

Col. Mohan Singh

Vs

State of Rajasthan

Criminal Appeal No. 363 of 1979

(R.S. Sarkaria, V.D. Tulzapurkar JJ)

30.07.1979

### JUDGMENT

1. This appeal by special leave is directed against an order, dated March 28, 1979, whereby the High Court of Rajasthan dismissed the appellant's application under Section 432, Criminal Procedure Code and refused to set aside an Order dated August 14, 1978 of the Sessions Judge framing a charge under Section 201, Penal Code against the appellant.

2. The prosecution case as put in court is that on March 4, 1978, one Padam Singh was shot dead at the farm of the appellant by the accused, Doongar Singh, in conspiracy with the accused, Hanif and Shambhoo Singh. Padam Singh's dead body was first put in a jeep for removal. After going some distance the jeep went out of order. Thereafter, Doongar Singh brought the car of the appellant. The dead body was then transhipped into the car (RJF 2118) and was taken to a distance and thrown into a lonely well on the boundary of village, Ramasani. Doongar Singh then brought the car back to Mohan Singh's bungalow where it was washed [vide the police report of A.S.P. City (West) Jodhpur]. It is not alleged that the appellant was in any manner concerned as an abettor or accomplice in the murder or participated or abetted the removal and disposal of the dead body of Padam Singh. The only allegation on the basis of which a charge under Section 201, Indian Penal Code has been framed against the appellant is that on March 8, 1978, that is, five days after the murder of Padam Singh, he got his car washed at the petrol pump of one Umrao Khan. In this connection, the investigating police officer examined Sardar Khan, son of Umrao Khan, petrol pump dealer and his servant, Mangilal. There is nothing in their statements that there was any blood on the car which was washed. There was not an iota of material on the record to furnish basis even for a grave suspicion that by getting the car washed on March 8, 1978, the appellant caused any blood or other evidence related to the murder of Padam Singh, to disappear. The presence of bloodstains on the car on March 8 stood negated by the prosecution's own assertion (in the police challan) that Doongar Singh had got the blood on the car washed on the day of the murder itself. The mere washing of the car on March 8 could not, by any stretch of imagination, be prima facie evidence of the factual ingredients of an offence under Section 201, Penal Code. The impugned order of the Sessions Judge being based on no evidential material whatever, was manifestly illegal. We, therefore, allow this appeal, set aside the impugned Order and quash the charge framed against the appellant.

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