Before Vijender Jain, C.J. & Rajive Bhalla, JJ

BAHADUR SINGH,—*Appellant*

versus

STATE OF PUNJAB,—*Respondent*

Criminal Appeal No. 755/DB of 1997

23rd March, 2007

Indian Penal Code, 1860—S. 302—Gruesome murder of a woman—No delay in lodging FIR—Direct and unimpeachable evidence in the shape of depositions of two eye witnesses—Motive behind murder fully established—Appellant's guilt fully established by clear, convincing and cogent evidence—Trial Court committing no error of fact or law while convicting appellant—Appeal dismissed.

Held, that the motive for a crime, being generally embedded in the mind of an accused, is a matter of inference to be drawn from the circumstances that surround a case. The absence of a motive or the failure of the prosecution to establish a firm motive need not necessarily lead to the acquittal of an accused. Where the prosecution adduces direct, cogent and unimpeachable evidence to establish the commission of the offence, motive for the offence, the absence thereof or its insignificance recedes into the background. In a given case, the motive may appear insignificant but one cannot loose sight of the complexities of the human psyche. Human being do not respond to situations with mathematical certainty. A given set of circumstances may lead to an adverse reaction on the part of an individual, whereas another may simply ignore them. As human conduct is, by its very nature, unpredictable, the fact that the motive appears to be minor or inconsequential cannot, by itself, be a circumstance to doubt the participation of an accused in the commission of an offence.

(Para 15)

Further held, that in the presence of direct and unimpeachable evidence, in the shape of depositions of the eye witnesses to the gruesome murder of Bimal Muni, the motive stands established. It is a settled principle of law that motive is not necessarily the linchpin of a successful prosecution more particularly where direct ocular

evidence convincingly implicates an accused, as in the present case. Consequently, the learned trial Court, upon an appraisal of the depositions of PW4 and PW5, rightly held that in view of the clear, cogent and reliable depositions by the two eye witnesses, the motive stood established.

(Para 18)

Baljit Mann, Advocate, *for the appellant.*

A. G. Masih, Sr. DAG, Punjab, for State of Punjab.

JUDGEMENT

VIJENDER JAIN, CHIEF JUSTICE

(1) Bahadur Singh, the appellant, has laid challenge to the judgment and order, dated 27th October, 1997, passed by the Session Judge, Sangrur, convicting him under Section 302 of the IPC, and sentencing him to undergo imprisonment for life and to pay a fine of Rs. 1,000, in default of payment of fine, to undergo RI for one year.

(2) On 9th April, 1994, at 5.30 p.m., Dewan Chand lodged a report, at Police Station, Dhuri, which was reduced into writing as FIR No. 47, dated 9th April, 1994 (Ex. PF). The first informant, Dewan Chand informed the police that they were seven brothers, six of them had shifted to Dhuri from village Bhuller Heri. The deceased Bimal Muni continued to reside in the village with his family. Bahadur Singh, the appellant, and Bimal Muni were on visiting terms. About six months before the occurrence, the deceased and the accused-appellant performed a religious function of Sant Aloraran Wale and also arranged a Bhandara (free meals) for the public. A large sum of money was spent on the religious function and the Bhandara. The expenses led to a dispute between the appellant and the deceased. The appellant began pressing for settlement of accounts. He visited Dhuri and requested the first, informant to intercede in the matter. On 8th April, 1994, the appellant requested the first informant, Dewan Chand, at his shop in Dhuri, to pay the money due to him. The first informant claims to have told the appellant that he would meet the deceased on 9th April, 1994 at village Bhullar Herri and asked the appellant to reach there so that accounts could be settled. The first informant, accompanied by Girdhari Lal, reached Bimal

Muni's house. At about 4.30 p.m., while they were discussing something with Bimal Muni, the appellant barged into the house, brandishing an unsheathed sword in his right hand and holding the sheath in his left hand. He threw the sheath to the ground and raised a lalkara that he would teach the deceased a lesson for not paying his money. The appellant held the Kirpan with both hands and inflicted a blow to the head of Bimal Muni. The first informant and Girdhari Lal raised an alarm but the appellant threatened them. He thereafter inflicted kirpan blows, which severed the head of Bimal Muni, from his body. The first informant and Girdhari Lal ran unstairs and raised an alarm. The appellant thereafter fled from the spot. The deceased's wife Raksha Devi, who was present at the time of occurrence, stayed with the dead body, while the first informant and Girdhari Lal rushed to the Police Station Dhuri to lodge the report, which became the subject matter of the FIR.

(3) SI Gurbhajan Singh (PW7), accompanied by Dewan Chand, Girdhari Lal and other police officials, left for the place of occurrence. On arrival, he secured the place of occurrence and lifted blood stained earth, which was placed in a small tin box and duly sealed. A piece of cloth, a wooden comb, a small kirpan, all blood stained, and one sheath were taken into possession. These items were made into separate parcels, duly sealed and taken into possession by the police,—*vide* memo. Ex. PH. A rough site plan, Ex.PL, indicating the place of recovery, was prepared. SI Gurbhajan Singh also prepared an inquest report Ex.PC.

(4) The accused was produced before the Investigating Officer on 18th April, 1994. He was interrogated on 19th April, 1994 and suffered a disclosure statement that led to the recovery of the weapon of offence, namely, a kirpan, his clothes, a shirt and a Payjama. The disclosure statement, Ex.PJ, was reduced into writing. The kirpan (sword) is Ex.P1, whereas Payjama and Kamiz are Exs.P8 and P7 respectively. Upon conclusion of investigation, the challan was presented. The trial Court framed charges. The prosecution led its evidence in the shape of Dr. Vijay Kumar. PW1, Kashmir Singh PW2, Constable Gian Singh, PW3, Dewan Chand, the first informant, PW4, Girdhari Lal, the eye witness, PW5, Darbara Singh, a witness to the recovery of the sword, PW6, SI Gurbhajan Singh, PW7, Constable Darshan Singh PW8, HC Pritpal Singh PW9, HC Ajaib Singh PW10,

Constable Gurmeet Singh PW11 and Dr. Hardeep Singh, Assistant Chemical Examiner, PW12. P.Ws 3, 8, 9, 10 and 11 were examined on affidavits Exs.PE, PN, PO, PQ & PR respecitvely. Three witnesses, namely, Surinder Kumar, Darshan Singh and ASI Kamal Dev were given up as unnecessary.

(5) Upon conclusion of the prosecution evidence, the appellant was called upon to enter upon his defence. The appellant produced Hardev Singh-DW1, who deposed that religious functions were held in 1991 and 1992 in village Bhullar Herri and no such function was held in that village after 1992.

(6) After hearing counsel for the parties, and upon an appraisal of the evidence on record, the Sessions Judge, Sangrur convicted and sentenced the appellant, as noticed herein above.

(7) Counsel for the appellant contends that the motive, as set out by the prosecution, in the present case, is inherently untrustworthy and so insignificant as to be unbelievable. The motive alleged, namely, a dispute regarding settlement of accounts could not have been the cause for the alleged murder. It is further argued that a motive, being for foundation of an offence, has to be estabilshed by adducing cogent and convincing evidence. As the prosecution has failed to establish any motive, the story, as narrated by the eye witnesses, and as accepted by the Sessions Judge, be discarded.

(8) The next contention, pressed into service by counsel for the appellant, is that the occurrence, allegedly took place at 4.30 p.m. on 9th April, 1994, and the first information was lodged at 5.30 p.m. However, the special report was received by the Ilaqa Magistrate at Dhuri at about 7 p.m. The delay in the receipt of the special report was sufficient to fabricate a false story and implicate the appellant. It is further argued that as the alleged eye witnesses Dewan Chand—PW4 and Girdhari Lal—PW5 were close relatives of the deceased, their testimony should be discarded. It is contended that Dewan Chand is the deceased's real brother, whereas Girdhari Lal is a cousin brother. In the absence of any independent corroboration of their depositions, their statements should be discarded, being witnesses interested in ensuring the conviction of the appellant.

(9) It is further argued that admittedly, both eye witnesses do not reside in village Bhullar Herri. Their presence in the village

at the time of occurrence was unnatural, unbelievable and when coupled with the fact of their close relationship with the deceased, their depositions did not merit acceptance.

(10) Another contention raised is the unnatural conduct of the eye witnesses, during the alleged assault. Despite the brutal assault, the two eye witnesses did not suffer any injury. They did not come forward to save the accused and stood-by as mute spectators. This unnatural conduct on the part of the eye witnesses, who are none other than the real and cousin brother of the deceased, casts a doubt upon their testimonies.

(11) Counsel for the respondent, on the other hand, contends that the conviction and sentence, imposed upon the appellant, does not call for any interference. It is contended that the motive alleged, namely, the failure of the deceased to settle his accounts with the appellant, has been clearly established. Even otherwise, where clear and cogent evidence is available, motive is not such a significant circumstance as would warrant setting aside the accused's conviction and sentence.

(12) It is further argued that there was no delay, inordinate or otherwise, in the lodging of the FIR and the receipt of the special report by the Ilaqa Magistrate. The occurrence took place at 4.30 p.m. on 9th April, 1994, the first information was lodged at 5.30 p.m. and the special report was received by the Ilaqa Magistrate at Dhuri at about 7 p.m. The contention, raised by counsel for the appellant as regards delay and a consequential false implication, does not merit acceptance.

(13) In so far as the relationship of Dewan Chand and Girdhari Lal with the deceased and their presence in village Bhullar Herri on the fateful day, it is contended that both witnesses deposed that they had arrived at village Bhullar Herri at the request of the appellant so as to resolve his financial dispute with the deceased. The fact that they were closely related to the deceased is entirely irrelevant. They had no reason to falsely implicate the appellant. The fact that the aforementioned witnesses were close relatives of the deceased is no ground to doubt their depositions. Their presence at the place of occurrence has been satisfactorily explained and as they were natural witnesses of the occurrence, no fault can be found with their depositions.

It is also argued that the fact that the eye witnesses did not suffer any injury or did not physically intervene to save the deceased, cannot be a circumstance to doubt their statements. They have categorically deposed that they were threatened by the appellant, who was armed with an unsheathed sword and, therefore, the mere fact that they did not physically intervened, is irrelevant.

(14) We have heard learned counsel for the parties and perused the paper book.

(15) The motive for a crime, being generally embedded in the mind of an accused, is a matter of inference to be drawn from the circumstances that surround a case. The absence of a motive or the failure of the prosecution to establish a firm motive need not necessarily lead to the acquittal of an accused. Where the prosecution adduces direct, cogent and unimpeachable evidence to establish the commission of the offence, motive for the offence, the absence thereof or its insignificance recedes into the background. In a given case, the motive may appear insignificant but one cannot loose sight of the complexities of the human psyche. Human beings do not respond to situations with mathematical certainty. A given set of circumstances may lead to an adverse reaction on the part of an individual, whereas another may simply ignore them. As human conduct is, by its very nature, unpredictable, the fact that the motive appears to be minor or inconsequential, cannot, by itself, be a circumstance to doubt the participation of an accused in the commission of an offence.

(16) **In Tarseem Kumar** *versus* **The Delhi Administration,** (1), the Apex Court held :—

> "Normally, there is a motive behind every criminal act and that is why investigating agency as well as the Court while examining the complicity of an accused try to ascertain as to what was the motive on the part of the accused to commit the crime in question. It has been repeatedly pointed out by this Court that where the case of the prosecution has been proved beyond all reasonable doubts on basis of the materials produced before the Court, the motive loses its importance. But in a case which is based on circumstantial evidence, motive for committing the crime on the part of

(1) AIR 1994 S.C. 2585

the accused assumes greater importance. Of course, if each of the circumstances proved on behalf of the prosecution is accepted by the Court for purpose of recording a finding that it was the accused who committed the crime in question, even in absence of proof of a motive for commission of such a crime, the accused can be convicted. But the investigating agency as well as the court should ascertain as far as possible as to what was the immediate impelling motive on the part of the accused which led him to commit the crime in question. In the present case, no motive on the part of the appellant to commit the murder of Gulshan, has been suggested or established on behalf of the prosecution."

(17) In **Nathuni Yadav and others** *versus* **State of Bihar and another** (2), the Apex Court held :—

"Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impells a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling facts would remain undiscoverable. Lord Chief Justice Champbell struck a note of caution in Reg. V. Palmer (Shorthand Report at page 308 (sic) CCC May 1856) thus: "But if there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of criminal courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties." Though, it is a sound proposition that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless motive is proved. After all, motive is a psychological phenomenon. Mere fact that prosecution failed to translate that mental disposition of

(2) AIR 1997 S.C. 1808

the accused into evidence does not mean that no such mental condition existed in the mind of the assailant. In Atley *versus* State of U.P. (AIR 1955 SC 807) it was held "that is true, and where there is clear proof of motive for crime, that lends additional support to the finding of the Court that the accused was guilty but absence of clear proof of motive does not necessarily lead to the contrary conclusion." In some cases, it may not be difficult to establish motive through direct evidence, while in some other cases inferences from circumstances may help in discerning the mental propensity of the person concerned. There may also be cases in which it is not possible to disinter the mental transaction of the accused which would have impelled him to act. No proof can be expected in all cases as to how the mind of the accused worked in a particular situation. Sometimes, it may appeal that the motive established is a weak one. That by itself is insufficient to lead to any inference adverse to the prosecution."

(18) In the present case, as narrated in the FIR, and in the depositions of PW4 and PW5, it is alleged that on 8th April, 1994 at about 5 p.m., the appellant came to his (Dewan Chand—PW-4's shop) and requested him to intercede in a dispute as regards settlement of accounts with Bimal Muni-deceased. Dewan Chand-PW4 asked the appellant to reach Bimal Muni's house on 9th April, 1994 at 4 p.m. to effect a settlement. The aforementioned witness asked Girdhari Lal to accompany him to village Bhullar Herri. On 9th April, 1994, Dewan Chand and Girdhari Lal reached village Bhullar Herri and went to the house of Bimal Muni. At about 4 p.m. when they were talking to Bimal Muni, the appellant, entered the house, brandishing an unsheathed kirpan in his right hand, and and the sheath in his left hand. He raised a lalkara, directed against Bimal Muni, threw the sheath to the ground, and holding the kirpan in both hands inflicted a direct blow to the head of Bimal Muni. The two eye witnesses were threatened that they would not be spared if they approached the deceased. Thereafter, the appellant inflicted 2-3 blow with his kirpan to the neck of Bimal Muni and, thus, severed his head. These, in sum and substance, are the allegations against the appellant, as regards the motive, as also the actual occurrence. Whether the motive was insufficient to harbour an intention to commit the murder, is irrelevant.

In the present case, in the presence of direct and unimpeachable evidence, in the shape of depositions of PW4 and PW5, the eye witnesses to the gruesome murder of Bimal Muni, the motive stands established. It is a settled principle of law that motive is not necessarily the linchpin of a successful prosecution more particularly where direct ocular evidence convincingly implicates an accused, as in the present case. Consequently, the learned trial Court, upon an appraisal of the depositions of PW4 and PW5, rightly held that in view of the clear, cogent and reliable depositions by the two eye witnesses, the motive stood established.

(19) The next point that merits consideration is whether there was any delay in the lodging of the FIR and the communication of the special report to the Ilaqa Magistrate. As noticed herein above, the occurrence took place at about 4.30 p.m. The matter was reported to the police immediately i.e. at 5.30 p.m. and the FIR recorded at Police Station Dhuri. After completion of legal formalities, the matter was immediately sent to the Ilaqa Magistrate at 7 p.m.

(20) The aforementioned facts, in our considered opinion, do not disclose any delay in the lodging of the FIR or in the communication of the special report to the Ilaqa Magistrate and, thus, the contention, raised by counsel for the appellant, that the delay in the lodging of the FIR and the communication of the special report, was utilized by the prosecution witnesses to falsely implicate the appellant, is baseless.

(21) Another contention as regards the relationship of the eye witnesses with the deceased, and the absence of independent witness, to corrobroate their depositions, necessitating the discarding of their depositions, cannot be accepted. As noticed herein above, the eye witnesses had come to village Bhullar Herri at the request of the accused. There is no denying the fact that they were related to the deceased, PW4 being his real brother and PW5 a cousin. However, relationship alone cannot be the solitary ground to discard the testimony of an eye witness. In order to raise a doubt, significant enough to discard statements of the eye witnesses, it was incumbent upon the appellant to elicit, whehter during their cross-examination or adduce in his defence, cogent and reliable evidence that would enable this Court to hold that the eye witnesses deposed falsely solely on account of their relationship with the deceased. In the present case,

no such evidence was elicited from the two witnesses, during their cross-examination or produced in defence. Their relationship with the deceased was the reason for their presence, on the fateful day, at the place of the occurrence and the mere fact that they were close relatives of the deceased would be insufficient to doubt the veracity of their depositions, made on oath. Counsel for the appellant was unable to bring to our notice any circumstance that would compel us to hold otherwise.

(22) The last contention i.e. the alleged unnatural conduct of the two eye witnesses, when the appellant was allegedly attacking the deceased, namely, their failure to intervene has been ably dealt with by the trial Court. While noticing this contention, the trial Court rightly held that different people respond in different ways to adversity. Some react and intervene, whereas others remain speech less and stand rooted to the spot. We find no infirmity with the aforesaid reasoning. Human behaviour does not follow any set pattern. Even otherwise, the two eye witnesses have deposed that they were threatened by the appellant, who was brandishing an unsheathed sword. The fact that they failed to intervene physically or did not suffer any injury does not detract from the appellant's guilt that has been established by the prosecution by clear, convincing and cogent evidence.

(23) Apart from the depositions, made by the two eye witnesses, it would be necessary to refer to the evidence on record. The prosecution lifted blood stained earth from the place of occurrence alongwith a parna, a wooden comb and a small kirpan. A sheath was also recovered from the place of occurrence, i.e. the house of the deceased. These articles, apart from the sheath, were also blood stained. During investigation, the appellant suffered a disclosure statement and at his instance, a blood stained sword, Ex.P1 was recovered, as were his shirt and pajama. This recovery was effected from the appellant's house. The recovery was fortified by the Chemical Examinier's and Serologist's reports Exs.PT and PU respectively, which found human blood on the blood stained articles. The circumference of guilt stands fortified by the deposition of PW1 Dr. Vijay Kumar Jindal, who deposed, as to the injuries suffered by the deceased, matches the ocular version in all material particulars. Dr. Vijay Kumar, who conducted the post mortem on 10th April, 1994,

found the following injuries :—

"1. Head and neck was lying separte from the rest of the body. Neck was amputated at the level of 6-7 vertibral. Trachea and larynx, oceophogus and cartid vessels were cut at the level.

Part of the skull bone i.e. left side of temporal bone and occipital bone was missing. Underlying brain matter was lacerated.

2. Incised would measuring 9 cm x 0.7 cm x bone over the left side of hair just above the hair line.

On dissection, underlying bone was cut and brain matter was lacerated.

3. Incised would 4 cm x 0.7 in size about 1 cm over the left shoulder."

(24) In his deposition on oath, PW1—Dr. Vijay Kumar Jindal deposed that injuries No. 1 and 2 were sufficient in the ordinary course of nature to cause death and that all injuries were *ante mortem* in nature. He also deposed that death in his opinion was the result of shock and haemorrhage, as a result of injuries No. 1 and 2 and death followed immediately. This witness also linked the injuries to the sword, Ex.P1. The medical evidence, thus, concludes and successfully supports and other evidence, namely, the oral depositions, the recoveries effected and, thus, the entire evidence, when read together, conclusively establishes the appellant's guilt beyond a shadow of doubt. The trial Court considered the aforementioned circumstances, while convicting the appellant and in our considered opinion did not commit any error of fact or law as would require interference.

(25) In view of what has been noticed herein above, the present appeal is dismissed being devoid of any merit. Bail/surety bonds are cancelled and forfeited to the State and the appellant be arrested forthwith to undergo the remaining sentence.

R.N.R.