meena Rani."
>
> (vi) "Even Maninder Singh chose not to go across to the Police Station to give the version which his brother Vikramjit Singh might have given to him to the Investigating Officer."
>
> (vii) "The reaction of the family of the in-laws of Meena Rani to the death of their daughter-in-law and injuries suffered by their son is also unexplainable as none of the members of the family of the in-laws were available at the Hospital, when the

police arrived and, therefore, in the inquest proceedings, which were conducted at 11.20 P.M., the Investigating Officer only mentioned that Amarjit Kaur, Kusum Lata, Deepak Sharma and Sukha Singh were present near the dead body and the respectables, who attested and participated in the proceedings are Tek Chand son of Hardial Sharma and Tarsem Singh son of Mohan Lal Pandit, residents of Budh Singh Wala."

(viii) "Looked at from another angle, if the husband and wife were waylaid and all the injures were caused by unfriendly assailants, the description of injuries on the person of deceased and that of the appellant injured show a marked disparity between the way in which the husband and wife were being treated by the attackers. There are 23 injuries on the deceased with sharp edged weapon, which include injury no. 4 which consists of 8 incised wounds on the right side of the upper arm. Out of these 23 injuries, injuries No. 5 to 19 are around chest, breast and abdomen of the deceased and it is inconceivable that a loving husband, who had married the lady only three months ago would not try to intervene to prevent this assault and in the process receive as serious if not more than serious injuries on his person. Seen in comparison with the injuries found on the person of Meena Rani those that were found on the body of appellant are simple. Only in case of injuries No. 7,8 & 9 Doctor found it necessary to get X-ray examination conducted and after receipt of report of radiological examination declared even these injuries to be simple."

Mr. S. Jaspal Singh, learned senior counsel appearing on behalf of the appellant, would submit that the High Court committed a serious error in relying on the said purported circumstances, as some of them are non- existing and, particularly, in view of the fact that a few of those circumstances had not been put to the appellant in his examination under Section 313 of the Code of Criminal Procedure.

Mrs. Kawaljit Kochar, learned counsel appearing on behalf of the State, on the other hand, would support the judgment contending inter alia:

(i) there was no reason as to why the appellant did not lodge a First Information Report.

(ii) the deposition of the PWs to the extent of their examination-in-chief should be relied upon as they turned hostile only after a period of five months which is unnatural.

(iii) The injuries on the person of the accused were not only found to be superficial; there being no corresponding cut in his waist or trouser, the same must have been held to have been self-inflicting.

(iv) All relevant questions having been put to the appellant in his examination under Section 313 of the Code of Criminal Procedure, he was not prejudiced by omission to put some of the circumstances to him by the learned Trial Judge.

In the instant case, there are two versions. The learned Sessions Judge proceeded to weigh the probability of both of them and opined that the appellant having not been able to prove its case, the prosecution case should be accepted. In our opinion, the approach of the learned Sessions Judge was not correct. The High Court also appeared to have fallen into the same error. It invoked Section 106 of the Indian Evidence Act although opining:

> "The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference."

Section 106 of the Indian Evidence Act does not relieve the prosecution to prove its case beyond all reasonable doubt. Only when the prosecution case has been proved the burden in regard to such facts which was within the special knowledge of the accused may be shifted to the accused for explaining the same. Of course, there are certain exceptions to the said rule, e.g., where burden of proof may be imposed upon the accused by reason of a statute.

It may be that in a situation of this nature where the court legitimately may raise a strong suspicion that in all probabilities the accused was guilty of commission of heinous offence but applying the well-settled principle of law that suspicion, however, grave may be, cannot be a substitute for proof, the same would lead to the only conclusion herein that the prosecution has not been able to prove its case beyond all reasonable doubt.

In Sharad Birdhichand Sarda v. State of Maharashtra [AIR 1984 SC 1622 = (1984) 4 SCC 116], this Court laid down the law in the following terms :

> "153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
>
> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047] "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is

guilty, (3) the circumstances should be of a conclusive nature and tendency, (4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

It was further observed :

> "179. We can fully understand that though the case superficially viewed bears an ugly look so as to prima facie shock the conscience of any court yet suspicion, however great it may be, cannot take the place of legal proof. A moral conviction however strong or genuine cannot amount to a legal conviction supportable in law.
>
> 180. It must be recalled that the well established rule of criminal justice is that "fouler the crime higher the proof". In the instant case, the life and liberty of a subject was at stake. As the accused was given a capital sentence, a very careful, cautious and meticulous approach was necessary to be made."

The High Court in support of its judgment has referred to certain purported independent circumstances. Some of them are not such which form links in the chain. They are not such which point out to the guilt the accused. They are not such which categorically demonstrate that it was the accused and accused alone who could commit the said offence. How and in what circumstances the car was stopped by the appellant is not known. The accused was entitled to maintain his silence. Only because he stopped the car at a distance of about 13 feet from the main road, the same by itself would not lead to a conclusion that he did so deliberately in order to facilitate attack. Conduct of an accused must have nexus with the crime committed. It must form part of the evidence as regards his conduct either preceding, during or after commission of the offence as envisaged under Section 8 of the Indian Evidence Act. No such inference was drawn, nor in the fact situation obtaining herein such an inference could be drawn. Whether any obstacles were put or were not found to have been placed on road by the attackers is also a question which would be of not much significance as no such evidence was brought on record. If some persons stand on the road, the same may itself be sufficient for a driver to stop his vehicle. In any event, it does not appear that such a question was even put to the appellant in his examination under Section 313 of the Code of Criminal Procedure.

Why an information was given only that an accident had taken place which was in fact a robbery is again a matter which does not point out to the guilt of the appellant. Information was given by somebody to a Press Reporter. He might not have wanted to disclose that the deceased has expired or her husband was lying injured at that point of time. It is a natural course of conduct. The conduct of a third person in any event is wholly irrelevant unless the same has a direct nexus in proving the crime.

It may or may not be that when Maninder Singh brother of the appellant brought the dead body of Meena Rani and the appellant to the hospital, he did not inform the doctors about the circumstances in which the incident had occurred but again the same relates to the conduct of the brother of the

appellant and not that of the appellant. Maninder Singh was not examined. The doctor was examined but the prosecution did not put any question to him in regard to the conduct of Maninder Singh or otherwise. We have, however, noticed hereinbefore that police had already been informed and they came to the hospital. The statement of Amarjit Kaur was recorded only in the hospital. It was, therefore, not correct to contend that the police was not informed at all. The purported conduct of the appellant in not requesting Dr. Naresh Kumar PW-2 to inform the police in regard to the circumstances in which he and his wife had received injuries is again not a circumstance which point out to the guilt of the accused.

Maninder Singh might not have gone to the police but having regard to the fact that he had brought them to hospital, it was for the investigating officer to record his statement.

The reaction of the family is again a matter which is not of much consequence to prove the guilt of the appellant. It does not lead to a circumstance which forms the link in the chain. Again, no such question was put to the appellant in his examination under Section 313 of the Code of Criminal Procedure. The nature of injuries on the person of the appellant, in our opinion, even does not form a circumstantial evidence which would prove the prosecution case. The doctor opined that injuries Nos. 1,4,5 and 6 could be caused by friendly hand but he has not stated so about the other injuries. The courts below did not consider the effect thereof.

Furthermore, as noticed hereinbefore, the prosecution witnesses have turned hostile. It may be an act of dishonesty on their part as contended by Mrs. Kochar but by reason thereof only we cannot hold the appellant guilt of commission of a heinous offence. In view of their statements in the cross-examination giving a complete go bye to what had been stated in the examination-in-chief, it is not possible to rely even upon a part of their statement.

It is now a well-settled principle of law that the circumstances which according to the prosecution lead to proof of the guilt against the accused must be put to him in his examination under Section 313 of the Code of Criminal Procedure. It was not done.

In Tara Singh v. The State [AIR 1951 SC 441], the law is stated in the following terms:

> "The High Court also bases its conclusion on the circumstantial evidence arising from the production of the kripan and the recovery of the shirt from the appellant. Those articles are said to be stained with human blood. The appellant was not asked to give any explanation about this. The serologists report had not been received when the appellant was questioned by the Committing Magistrate. Therefore, he could not be asked to explain the presence of human bloodstains on the kripan. All he was asked was whether the bloodstained Kripan was recovered at his instance. That is not enough. He should also have been asked whether he could explain the presence of blood stains on it. The two are not the same. Then, in the Sessions Court there was the additional evidence of the Imperial Serologist showing that the kripan had stains of human blood on it. That was an additional and very vital piece of evidence which the appellant should have been afforded an opportunity of explaining."

A knife was recovered purported to be pursuant to a confession made by the appellant. The statement was admissible in evidence but the knife was recovered from the place of incident without something more which would lead to a discovery of fact, it, therefore, may not have much evidentiary value. [See Kora Ghasi v. State of Orissa, AIR 1983 SC 360 :

> (1983) 2 SCC 251] Furthermore, recovery of a knife alone is not sufficient to arrive at a finding of guilt. Some jewellery might have been recovered from the accused No. 2 but such recovery was not made at the instance of the appellant. It was said to be a chance recovery. There is nothing on record to show that accused No. 2 was known to the appellant. PW-8 Amarjit Singh who has proved recoveries stated that Arvind Sharma ran away after leaving his scooter. Yet again PW-4 in her cross-examination denied that the deceased was having the said jewellery on her person.

We have noticed hereinbefore that both the learned Sessions Judge as also the High Court proceeded to compare the probabilities of two views. It is now beyond any cavil that where two views of a story appear to be probable, the one that was contended by the accused should be accepted. [See K. Gopal Reddy v. State of Andhra Pradesh, (1979) 1 SCC 355, Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116, Tota Singh and another v. State of Punjab, AIR 1987 SC 1083, Divakar Neelkantha Hegde & Others v. The State of Karnataka, JT 1996 (7) SC 63, State of Orissa v. Babaji Charan Mohanty and Another, (2003) 10 SCC 57 and Hem Raj and Others v. State of Haryana, (2005) 10 SCC 614] We have, in the aforementioned situation, no other option but to express our disagreement with the views of the learned Sessions Judge and the High Court. The appeal is allowed. The appellant is directed to be released unless wanted in any other case.